Procurement Form (Design & Construct)

[***Drafting Note: This template should be used where a Contractor is to be engaged to carry out both design and construction for a project. For construct only (without design), please use the Construct-Only template.***

***While this template has been drafted for use in local government projects, it is recommended that legal advice is sought as to whether this template is suitable for a specific project and whether any amendments are required.***]

Part A

This Member Contract for Works is made pursuant to the Panel Agreement dated [***Insert date***] with agreement number [***insert agreement number***] (**Panel Agreement**) between:

1. Western Australian Local Government Association  
   ABN: 28 126 945 127 (**WALGA**)

and

1. [***Insert Contractor’s name and details***] (**Contractor**)

**Procurement Form Number:** [***Insert Procurement Form Number***]

**Member:** [***Insert description of Member, including full name and ABN of member. For clarity, the Member is the Principal and not WALGA.***]

It is agreed as follows:

* + 1. WALGA and the Contractor entered into the Panel Agreement;
    2. under the Panel Agreement, the Member is entitled to enter into individual contracts with the Contractor for the performance of the Services up until expiry of the term of the Panel Agreement by executing a Procurement Form;
    3. by executing the Procurement Form, the Member and the Contractor are entering into a contract for the performance of the Services described in this Procurement Form, formed pursuant to the terms of, but separate from, the Panel Agreement. The Member Contract comprises:
       1. the terms and conditions of this Procurement Form, including any schedules, annexures or attachments to this Procurement Form; and
       2. the Member Contract Conditions (Design & Construct) as set out in Part D of this Procurement Form;
    4. if there is any inconsistency between the documents referred to in paragraph (c), the documents will prevail in the order of precedence set out in paragraph (c) of this Procurement Form;
    5. any term which is not defined in this Procurement Form has the meaning given to it in the Panel Agreement;
    6. the Contractor represents and warrants to the Member that the execution of this Procurement Form has been properly authorised; and
    7. for clarity, additional purported ‘Member Contracts’ may not be issued pursuant to this Member Contract.

[***Drafting Note: Insert preferred execution block for Member at the end of this Part A. We recommend that the Contractor execute under s 127 of the Corporations Act 2001* (Cth)*.***]

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Contractor** | | |
|  | Executed by  [**Insert Contractor**]  in accordance with section 127 of the *Corporations Act 2001* (Cth) by |  | |
| *sign here* ► |  | *sign here* ► |  |
|  | Company Secretary/Director |  | Director |
| *print name* |  | *print name* |  |

Part B

Procurement Form Details

|  | **Ref** | **Item** | **Detail** | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | Panel Agreement Number | PSP012 | | | | |
|  |  | Date of Request for Services | [**Insert]**  **[*Drafting Note: This is the date on which the Member issues a request to the Contractor for the provision of “Deliverables”, pursuant to clause 4.3 of the Panel Agreement.*]** | | | | |
|  |  | Procurement Form Number and Title | [**Insert]** | | | | |
|  | 35 | Party notice details | **Principal** | | | | |
| Name: | | [**Insert**] | | |
| ABN: | | [**Insert**] | | |
| Address: | | [**Insert**] | | |
| Attention: | | [**Insert**] | | |
| Phone: | | [**Insert**] | | |
| Email: | | [**Insert**] | | |
| **Contractor** | | | | |
| Name: | [**Insert**] | | | |
| ABN: | [**Insert**] | | | |
| Address: | [**Insert**] | | | |
| Attention: | [**Insert**] | | | |
| Phone: | [**Insert**] | | | |
| Email: | [**Insert**] | | | |
|  | 1.1 | Project | [**Insert**] | | | | |
|  | 1.1 | Principal Maximum Liability Amount | $[**Insert**](*$ or % of Contract Price*) | | | | |
|  | 1.1 | Contractor Maximum Liability Amount | $**[Insert**] (*$ or % of Contract Price*) | | | | |
|  | 1.1 | Contractor’s Design Obligations | [**Insert all tasks necessary to design and specify the Works.**] | | | | |
|  | 1.1 | Liquidated Damages rate | $ **[Insert**] (per day of delay)  [***Drafting Note: Include a genuine pre-estimate of the likely loss incurred by the Principal per day if the Contractor fails to achieve Completion by the Date for Completion.***  ***If LDs do not apply to a specific Contract, state “general damages” are to apply. Do not insert “zero” or “nil”.***] | | | | |
|  | 1.1 | Liquidated Damages Cap | [**Insert the maximum amount of the Contractor’s liability for Liquidated Damages under the Contract.**] | | | | |
|  | 1.1 | Preliminary Design | [**Insert preliminary design documents.**] | | | | |
|  | 1.1 | Project Requirements | As set out in Part C of the Procurement Form.  [**Specify whether Preliminary Design is included.**]  As part of the Project Requirements, the following plans form part of the Project Requirements (cross, where applicable):  Work Health and Safety Management Plan;  Pandemic Management Plan; and  Other (specify): [Insert]. | | | | |
|  | 1.1 | Site | [**Insert details of Site, including referring to location of Site plan.**] | | | | |
|  | 1.8 | Separable Portions | Portion of Works: | | | | [**Insert**] |
| Date for Completion: | | | | [**Insert**] |
| Respective amounts for Liquidated Damages and delay damages (all calculated pro-rata according to the ratio of the Principal’s valuation of the Separable Portion to the Contract Price): | | | | [**Insert**]  [***Drafting Note: In respect of each portion of the Works included in a Separable Portion, this sets out the way in which the LDs and delay damages are broken down in respect of each Separable Portion. This can be expressed as a percentage for each Separable Portion, as an example.***]  [***Drafting Note: Where the information to be set out in this Item 14*** ***is voluminous (for e.g. if there are many Separable Portions), we recommend that this information is inserted in the Project Requirements. If this approach is adopted, please ensure that the details required in this Item explicitly cross-reference their inclusion in the Project Requirements.***] |
|  | 2.2 | Conditions Precedent | [**Insert**] | | | | |
|  | 3.4 | Principal Supplied Items | [**Insert materials or equipment supplied by the Principal.**] | | | | |
|  | 3.8 | Reliance Information | [**Insert list of documents, if any**] | | | | |
|  | 5.1 | Performance Securities required? | **Works Security**: | | | One bank guarantee for [insert]% of the Contract Price. | |
| **Defects Liability Security:** | | | One bank guarantee for [insert]% of the Contract Price. | |
| **Retention Monies**: | | | [**Yes**] / [**No**]  [**Insert amount of retention to be withheld in each payment claim, as a percentage of the Contract Price – such as 10%**]  [**Insert cap on retention under the Contract, as a percentage of the Contract Price – such as 10%**] | |
| **Advance Payment Security**: | | | [**Insert**] | |
|  | 5.6 | Adjustment of the initial amount of Performance Securities | (a) Initial increase in Contract Price: [**Insert**] %  (b) Subsequent increases in the adjusted Contract Price at (a): [**Insert**]%  [**Drafting Note: Indicate the % increase of the Contract Price requiring the Contractor to provide adjusted bank guarantees.**] | | | | |
|  | 5.9 | Parent Company Guarantee? | Is a Parent Company Guarantee required? | | | | [**Yes**] / [**No**] |
| If required, details of the Contractor Guarantor: | | | | [**Insert**] |
|  | 6.1(a) | Principal Documents | [**Insert list of documents to be supplied by the Principal and number of copies.**] | | | | |
|  | 6.2(a) | Contractor’s Documents | [**Insert list documents to be supplied by the Contractor.**] | | | | |
|  | 6.3(b) | Operations and Maintenance Manuals | [**Yes**] / [**No**] | | | | |
|  | 7.1(b)(1) | Permitted Subcontract value | $[**Insert the value of subcontract that does not require the Principal’s consent**] | | | | |
|  | 7.1(b)(2) | Approved Subcontractor | [**Insert details of proposed Subcontractor and the relevant Work to be subcontracted**] | | | | |
|  | 7.3 | Novation value consent threshold | $[**Insert aggregate value of Work**] | | | | |
|  | 7.6 | Key Personnel | [**Insert details of Key Personnel and roles**] | | | | |
|  | 18.2 | Defects Liability Period | [**Insert**] months from 4:00pm on the Date of Completion. | | | | |
|  | 18.3 | Defects Liability Period for Remedial Work | [**Insert**] months from the date of the Principal’s acceptance of the Remedial Work. | | | | |
|  | 12.7(d) | Daily limit on delay costs | [**Insert**] | | | | |
|  | 12.1(b) | Date for Completion | [**Insert**] | | | | |
|  | 19.1(a) | Contract Price | [**Insert**] | | | | |
|  | 19.2(b)(2) | Profit and attendance margin | [**insert margin to be applied to any Provisional Amount Excess**]% | | | | |
|  | 19.3 | Basis of payment | [Schedule of rates] / [Lump sum]  [Schedule of rates and Lump sum] | | | | |
|  | 19.3(b) | Milestone Events | [**Insert Milestone Events if Contract is a lump sum.**] | | | | |
|  | 19.3(b) | Milestone Amounts | [**Insert Milestone Amounts if Contract is a lump sum.**] | | | | |
|  | 23(d) | Insurance | [**Insert any insurances the Contractor is required to take out for the Works (if any) in addition to any insurances under the Panel Agreement. If none, insert “Not applicable”**]  [***Drafting Note: Current insurance levels under the Panel Agreement for the Contractor can be viewed in VendorPanel.***]  [***Drafting Note: The Panel Agreement does not require the Contractor to provide Contract Works Insurance. Member to consider, on a case-by-case basis, the Contractor providing Contract Works Insurance. Member to consider, otherwise, whether the Member provides this insurance coverage for the Works.***] | | | | |

Part C

Project Requirements

[**For each Procurement Form, describe the Principal’s written requirements for the Works, including:**

* **the stated purpose for which the Works are intended;**
* **the Principal’s specification in relation to materials and/or methodology to be used and specific standards to be met;**
* **the Principal’s design, timing and cost objectives for the Works; and**
* **where stated in Item 12, the plans and a Preliminary Design (if applicable).**]

[***Drafting Note: The Project Requirements must, in terms of the plans, as set out in Item 12, including as a minimum the obligation on the Contractor to prepare the Work Health and Safety Management Plan, and the Pandemic Management Plan (where required).***]

[***Drafting Note: This template has not been prepared to be used in the context of a costs-plus commercial model. If a cost-plus commercial model is preferred, the Member should seek legal advice in relation to additional drafting required in the context of such a model.***]

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Member Contract Conditions (Design & Construct)

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# Definitions and interpretation

## Definitions

The meanings of the terms used in the Contract are set out below.

| ****Term**** | Meaning |
| --- | --- |
| **ABCHR Obligations** | the Contractor’s Anti-Bribery, Anti-Corruption and Human Rights obligations set out in clauses 31.1(b) and 31.1(c). |
| **Acceleration Order** | a written direction given by the Principal to accelerate or re-sequence Work which expressly states it is an acceleration order under clause 13.3. |
| **Advance Payment Security** | the Performance Security as detailed in clause 5 and Item 18. |
| **Approval** | approvals, authorisations, licences, exemptions, visas, permits, consents, clearances, registrations, certifications, waivers or requirements of Law or a Government Agency. |
| **Approved Financial Institution** | a bank which:   1. is registered and conducting business in Australia, with a local branch in Western Australia; 2. is regulated by the Australian Prudential Regulation Authority; and 3. has a long term Standard & Poor’s credit rating of at least A- (or equivalent rating with another recognised international rating agency). |
| **Artefacts** | fossils, human remains, artefacts, valuable minerals and other things of scientific, geological, historical or archaeological significance or Aboriginal origin. |
| **As Built Drawings** | the drawings and other information to be created by the Contractor which details the manner in which the Works have been constructed. |
| **As For Construction Drawings** | the documents, drawings and other information to be created by the Contractor which detail the manner in which the Works are to be constructed, including shop drawings. |
| **Associated Parties** | has the meaning given in clause 31.1(c). |
| **BBSY Rate** | for a period:   1. the average bid rate displayed on the Reuters screen BBSY page at or about 10:30am (AEST) on the day the payment was due for a term closest to that period; or 2. if that rate ceases to be published, any substantially equivalent rate that replaces it. |
| **Business Day** | a day that is not a Saturday, Sunday, a public holiday in the place where the Principal has its head office, or 27 28, 29, 30 or 31 December. |
| **Change of Control** | any change in the capacity to control the financial and operating policies, or management, of the Contractor. |
| **Claim** | any claim, demand, action or proceeding of any nature whatsoever, whether actual or threatened, including a claim by the Contractor for:   1. an adjustment to the Contract Price; 2. payment of an amount in addition to the Contract Price; 3. suspension of, or relief from, an obligation under the Contract; 4. any direction of the Principal’s Representative under the Contract; or 5. an extension of time to the Date for Completion. |
| **Commencement Date** | the date on which all Conditions Precedent have been satisfied or waived in accordance with clause 2.2, or if no Conditions Precedent are specified, then the Contract Date. |
| **Compensation Event** | any of the following, in each case, except to the extent caused by the Contractor, the Contractor Personnel or a Defect:   1. a breach of the Contract by the Principal; 2. a negligent act or omission of the Principal or the Principal Personnel; 3. a Variation Directed by the Principal pursuant to a Variation Notice (other than a Variation Directed by the Principal for the Contractor’s convenience or to overcome a Defect, or a Variation the subject of a Variation Notice where the adjustment to the Date for Completion has been agreed by the parties prior to the relevant Variation Notice being given); 4. the performance of an inspection or test Directed under clause 15.1 which the Principal is required to pay for under clause 15.2(b); 5. Excluded Contamination; 6. an Excluded Artefact; 7. a Native Title Claim in respect of the Site or any part of it; and 8. an inaccuracy in the Reliance Information. |
| **Completion** | the stage in the carrying out and completion of the Works when:   1. the Works are complete in accordance with the Contract except for Minor Defects; 2. those Completion Tests, inspections and commissioning required by the Contract to have been carried out and passed before the Works reach ‘Completion’ have been carried out and passed; 3. all training in respect of the Works has been provided by the Contractor as required by the Project Requirements; 4. any Documents, Approvals or other information required under the Contract or the Project Requirements, or which, in the Principal’s opinion, are essential for the use, operation and maintenance of the Works have been supplied (including the As Built Drawings correspondence and records which outline any requirements of Government Agencies that apply to the Works, any executed and completed transfer of warranties and guarantees in a form acceptable to the Principal for any part of the Works completed by a Subcontractor or for the supply of any Materials and Equipment); and 5. any other matter or condition required by the Contract to be achieved or satisfied prior to Completion has been achieved or satisfied,   and **Complete** has a corresponding meaning. |
| **Completion Certificate** | a certificate issued by the Principal under clause 17.4 evidencing the Date of Completion. |
| **Completed Milestone Events** | has the meaning given in clause 19.3(b)(1). |
| **Completion Notice** | has the meaning given in clause 17.1. |
| **Completion Tests** | the tests necessary to confirm whether the Works have reached Completion pursuant to clause 16.1. |
| **Conditions Precedent** | the conditions precedent set out in Item 15. |
| **Confidential Information** | in relation to a Party, is any information (in any form) which is disclosed or made available by or on behalf of that Party to the other Party during or in connection with the negotiation or performance of the Contract that is:   1. expressly provided or made available on a confidential basis; 2. relates to a Party’s business, assets or affairs; or 3. could reasonably be expected to have been provided or made available on a confidential basis,   but excluding information which is:   1. in the public domain, other than due to a breach of confidentiality; or 2. lawfully obtained by the receiving Party from a different source in circumstances which do not impose a duty of confidence.   The terms of the Contract are deemed to be Confidential Information of both Parties. |
| **Construction Plant** | the equipment, facilities, appliances, machinery, tools, scaffolding and other tangible property (including fuel, spare parts and consumables) supplied, leased or hired that the Contractor or its Subcontractors are required to use in the carrying out of (but that does not form part of) the Works. |
| **Construction Program** | the program prepared by the Contractor and approved (or otherwise) by the Principal under clause 9.2 and, where updated and approved in writing by the Principal in accordance with clause 9.3(b), the latest updated Construction Program. |
| **Contamination** | the presence of a substance (whether solid, liquid or gas) in the Environment:   1. at a concentration above that normally present in the Environment in the same locality; and 2. which creates a risk of harm to human health or any other aspect of the Environment,   and **Contaminate** has a corresponding meaning. |
| **Contract** | the agreement formed between the Parties regarding the performance of the Works by:   1. with respect to the Works, either:  * the relevant Procurement Form; or * the details in VendorPanel; and  1. the Design & Construct Contract Conditions. |
| **Contract Date** | the date on which the Contract is executed by the last Party to do so. |
| **Contract Price** | the amount set out in Item 32 payable to the Contractor in respect of the Works calculated as follows:   1. where Schedule 1 sets out a lump sum, the lump sum; 2. where Schedule 1 refers to a schedule of rates, the amount ascertained by adding the products of the rates and the corresponding quantities in the schedule of rates; or 3. where Schedule 1 refers to both a lump sum amounts and schedule of rates, the aggregate of the lump sum amounts specified in Schedule 1 and the amount ascertained by addition the product of the rates and the corresponding quantities in the schedule of rates,   as adjusted only in accordance with clause 19.1(b)(2). |
| **Contractor** | the Party defined as the “Contractor” in the Procurement Form. |
| **Contractor Event of Default** | has the meaning given in clause 27.1. |
| **Contractor Guarantor** | the person or entity specified in Item 20. |
| **Contractor IP** | any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a Third Party) which:   1. is in existence before the Contract Date or comes into existence after the Contract Date other than in connection with the Contract or the Works; and 2. the Contractor makes available, contributes, brings to, or uses in connection with the Contract,   but excludes the Project IP. |
| **Contractor Maximum Liability Amount** | the amount in Item 7. |
| **Contractor Personnel** | 1. any Related Body Corporate of the Contractor; 2. any Subcontractor; and 3. any officer, employee or agent of the Contractor or a person referred to in paragraph 1 or 2 of this definition and includes the Key Personnel. |
| **Contractor Representative** | the person appointed by the Contractor as its duly authorised representative with respect to the Contract pursuant to clause 4.2. |
| **Contractor’s Design Obligations** | the tasks listed in Item 8, and, in addition:   1. all tasks necessary to design and specify the Works required by the Contract; 2. preparation of the Design Documents; and 3. if required by Item 11, development of the Preliminary Design. |
| **Contractor’s Documents** | the documents listed in Item 22, including all documents developed by the Contractor and necessary for the performance of the Works to be supplied by the Contractor to the Principal under the Contract and includes the Construction Program, Design Documents, As For Construction Drawings, As Built Drawings, Work Health and Safety Management Plan and the Operations and Maintenance Manuals. |
| **Corrupt Act** | has the meaning given in clause 31.1(c). |
| **COVID-19** | the coronavirus disease identified by the World Health Organisation on 11 February 2020 as COVID-19 and declared a pandemic by the World Health Organisation on 11 March 2020, and includes any and each mutation, variant or strain of the virus that causes the disease. |
| **Date for Completion** | the date set out in Item 31, as may be extended in accordance with the Contract. |
| **Date of Completion** | the date evidenced in the Completion Certificate as the date upon which Completion was reached. |
| **Default Interest Rate** | the BBSY Rate plus 2% per annum. |
| **Defect** | any defect, material error or deficiency in the performance of the Work or any part or aspect of the Works that are not in compliance with the Contract, and includes any:   1. error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works; 2. workmanship or materials incorporated in the Works not being of the standard or quality required under the Contract; or 3. Works not meeting the standards or specifications required under the Contract. |
| **Defects Liability Period** | a ‘Defects Liability Period’ under clauses 18.2 or 18.3.  The last Defects Liability Period for a part or parts of the Work is the last Defects Liability Period to expire which applies to that part or parts.  The last Defects Liability Period for the Work is the last Defects Liability Period to expire which applies to any part of the Work. |
| **Defects Liability Security** | one of the Performance Securities as detailed in clause 5 and Item 18. |
| **Delay Event** | has the meaning given in clause 12.2. |
| **Design & Construct Contract Conditions** | this document called “Member Contract Conditions (Design & Construct)”. |
| **Design Document** | the drawings, specifications, documents and other information, samples, models, patterns and the like required by the Contract or reasonably required by the Principal and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works. |
| **Direction** | includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement, and **Direct** and **Directed** have corresponding meanings. |
| **Dispute** | a difference, dispute or issue arising at any time between the Parties arising out of, or in connection with, the Contract (and including any question regarding the existence, validity or termination of the Contract). A reference to a Dispute which is partly resolved, refers to the unresolved part of the Dispute. |
| **Dispute Notice** | has the meaning given in clause 34.1(b). |
| **Document** | includes, as appropriate, a technical document, Design Document, manual, operating system and record, including any documents forming part of the Contract. |
| **Environment** | has the same meaning as that term has under the *Environmental Protection Act 1986* (WA) and **Environmental** has a corresponding meaning. |
| **Environmental Laws** | all Laws in relation to the Environment, including the *Environmental Protection Act 1986* (WA). |
| **Environmental Requirements** | the requirements set out in the Project Requirements and any of the following related to the protection of the Environment, land use, planning, pollution, Contamination and the handling or disposal of substances:   1. Legislative Requirements; and 2. Directions, notices and the like issued in accordance with any Legislative Requirement. |
| **Excepted Risks** | any of the following, in each case, except to the extent caused by the Contractor, a Contractor Personnel or a Defect:   1. any negligent act or omission of the Principal or Principal Personnel; 2. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority; and 3. ionising radiations or contamination by radioactivity from any nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel. |
| **Excluded Artefacts** | Artefacts at the Site to the extent that, at the Contract Date:   1. the Contractor was not aware of the Artefact; and 2. the Artefact could not reasonably have been anticipated by an experienced and skilled contractor having complied with clause 10.1(b). |
| **Excluded Contamination** | Contamination at the Site not caused by the Contractor or the Contractor Personnel to the extent that, at the Contract Date:   1. the Contractor was not aware of the Contamination; and 2. the Contamination could not reasonably have been anticipated by an experienced and skilled contractor having complied with clause 10.1(b). |
| **Excluded Loss** | 1. loss of use, production or business; 2. loss of profit or anticipated profit or revenue; 3. loss of opportunity; 4. any failure to realised anticipated savings; or 5. loss of goodwill or damage to reputation. |
| **Existing Works** | the existing buildings, structures, utilities and infrastructure on the Site. |
| **Final Completion** | when the Principal determines that the Contractor has:   1. rectified all Defects notified prior to the date that is 10 Business Days after the expiry of the Defects Liability Period; and 2. provided to the Principal any Documents or information that may be listed in the Project Requirements or otherwise required under the Contract. |
| **Final Completion Certificate** | a certificate identified as such and issued by the Principal under clause 17.7(c) certifying that Final Completion has been achieved. |
| **Final Completion Date** | 1. the date certified by the Principal in a Final Completion Certificate issued under clause 17.7(c) to be the date on which Final Completion was achieved; or 2. where another date is determined in any Dispute resolution in accordance with the Contract, or litigation as the date upon which Final Completion was reached, that other date. |
| **Final Payment Claim** | a payment claim issued in accordance with clause 17.8. |
| **Final Payment Schedule** | the schedule referred to in clause 17.9. |
| **Force Majeure Event** | any of the following events occurring, in respect of paragraph 1 only, at the Site, and in respect of paragraphs 2 to 5, in Australia:   1. act of God, including cyclone, flood, earthquake, tsunami and bushfire; 2. subject to clause 30.3, epidemic, pandemic, or quarantine by order of any Government Agency; 3. war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Government Agency; 4. ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and 5. industrial action or dispute which results in an Australia wide stoppage that has not arisen by reason of, or in connection with, events in any way connected with the Work or the affected Party or any of its Personnel,   in each case, to the extent it:   1. was not caused by an act or omission of the affected Party or any of its Personnel; 2. was beyond the reasonable control of the affected Party and its Personnel; and 3. could not have been avoided or overcome by the affected Party or any of its Personnel taking reasonable precautions or steps. |
| **Good Industry Practice** | 1. the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a reputable and prudent contractor in performing work similar in nature, size, scope and complexity to the Works and under conditions comparable to those applicable to the Works; 2. the practices and compliance with applicable standards and codes, being the standards and codes specified in the Contract or, if the Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied by a principal in the circumstances; and 3. compliance with applicable Legislative Requirements. |
| **Government Agency** | any government or governmental, local governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency, department, commission, authority or Minister in Western Australia or the Commonwealth of Australia. |
| **Gross Negligence** | a negligent act or omission resulting from a conscious or reckless disregard or indifference. |
| **GST** | has the meaning given in section 195-1 of the GST Act. |
| **GST Act** | *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other act, ordinance, regulation, public binding ruling or subordinate legislation relating to the imposition of GST. |
| **Human Rights** | 1. the internationally recognised principles relating to human rights as defined in the UN Guiding Principles on Business and Human Rights; and 2. the principles relating to human rights under applicable Law. |
| **Incident** | any occurrence or event that has resulted in, or has the potential to result in adverse consequences to people, property, the Environment, reputation or production or a combination of these, including:   1. deviations from the Principal’s health, safety and environmental Policies and Guidelines; and 2. non-compliances with relevant health, safety and environmental Legislative Requirements and any public complaint regarding the Contractor and relating to its provisions of the Works. |
| **Insolvency Event** | any of the following:   1. a 'controller' (as defined in the *Corporations Act 2001* (Cth)), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a body corporate or any asset of a body corporate; 2. a liquidator or provisional liquidator is appointed in respect of a body corporate; 3. any application is made to a court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of:    * 1. appointing a person referred to in paragraph 1 or 2 of this definition;      2. winding up or de-registering a body corporate; or      3. proposing or implementing a scheme of arrangement,   other than an application which is withdrawn, dismissed or set aside within 15 Business Days after it is made;   1. a body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving, an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent; 2. a body corporate becomes, states in writing that it is or is deemed under any Legislative Requirement to be, insolvent or unable to pay its debts as and when they fall due; and 3. any act is done or event occurs which, under any applicable Legislative Requirement from time to time in any jurisdiction, has an analogous or similar effect to any act or event described in paragraphs 1 to 5 of this definition, including bankruptcy of an individual. |
| **Insurances** | the insurances which the Contractor is required to obtain under the Panel Agreement. |
| **Intellectual Property** | all intellectual and industrial property rights, including trade marks, copyright (including future copyright), Moral Rights, inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights. |
| **Item** | an item of Part B of the Procurement Form. |
| **Key Personnel** | the personnel specified in Item 27, as replaced in accordance with clauses 7.6(b) or 7.6(c). |
| **Latent Conditions** | has the meaning in clause 10.11(a). |
| **Law** | all laws, statutes, ordinances, rules, regulations, by-laws, decrees, orders and the like, and any industrial instruments and any binding determination of an industrial body, whether of governmental or other authority or agency having jurisdiction over the Parties or any of them, or the Works, and which are or may become applicable. |
| **Legislative Requirement** | 1. Laws; 2. Approvals; and 3. fees, levies and charges payable in connection with the foregoing and otherwise in connection with the Works including all training payments and levies. |
| **Liquidated Damages** | the liquidated damages payable pursuant to clause 14. |
| **Liquidated Damages Amount** | has the meaning in clause 14(a). |
| **Liquidated Damages Cap** | the amount specified in Item 10. |
| **Loss** | any liability, cost, expense, loss, personal injury (including illness), death or damage, amounts payable on a Claim (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis. |
| **Materials and Equipment** | all materials, goods, parts, equipment, hardware, software and any other items which are used in and form part of the Works. |
| **Milestone Amount** | if the Contract Price is a lump sum, the milestone amounts set out in Item 36. |
| **Milestone Event** | if the Contract Price is a lump sum, the milestone events set out in Item 35. |
| **Minor Defects** | Defects, which:   1. do not prevent the Works from being reasonably capable of being used for the intended purpose; 2. the Principal determines the Contractor has reasonable grounds for not promptly rectifying; and 3. the rectification of which will not prejudice the convenient use of the Works. |
| **Moral Rights** | has the meaning given in the *Copyright Act 1968* (Cth). |
| **Native Title Claim** | any claim or application for a determination of native title under the *Native Title Act 1993* (Cth). |
| **Notifiable Incident** | any act, event or circumstance which occurs in connection with the performance of the Works which:   1. is required by the Work Health and Safety Requirements or Environmental Requirements (or both) to be notified to a regulator; or 2. results in, could have resulted in or still has the potential to result in, a serious injury to a person or the Environment. |
| **Operations and Maintenance Manuals** | the manuals to be prepared by the Contractor in accordance with clause 6.3(b) for the operation, maintenance and repair of the Works. |
| **Pandemic Management Plan** | the pandemic management plan for the Work, as required under the Project Requirements. |
| **Panel Agreement** | the agreement between WALGA and the Contractor, regarding the panel pursuant to which the Contractor is performing the Works for the Principal. |
| **Parent Company Guarantee** | the parent company guarantee that the Contractor Guarantor is required to provide to the Principal in accordance with clause 5.9. |
| **Party** | the Principal or the Contractor (together the **Parties**). |
| **Performance Securities** | the performance securities described in Item 18, including the Works Security, Defects Liability Security and the Advance Payment Security, and any replacement securities required under clause 5.4. |
| **Personnel** | the Contractor Personnel or the Principal Personnel, as the context requires. |
| **Policies and Guidelines** | the policies and guidelines of the Principal:   1. set out in Schedule 5; 2. available on the Principal's website; or 3. provided by the Principal to the Contractor in any format (including hard copy, pdf, via email, or stored on a storage device),   as amended and varied from time to time. |
| **PPS Act** | the *Personal Property Securities Act 2009* (Cth) and any regulations under it. |
| **Preliminary Design** | the Documents listed in Item 11. |
| **Principal** | the Party defined as the “Principal” in the Procurement Form, being an entity within the definition of “Member” (as that term is defined in the Panel Agreement). |
| **Principal Contractor** | 1. “principal contractor” or similar term as defined in Work Health and Safety Legislation; or 2. where “principal contractor” or similar term is not defined in Work Health and Safety Legislation, the entity that performs a role similar to the role of “principal contractor” within the meaning of the *Work Health and Safety Act 2020* (WA). |
| **Principal Event of Default** | has the meaning given in clause 27.4. |
| **Principal IP** | any Intellectual Property of the Principal (or licensed to the Principal by a Third Party) which the Principal makes available, contributes, brings to or uses in connection with the Contract. |
| **Principal Personnel** | 1. a Related Body Corporate of the Principal; 2. any contractor, supplier, or consultant of the Principal; and 3. any officer, employee, or agent of the Principal or a person referred to in paragraphs 1 or 2 of this definition, 4. excluding the Contractor or any Contractor Personnel. |
| **Principal Representative** | the person appointed by the Principal as its duly authorised representative with respect to the Contract pursuant to clause 4.1. |
| **Principal Supplied Items** | the materials or equipment supplied by or on behalf of the Principal as specified in Item 16 (if any). |
| **Principal Maximum Liability Amount** | the amount in Item 6. |
| **Project** | has the meaning given in Item 5. |
| **Project IP** | has the meaning given in clause 24.2(a). |
| **Procurement Form** | as appropriate:   1. the form of that title, order or requisition issued by the Principal to the Contractor from time to time, which provides for the specifics, execution and creation of the Contract for the performance of the Works; or 2. where a Contract is to be created in VendorPanel, the specifics contained on that system, by reference to the Works, necessary for a Contract to be created. |
| **Project Requirements** | the Principal’s written requirements for the Works set out in Part C of the Procurement Form (including any of the documents stated in Item 12) which:   1. may include the stated purpose for which the Works are intended; 2. may include the Principal’s specification in relation to materials and methodology (or both) to be used and specific standards to be met; 3. may include the Principal’s design, timing and cost objectives for the Works; and   where stated in Item 12, will include a Preliminary Design. |
| **Provisional Amount Excess** | has the meaning given in clause 19.2(b)(2). |
| **Provisional Sum Item** | has the meaning given in clause 19.2(a). |
| **Public Official** | any:   1. individual who is employed by or acting on behalf of a Government Agency, government-controlled entity, wholly or partially-owned government entity, or public international organisation; 2. political party, party official or candidate; 3. individual who holds or performs the duties of an appointment, office or position created by custom or convention; or   individual who holds themselves out to be the authorised intermediary of any person specified in paragraphs 1, 2 or 3 above. |
| **Related Activities** | the activities of public or private utilities, statutory and other relevant authorities and others (including other contractors) who may be engaged on or in the vicinity of the Site or who are on or carry out work on or in the vicinity of the Site. |
| **Related Bodies Corporate** | has the meaning given in the *Corporations Act 2001* (Cth). |
| **Relevant Requirements** | has the meaning given in clause 31.1(b)(1). |
| **Relevant Security Interest** | any security interest held by the Principal in any part of the Work, any Materials and Equipment or any personal property provided to the Contractor by the Principal, or otherwise arising out of or in connection with the Contract or the performance of it. |
| **Reliance Information** | the documents listed in Item 17. |
| **Remedial Work** | all work associated with the rectification of a Defect, at the Contractor’s sole cost and risk, and includes all necessary replacement of the Works (including packing, transportation to or from the Site or the manufacturing location, investigation, redesign and re-testing as required) to ensure that the Works comply with the Contract. |
| **Retention Monies** | is defined in clause 5.10(a). |
| **Security of Payment Act** | the *Building and Construction Industry (Security of Payment) Act 2021* (WA). |
| **Separable Portion** | as set out in clause 1.8, and as particularised in Item 14 or as otherwise Directed by the Principal. |
| **Services** | any service or item of infrastructure, including water, electricity, gas, fuel, telephone, drainage, sewerage, fibre optic cable and electronic communications services. |
| **Site** | the lands and other places to be made available to the Contractor by the Principal for the purpose of the Contract, being those lands and places more particularly described in Item 13. |
| **Site Conditions** | the physical conditions and characteristics at, under and above the Site and its surroundings, including:   1. weather, wind climate, air quality and other atmospheric conditions and characteristics; 2. topography, water, erosion and other ground surface conditions and characteristics; 3. rock, soil, ground water and other geotechnical, geological and sub-surface conditions and characteristics; 4. conditions and characteristics which affect the transmission of noise; 5. flora, fauna and other biological and ecological conditions and characteristics; 6. buildings, structures, services, utilities and other man-made structures; and 7. the occupation and use of land,   but does not include Latent Conditions. |
| **Subcontract** | any subcontract for the performance of any part of the Works that the Contractor enters into with a Subcontractor. |
| **Subcontractor** | any company or person to whom the Contractor has engaged as an independent contractor to perform any part of the Works, and includes a trade contractor, consultant, supplier, vendor or a subcontractor of any tier and the employees, agents and invitees of such parties. |
| **Sustainability Objectives** | has the meaning given in clause 8(a). |
| **Tax** | any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any Government Agency or other body authorised by Legislative Requirements, and **Taxation** has a corresponding meaning. |
| **Tax Invoice** | any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit. |
| **Third Party** | any person not being the Principal, Principal Personnel, the Contractor or Contractor Personnel. |
| **Variation** | any addition, omission, substitution or change to the scope of, or requirements for, the Work set out in the Contract, but does not include:   1. a direction by the Principal or the Principal’s Representative to clarify the Work, or require the performance of the Work in accordance with the Contract; or 2. measures implemented in accordance with clause 28. |
| **Variation Notice** | a notice issued by the Principal Directing the Contractor to carry out a Variation requested by the Principal. |
| **Variation Quotation** | a quotation from the Contractor which sets out the Contractor’s additional costs or savings and the effect (if any) on the Construction Program for performing a Variation. |
| **VendorPanel** | WALGA’s online quotation, compliance and contract management system, as updated from time to time, which includes the system formerly branded as “eQuotes”. |
| **WALGA** | the Western Australian Local Government Association (ABN 28 126 945 127) of 170 Railway Parade, West Leederville, in the State of Western Australia. |
| **Work Health and Safety Management Plan** | the ‘Work Health and Safety Management Plan’ for the Work required by the Principal’s Project Requirements. |
| **Work Health and Safety Requirements** | the requirements set out in the Contract relating to work health and safety, and any of the following related to work health and safety or dangerous goods:   1. Legislative Requirements; 2. the National Standard for Construction Work, codes of practice, Australian Standards and compliance codes; 3. directions, notices and the like issued by any Government Agency or in accordance with any Legislative Requirements; 4. any such matters of which the Contractor has been informed by the Principal, orally or in writing; and 5. any relevant Policies and Guidelines,   and, for clarity, includes the *Work Health and Safety Act 2020* (WA) and the Work Health and Safety (General) Regulations 2022 (WA). |
| **Works** | the work and activities undertaken or to be undertaken in the Contractor’s performance of the Contract, including:   1. the performance of Remedial Work; and 2. the provision of Materials and Equipment, and any ancillary works and services as stated or reasonably inferred from the Contract,   as described in Part C of the Procurement Form and as may be modified by Variations. |
| **Works Security** | one of the Performance Securities as detailed in clause 5 and Item 18. |

## Interpretation

In the Contract, unless the context requires otherwise:

### headings and bold type are for convenience only and do not affect the interpretation of the Contract;

### the singular includes the plural and the plural includes the singular;

### words of any gender include all genders;

### other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;

### an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;

### a reference to a clause, Party, Schedule, attachment or exhibit is a reference to a clause, Party, Schedule, attachment or exhibit of or to the Contract;

### a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of the legislation;

### a reference to a document includes all amendments, supplements, replacements or novations to or of that document;

### a reference to a Party to a document includes that Party’s successors and permitted assignees;

### a promise on the part of 2 or more persons binds them jointly and severally;

### a reference to an agreement other than the Contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;

### specifying anything after the words “includes”, “including” or “for example” or any similar expression does not limit what else is included unless there is express wording to the contrary;

### Part 1F of the *Civil Liability Act 2002* (WA) does not apply to the Contract;

### a reference to ‘$’, ‘AUD’ or ‘dollars’ is to Australian dollars, unless stated otherwise;

### a reference to a ‘day’, ‘month’ and ‘year’ is a reference to a calendar day, month and year (respectively);

### a reference to time is to local time in Perth, Western Australia, unless stated otherwise;

### no provision of the Contract will be construed adversely to a Party because that Party was responsible for the preparation of the Contract or that provision; and

### a reference to a body, other than a Party to the Contract (including an institute, association or authority), whether statutory or not:

#### which ceases to exist; or

#### whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## Business Day

Where the day on or by which any payment under the Contract is to be made is not a Business Day, that payment must be made on or by the next Business Day.

## Rights and obligations of more than one person

Where a Party consists of more than one person, unless the context otherwise requires:

### the Party’s obligations under the Contract bind each person jointly and severally;

### the Party’s rights under the Contract benefit each person jointly; and

### a reference to the Party is a reference to each person separately and any 2 or more of them together, for example:

#### a representation, warranty or undertaking given by the Party relates to each person separately and any 2 or more of them together; and

#### an act or omission of a Party includes an act or omission taken or made by each person separately and any 2 or more of them together.

## Inconsistencies

### The following principles (in descending order of precedence) apply to any inconsistencies, ambiguities and discrepancies in or between the documents forming the Contract:

#### where the inconsistency, ambiguity or discrepancy is between figured and scaled dimensions, the figured dimension applies (unless obviously incorrect);

#### where the inconsistency, ambiguity or discrepancy relates to the quality or standard required by the Contract, the higher quality or standard applies; and

#### where the inconsistency, ambiguity or discrepancy is between documents forming the Contract, the order of precedence set out in Procurement Form applies.

### Each Party must promptly notify the other Party if it becomes aware of any inconsistency, ambiguity or discrepancy in or between the documents forming the Contract.

### Where an inconsistency, ambiguity or discrepancy is not resolved under clause 1.5(a), the Principal must (acting reasonably) determine the interpretation that is the most consistent with the Parties’ intentions as ascertainable from the Contract and that interpretation will apply.

## Language

Documents provided by the Parties or their representatives, and communications between the Parties or their representatives, under or in connection with the Contract must be in English.

## Early works

On and from the Commencement Date, the Contract applies to any Works performed before the Commencement Date as if the Works were performed under the Contract.

## Separable Portions

### Separable Portions may be set out in the Contract or as Directed by the Principal. In respect of Separable Portions Directed by the Principal, such Direction must clearly identify for each, the:

#### portion of the Works;

#### Date for Completion; and

#### respective amounts for liquidated damages and delay damages (all calculated pro-rata according to the ratio of the Principal’s valuation of the Separable Portion to the Contract Price).

### Each of the following definitions and clauses apply separately to each Separable Portion and references in those clauses to the Works is a reference to so much of the Works as is comprised in the relevant Separable Portion:

#### the definitions of “Completion”, “Contract Price”, “Date for Completion”, “Date of Completion”, “Defect”, “Defects Liability Period”, “Liquidated Damages”, “Milestone Amounts” and “Milestone Events”;

#### clause 12 (Timing for completion of Works);

#### clause 14 (Liquidated Damages);

#### clause 15 (General testing and inspections);

#### clause 16 (Completion Tests);

#### clause 17 (Completion of Works);

#### clause 18 (Defects);

#### clause 19 (Contract Price);

#### clause 22.2 (Care of the Works); and

#### any definitions necessary for the interpretation of the above listed clauses.

### In the event of a conflict or inconsistency between Separable Portions set out in the Contract and Separable Portions Directed by the Principal, the Principal must (acting reasonably):

#### determine which of the Separable Portions is to have priority; or

#### Direct amendments to any, or all of, the Separable Portions.

# Commencement

## Commencement of provisions

### Clauses 1, 2, 3.2(a), 3.7, 3.8, 4, 5, 7.1, 7.4(c), 7.6(b), 7.6(c), 7.6(d), 7.7(b), 7.7(c), 23, 24, 25, 26, 27, 29.1, 34, 35 and 36 come into full force and effect on the Contract Date.

### Subject to clause 2.1(a), the Contract does not come into force or effect until the Commencement Date.

### Subject to clause 29, the Contract continues in full force and effect notwithstanding the termination or expiry of the Panel Agreement.

## Conditions Precedent

### The Contractor must ensure that the Conditions Precedent are satisfied within 20 Business Days of the Contract Date, unless a longer period is agreed in writing between the Parties.

### The Principal may, at any time, waive one or more of the Conditions Precedent by written notice to the Contractor.

### If the Conditions Precedent are not satisfied or waived within the period specified in clause 2.2(a), the Principal may, before satisfaction or waiver of those conditions, terminate the Contract by giving notice to the Contractor.

### If the Contract is terminated in accordance with 2.2(c), neither Party is entitled to make a Claim against the other Party as a result of that termination. However, the rights and obligations of the Parties which accrued before the date of termination are not excluded or reduced.

# Performance of Work

## Contractor’s warranties

The Contractor warrants to the Principal that:

### without limiting any other provision under the Contract, the Contractor possesses the commercial and technical competence of a reasonably competent contractor;

### the Contractor and the Contractor Personnel are and at all times will be suitably qualified and experienced, and will perform the Works:

#### in accordance with the Contract and Good Industry Practice; and

#### with a degree of professional skill, care and diligence expected of a contractor that is an expert in carrying out work of a nature similar to the Works;

### all materials that the Contractor uses or supplies as part of the Works are new and of merchantable quality and are free from defects in design, materials and workmanship;

### it has examined and carefully checked any design objectives and Preliminary Design included in the Project Requirements and that such Preliminary Design is accurate, suitable, appropriate and adequate for the purpose stated in, or reasonably ascertainable from, the Project Requirements to enable the Contractor to perform the Works in accordance with the Contract;

### it will carry out and complete the Contractor’s Design Obligations to accord with the Project Requirements, including ensuring that all design calculations, drawings, specifications and other Documents relating to engineering, design work, construction, commissioning works and the procurement of material supplied by the Contractor meet the Project Requirements;

### it will, as between the Principal and the Contractor, be solely responsible for, and assume all risk in relation to, the design of the whole of the Works, including the Preliminary Design and for any further design work (including any design undertaken during the tendering process and otherwise prior to the entry into the Contract), delays, cost increases, losses and expenses caused by or resulting from any deficiencies in the design, including, as appropriate, a technical document, Design Document, manual, operating system and record;

### it will carry out and complete the Works in accordance with the Design Documents so that the Works, when completed, will:

#### be fit for their intended purpose as stated or reasonably inferred from the Contract; and

#### comply with all the requirements of the Contract (including the Project Requirements) and all Legislative Requirements;

### it is responsible for and bears all risk in connection with both the design and construction of the Works including the responsibility for the co-ordination, management and interface of the processes necessary to complete the design and construction of the Works in accordance with the Contract and overcoming any build-ability or constructability issues; and

### it has made an appropriate and reasonable allowance in the Construction Program for:

#### the provision of relevant documentation referred to in clause 3.5(c), including considering and incorporating any comments from the Principal, and resubmitting the relevant documentation to the Principal; and

#### a Government Agency to provide its approval,

and that delay by any Government Agency will not entitle the Contractor to an extension to the Date for Completion under clause 12.2.

## Warranties unaffected

### The Contractor remains solely responsible for complying with all its obligations under the Contract and the Contractor’s obligations and warranties remain unaffected notwithstanding any one or more of the following:

#### that design Work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Project Requirements;

#### any Variation;

#### any receipt, review, comment, rejection or expression of satisfaction or dissatisfaction by or on behalf of the Principal (or absence of such), whether under the Contract or otherwise in relation to:

##### the documents prepared or provided by the Contractor, including the Contractor’s Documents;

##### the design, materials, goods and methods of working used by the Contractor;

##### the performance of the Work or the way Work is performed; or

##### any of the Contractor’s selection of Subcontractors;

#### the Principal’s consent to subcontract under clause 7.1;

#### any issuance of any certificate or authorisation by the Principal or any inspector;

#### the issuance of any Approval;

#### the Contractor’s use of any information, design, goods, equipment or work methods prepared, provided or suggested by or on behalf of the Principal; or

#### the presence or absence of the Principal Representative during the performance of any operation, tests or inspection.

### No such act or omission will relieve the Contractor in any way from any of its obligations and liabilities under the Contract or at Law, nor imply acceptance by the Principal of any Defect and the Contractor must promptly rectify any part of the Works that fails to meet the requirements of the Contract.

### The Contractor acknowledges that the Principal:

#### has relied on each of the warranties, acknowledgements, agreements and representations given in clauses 3.1 and 3.2; and

#### would not have entered into the Contract but for those warranties, acknowledgements, agreements and representations.

## Contractor to provide all things required for performance

Except as otherwise specified in the Contract, the Contractor must provide or construct (or both, as applicable), as part of the Works, all things and services necessary for or incidental to the performance of the Works and the Contractor’s other obligations under the Contract, including all necessary:

### labour, equipment, materials, software, services and utilities;

### mobilisation, demobilisation and transport of labour;

### Construction Plant, Materials and Equipment and other required items (other than Principal Supplied Items);

### lay-down areas, workshops, storage areas, temporary stores, offices and other buildings or structures;

### accommodation and lodging of the Contractor Personnel;

### fencing, lighting and guarding;

### telephones, fire-fighting equipment and first aid equipment; and

### other goods, services and facilities necessary for the Works,

and the cost of doing this is taken to be included in the Contract Price.

## Resources and other items provided by the Principal

### If there are any Principal Supplied Items, the Principal will provide the Contractor with the Principal Supplied Items at the time specified in the Contract or, at the Principal’s option, at the subsequent later dates at which the Contractor advises the Principal that the Principal Supplied Items are actually needed by the Contractor for the performance of the Works.

### The Contractor must only use the Principal Supplied Items for the purposes of performing the Work, and comply with any terms and conditions in respect of the Principal Supplied Items notified to the Contractor.

### Upon delivery of any Principal Supplied Items, the Contractor must immediately perform a visual inspection for general conformity with the Contract requirements and must check the quantities of items received.

### The Contractor must immediately record and confirm in writing receipt of any Principal Supplied Items. The Contractor must immediately, and in any event no later than 5 Business Days after receipt, notify the Principal of any defects, default or shortage in Principal Supplied Items. If the Contractor fails to notify the Principal in accordance with this clause 3.4(d), then such Principal Supplied Items will be deemed to be free of defects, default or shortage.

### Upon delivery by the Principal, risk in Principal Supplied Items will pass to the Contractor. The Contractor must separately store, protect and maintain all Principal Supplied Items in good order and condition, including protection against all weather, hazards, water, humidity, sand, fire, theft, vandalism and the like.

### The Contractor must:

#### clearly identify and mark all Principal Supplied Items as the property of the Principal; and

#### keep comprehensive records of all Principal Supplied Items.

### As between the Principal and the Contractor, title in the Principal Supplied Items remains with the Principal.

### Except to the extent used in the performance of, or incorporated into, the Works in accordance with the Contract, upon completion of the Works or if requested in writing by the Principal, the Contractor must return Principal Supplied Items to the Principal in the same condition as when the Contractor received them (fair wear and tear excepted).

## Contractor and Contractor Personnel to comply with certain standards and requirements

The Contractor must ensure that in performing its obligations under the Contract, it:

### has all of the necessary skills and training and holds all of the required qualifications, licences and visas to perform the Works in accordance with all applicable Laws and industry standards;

### obtains any Approvals required for the performance of Works, including any Approvals set out in the Project Requirements;

### gives reasonable assistance to the Principal in obtaining, maintaining and complying with any Approvals required to be obtained by the Principal, including the provision of any relevant documentation. Such assistance must be provided promptly, and as requested by the Principal;

### complies with all Work Health and Safety Requirements and all applicable Legislative Requirements, including Environmental Laws, the Policies and Guidelines and any reasonable instructions given by the Principal;

### does not interfere with the Principal's activities or the activities of any other person at the Site;

### carries out and performs its obligations under the Contract in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;

### maintains the Site and the Works in a safe, secure, clean and orderly manner having regard to the condition of the Site immediately before such entry;

### regularly removes rubbish, refuse and surplus material from the Site;

### provides all such information and assistance as the Principal reasonably requires; and

### procures that the Contractor Personnel comply with the standards and requirements set out in this clause 3.5.

## Non-compliant Work

### The Principal may Direct the Contractor in writing to rectify, at its sole cost, any Work not performed in accordance with the Contract at any time prior to the issue of the Completion Certificate. The Principal’s Direction must identify the non-compliant Work.

### The Principal may, after consulting with the Contractor, specify a reasonable time within which the Contractor must rectify the non-compliance by written notice to the Contractor.

### The Contractor must comply with a Direction under clause 3.6(a) within:

#### where the Principal has specified a reasonable time under clause 3.6(b), that time; or

#### otherwise, a reasonable time.

### If the Contractor fails to rectify a non-compliance by the time required under clause 3.6(c), the Principal may, after giving the Contractor reasonable notice, have the non-compliance rectified.

### The costs and expenses incurred by the Principal in having a non-compliance rectified will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.

### The Contractor must promptly notify the Principal in writing if it becomes aware of any Work not performed in accordance with the Contract.

## No reliance

### Subject to clause 3.8, the Principal makes no representation and gives no warranty regarding the documents and other information (in any form) provided or made available by or on behalf of it to the Contractor in connection with the negotiation or performance of the Contract, including the accuracy, completeness and adequacy of such documents and information.

### The Principal may not have verified such documents and information before providing them to the Contractor. The Contractor must review and check such documents and information provided to it before relying on them for the purposes of the Contract or the performance of it.

### The Contractor warrants to the Principal that it has not relied on any such documents and information, including the accuracy, completeness and adequacy of them, for the purposes of entering into the Contract.

## Reliance Information

### The Contractor is entitled to rely on the Reliance Information.

### The Contractor acknowledges that it remains responsible for interpreting and extrapolating the Reliance Information.

### The Contractor must notify the Principal in writing of any inaccuracy in the Reliance Information as soon as practicable after becoming aware of the inaccuracy.

## Risks associated with Work

Subject to the Contractor’s express rights under the Contract, the Contractor accepts all risks associated with its performance of the Contract, including the risks associated with:

### the actual cost of performing the Works being greater than estimated;

### the actual time required to perform the Works being greater than estimated;

### changes to currency exchange rates; and

### escalation of the cost of materials or labour.

## Meetings

If Directed by the Principal Representative, the Contractor must attend any meetings to discuss any aspects of the Works.

## Manufacturer warranties

The Contractor must:

### obtain warranties on commercially available terms for all Materials and Equipment from the manufacturers or suppliers of those Materials and Equipment;

### ensure that the benefit of those warranties are assignable to the Principal or its nominee; and

### in the event of the earlier of the expiry or termination of the Contract, assign the benefit of those warranties to the Principal (or its nominee).

## Coordination with Related Activities

### In performing the Works, the Contractor must:

#### plan, coordinate, program, and integrate, the performance of the Works (including the work of Subcontractors) with the performance of the Related Activities;

#### ensure that the performance of the Work does not delay, disrupt or interfere with the performance of the Related Activities; and

#### not carry out the Works in a manner which may cause damage to the Existing Works or any Related Activities.

### Without limiting clause 3.12(a), the Contractor must:

#### liaise, consult and cooperate with any others performing Related Activities;

#### identify aspects of the Work which have the potential to impact on the Related Activities;

#### coordinate, plan and program the performance of the Work to avoid or minimise any impacts on the performance of the Related Activities;

#### develop and implement systems and policies to avoid or minimise any impacts to the performance of the Related Activities;

#### notify the Principal in writing before performing Work which has the potential to impact on the performance of the Related Activities;

#### take all reasonable steps to protect the Work and Materials and Equipment from accidental damage caused by the Existing Works or performance of the Related Activities;

#### provide documents, information and assistance as reasonably requested by the Principal for the purposes of coordinating and interfacing the performance of the Related Activities with the performance of the Work; and

#### attend meetings with the Principal and those involved in performing the Related Activities as reasonably requested by the Principal or otherwise required to comply with this clause 3.12.

## Actions to be taken by Principal

### Where the Contractor is not responsible under the Contract for an action required for the performance of the Work and the Contract does not expressly state that the Principal is responsible for taking the action by a specified time, the Contractor must:

#### notify the Principal in writing that the action is required and the date the action is required to avoid any delay to the Date for Completion; and

#### keep the Principal informed regarding any change to the date the action is required to avoid a delay to the Date for Completion.

### The Contractor must give notice and keep the Principal informed under clause 3.13(a) so that the Principal has a reasonable time to take the action before the date such action is required to avoid a delay to the Date for Completion.

# Principal Representative and Contractor Representative

## Principal Representative

### The Principal:

#### will notify the Contractor of the name of the Principal Representative who may perform any of the Principal’s rights and obligations under the Contract; and

#### may replace the Principal Representative at any time by notice.

### The Principal Representative is the agent of the Principal (and is not an independent certifier, valuer or assessor) and, unless expressly stated otherwise in the Contract, gives Directions and carries out all other functions under the Contract as agent of, and solely for and on behalf of, the Principal. Unless expressly stated otherwise in the Contract, the Principal and the Principal Representative are not obliged to exercise any discretionary power or right for the benefit of the Contractor (including to overcome a failure of the Contractor to comply with any provisions of the Contract).

### The Principal Representative may nominate a delegate to perform specific tasks within the Principal Representative’s authority. In such case, the Principal Representative will inform the Contractor in writing of the name of the delegate and the scope of the delegation. The Principal Representative may cancel any delegation at any time.

### The Contractor must not accept any Direction from any person other than the Principal Representative or the Principal Representative's delegate.

### The Contractor must comply with the Principal Representative's Directions, whether oral or in writing, provided that where an oral Direction is given the Principal Representative will as soon as practicable confirm the Direction in writing.

### If the Principal Representative gives a Direction that is in conflict with the Contract, the Contractor must inform the Principal Representative in writing, advising why the Direction is contrary to the Contract, before complying with the Direction.

### A Direction given by the Principal Representative does not relieve the Contractor of, or limit, its obligations under the Contract.

## Contractor Representative

### The Contractor must notify the Principal of the name of the Contractor Representative.

### The Contractor must ensure that the Contractor Representative:

#### has the authority to receive Directions on behalf of the Contractor from the Principal and the Principal Representative;

#### has the authority to carry out the overall coordination and supervision of the Contractor’s obligations under the Contract;

#### is competent; and

#### is not discharged or replaced as the Contractor Representative without the Principal Representative's written consent.

### The Contractor Representative is the agent of the Contractor and, unless expressly stated otherwise in the Contract, carries out all functions under the Contract as agent of, and solely for and on behalf of, the Contractor.

### Any communication or notice given to the Contractor Representative by the Principal is deemed to have been given to the Contractor.

### The Contractor must ensure that the Contractor Representative fully cooperates with the Principal Representative.

# Security for performance

## Provision of Performance Securities

If stated to apply in Item 18, the Contractor must provide the Performance Securities which comply with clause 5.2 for the purpose of ensuring the due and proper performance of the Contract.

## Requirements for Performance Securities

Each Performance Security must:

### be provided, and thereafter maintained, for the amounts specified in Item 18;

### be issued by an Approved Financial Institution;

### be an unconditional on demand bank guarantee in the form set out in Schedule 2 or any other form pre-approved by the Principal in writing; and

### have no expiry date or an expiry date that is at least 3 months after the Performance Security is reasonably expected to be returned under clause 5.5.

## Recourse

### The Principal may make a demand under, and use the proceeds of, the Performance Securities in respect of:

#### an Insolvency Event of the Contractor or the Contractor Guarantor;

#### the termination of the Contract by the Principal in accordance with clause 29.1;

#### any amount due and payable, or which the Principal reasonably believes is due and payable, by the Contractor to the Principal under or in connection with the Contract which remains unpaid; and

#### any Loss suffered or incurred by the Principal for which the Principal reasonably believes the Contractor is liable as a result of a breach of the Contract or negligence.

### If the Principal terminates the Contract under clause 29.1, the Principal may make demands under the Performance Securities and apply the proceeds in respect of:

#### the additional costs of having the Works completed by itself or others; and

#### any other Loss suffered or incurred by the Principal as a result of the termination.

### The Principal must give the Contractor not less than 5 business days’ (as such term is defined in the Security of Payment Act) prior written notice of its intention to have recourse to the Performance Security.

### A notice of intention from the Principal in accordance with clause 5.3(c) must:

#### identify the Contract and this clause 5.3;

#### describe the circumstances that entitle the Principal to have recourse to the Performance Security; and

#### be in the approved form pursuant to the Security of Payment Act (if any).

### The Contractor covenants that it will not take any steps (including commencing proceedings or seeking an injunction or declaration) to prevent the issuer of a Performance Security paying a demand by the Principal.

### The Contractor will be liable for, indemnifies, and holds harmless, the Principal from and against any Loss suffered or incurred by the Principal arising out of, or in connection with, a breach by the Contractor of clause 5.3(e).

## Replacement of Performance Securities

### The Contractor must replace a Performance Security with a replacement Performance Security from another Approved Financial Institution:

#### at least 15 Business Days before the Performance Security expires; and

#### within 15 Business Days after written request by the Principal if the issuer of the Performance Security no longer satisfies the requirements of clauses 5.2(a) and 5.2(b).

### The replacement Performance Security must be for the remaining amount of the Performance Security being replaced and comply with clause 5.2.

### The Contract will apply to the replacement Performance Security as if it was the Performance Security being replaced.

### The Principal must return the Performance Security (or the cash it is holding as cash security in accordance with clause 5.4(e)) to be replaced to the Contractor in exchange for the replacement Performance Security.

### If the Contractor does not replace any Performance Security as required by this clause 5.4, the Principal may make a demand for the full amount of the Performance Security to be replaced and hold the proceeds on the basis that the Performance Security to be replaced was held under the Contract.

## Release of Performance Securities

### The Contractor may, by written notice to the Principal, request the return of:

#### the Works Security, 15 Business Days after the date that the Completion Certificate is issued in accordance with clause 17.4, provided that all Claims made in accordance with the Works Security have been fully satisfied by the issuing bank;

#### the Defects Liability Security, 15 Business Days after the date that the Final Payment Schedule is issued in accordance with clause 17.9, provided that all Claims made in accordance with the Defects Liability Security have been fully satisfied by the issuing institution; and

#### the Advance Payment Security, 15 Business Days after the date that the portion of the Contract Price referable to the Advance Payment Security has been earned by the Contractor performing the Works to the satisfaction of the Principal.

### If the Contract is terminated, the Contractor may, by written notice to the Principal, request the return of all unreturned Performance Securities after:

#### the Contractor’s liabilities under or in connection with the Contract have been agreed by the Parties or determined under clause 34; and

#### the Contractor has satisfied those liabilities.

### The Principal must return each Performance Security to the Contractor within 15 Business Days after a request for its return in accordance with clause 5.5(a) or 5.5(b).

### The Principal’s obligations under this clause 5.5 to return the Performance Securities are subject to the Principal’s rights to have recourse to them under clause 5.3.

## Adjustment of the initial amount of the Performance Securities

### Upon written request by the Principal to the Contractor, the Contractor must provide adjusted Performance Securities (other than the Advance Payment Security) if the Contract Price, as the result of Variations and any other payments under the Contract, increases by more than the percentage stated in Item 19.

### The Principal may request further adjustments in respect of further increases to the Contract Price by more than the percentage stated in Item 19 compared with the value at the date of the previous adjustment.

## Interest

The Principal is entitled to retain any interest it accrues on the Performance Securities or any proceeds of the Performance Securities.

## No trust

The Principal does not hold the Performance Securities or any proceeds of the Performance Securities on trust for the Contractor. The Principal is not obliged to hold any proceeds of demands under the Performance Securities in a separate account to its other funds.

## Parent Company Guarantee

### If stated to apply in Item 20, the Contractor must ensure the Contractor Guarantor executes and delivers to the Principal a Parent Company Guarantee substantially in the form set out in Schedule 3 on or before the Commencement Date.

### The Contractor must, acting reasonably and in good faith, endeavour to agree any amendments to the Parent Company Guarantee requested by the Principal for the purposes of obtaining finance for the Works.

## Retention monies

### If stated to apply in Item 18, the Principal may deduct the percentage in Item 18 of each payment claim as retention monies until the percentage in Item 18 of the Contract Price (in aggregate for all Works) is retained as security for the Contractor’s performance (the **Retention Monies**).

### Any retention will be in accordance with clauses 5.10 and 19.4(b).

### The Principal may have recourse to the Retention Monies, and use the proceeds of, the Retention Monies in respect of:

#### an Insolvency Event of the Contractor or the Contractor Guarantor;

#### the termination of the Contract by the Principal in accordance with clause 29.1;

#### any amount due and payable, or which the Principal reasonably believes is due and payable, by the Contractor to the Principal under or in connection with the Contract which remains unpaid; and

#### any Loss suffered or incurred by the Principal for which the Principal reasonably believes the Contractor is liable as a result of a breach of the Contract or negligence.

### The Principal must give the Contractor not less than 5 business days’ (as such term is defined in the Security of Payment Act) prior written notice of its intention to have recourse to the Retention Monies.

### A notice of intention from the Principal in accordance with clause 5.10(c) must:

#### identify the Contract and this clause 5.10;

#### describe the circumstances that entitle the Principal to have recourse to the Retention Monies; and

#### be in the approved form pursuant to the Security of Payment Act (if any).

### The Contractor’s liability is not limited to the Retention Monies and retention of the Retention Monies by the Principal does not affect any of the Principal’s rights arising from a default by the Contractor under the Contract.

### The Contractor covenants with the Principal that the Contractor will not institute any proceedings, or exercise any right or take any steps to enjoin or otherwise restrain the Principal from using the Retention Monies, even where the Contractor disputes the Principal’s right to payment (including where dispute resolution proceedings have been commenced under clause 34).

### The Principal must, no later than 10 Business Days after the issue of the Final Payment Schedule, release to the Contractor that percentage of the Retention Monies such that, at the time of the release, the Principal still holds 50% of the Retention Monies.

### The Principal must release to the Contractor all Retention Monies still held by the Principal no later than 10 Business Days after the later of:

#### the issue of the Final Completion Certificate; and

#### when all sums of money owed by the Contractor to the Principal under the Contract have been paid in full.

### Interest earned on Retention Monies held by the Principal belongs to the Principal. The Principal does not hold any Retention Monies provided by the Contractor or proceeds of such Retention Monies on trust for the Contractor.

# Contract Documents

## Supply of Documents by the Principal

### The Principal will supply to the Contractor the Documents and number of copies thereof, both stated in Item 21.

### The Contractor acknowledges and agrees that:

#### all Documents supplied by the Principal to the Contractor:

##### remain the property of the Principal; and

##### must be returned by the Contractor to the Principal on the Date of Completion, or such earlier termination; and

#### all Documents supplied by the Principal to the Contractor must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose except for the performance of the Works.

## Supply of Contractor’s Documents

### The Contractor must:

#### to the extent that any Contractor’s Documents have not already been completed and included in the Project Requirements, prepare the Contractor’s Documents in accordance with the Contract; and

#### not make or cause or permit to be made any amendments to the Contractor’s Documents which are included in the Project Requirements or which have otherwise been approved by the Principal in accordance with the Contract without the prior written consent of the Principal.

### The Contractor agrees that the costs incurred by the Contractor in preparing and finalising the Contractor’s Documents form part of the Contract Price.

### All Contractor’s Documents are, upon creation, the property of the Principal.

## Approval of Contractor’s Documents

### The Contractor must submit all of the Contractor’s Documents to the Principal for approval:

#### as each Contractor’s Document is completed;

#### prior to the use of any of the Contractor’s Documents for the purpose of the Works; and

#### in sufficient time to enable:

##### any amendments required by the Principal to be incorporated into the final Contractor’s Documents (which amendments the Contractor must make when requested by the Principal); and

##### Completion to be achieved by the Date for Completion,

and, where the Project Requirements specify a date for submission, in no event later than that date.

### The Contractor must submit all Design Documents and, if stated to be required in Item 23, Operations and Maintenance Manuals to the Principal for approval under this clause 6.3 in accordance with the requirements set out in the Project Requirements.

### If the Principal notifies the Contractor that:

#### a Contractor’s Document does not comply with the requirements of the Contract; or

#### it otherwise requires a revision to any Contractor’s Document,

subject to clause 6.3(e), the Principal may Direct the Contractor to amend the Contractor’s Document and the Contractor must amend that Contractor’s Document in accordance with the Direction of the Principal.

### The Contractor must promptly (and, in any event, within 10 Business Days of any Direction by the Principal under clause 6.3(c)), submit the amended Contractor’s Document to the Principal for written approval in accordance with clause 6.3 and the procedure under this clause 6.3 will apply to the amended Contractor’s Document as though it were being submitted for the first time.

### The Contractor acknowledges and agrees that any:

#### review of, comment on, amendments Directed to, or approval of, any Contractor’s Documents (including Design Documents) under this clause 6.3;

#### failure by the Principal to perform (including any failure to perform correctly) any of the functions referred to in clause 6.3; or

#### delay or disruption arising out of or in connection with clause 6.3,

will not:

#### limit, or relieve the Contractor of, any obligation or liability under the Contract;

#### limit any right of the Principal under the Contract;

#### constitute acceptance by the Principal of the performance of the Contractor’s obligations under the Contract; or

#### give rise to any Claim on the part of the Contractor.

## Availability

The Contractor must keep available to the Principal:

### on Site, one complete set of Documents affecting the Works; and

### at the place of manufacture or assembly of any significant part of the Works off-Site, a set of the Documents affecting that part.

## Compliance

The Contractor must, in the performance of the Work, comply with all Contractor’s Documents which are included in the Project Requirements or which have otherwise been approved by the Principal in accordance with the Contract.

# Subcontracting and personnel

## Subcontracting

### Unless otherwise provided for in the Panel Agreement, the Contractor must not subcontract:

#### the whole of the Works; or

#### any part of the Works without the Principal’s prior written approval (such approval not to be unreasonably withheld).

### The Principal’s approval to a proposed Subcontractor is not required if:

#### the aggregate value of all Work subcontracted to the proposed Subcontract does not exceed the amount in Item 24; or

#### the proposed Subcontractor is listed in Item 25 for the relevant Work to be subcontracted.

### When requesting approval for a proposed Subcontractor, the Contractor must provide to the Principal:

#### the proposed Subcontractor’s history and capabilities in performing work of a similar nature;

#### the proposed Subcontractor’s history and capabilities regarding health, safety and the Environment;

#### the proposed Subcontractor’s financial standing; and

#### any other information regarding the proposed Subcontractor, that is reasonably requested by the Principal.

### When requesting approval for a form of Subcontract, the Contractor must, unless the Principal advises the Contractor that it is not required, provide a copy of the proposed Subcontract (commercially sensitive pricing information may be omitted).

## Subcontract terms

### The Contractor must ensure that:

#### each Subcontract includes the provisions required by the Contract and the rights under each Subcontract are assignable to the Principal;

#### any assignment or transfer or further subcontracting of any Subcontract is prohibited without the consent of the Principal;

#### all warranties and guarantees obtained from its Subcontractors are obtained for the benefit of the Principal and, should the Principal deem it necessary, the Contractor must ensure that any such warranties and guarantees are enforceable directly by the Principal; and

#### otherwise be on terms reasonably necessary to enable the Contractor to comply with its obligations under the Contract.

### The Contractor must give the Principal a copy of each Subcontract executed by it within 10 Business Days after it is executed. The copies provided under this clause 7.2(b) may omit commercially sensitive pricing information.

### If an Insolvency Event subsists in relation to the Contractor, or the Contract has been terminated, the Contractor must give the Principal a copy of each Subcontract executed by it within 5 Business Days after the Principal’s request. The copies provided under this clause 7.2(c) must have no details omitted or redacted.

## Novation of Subcontractors

The Contractor must ensure that, where the aggregate value of Work subcontracted to a Subcontractor exceeds the amount specified in Item 26, the Subcontract includes a provision that obliges the Subcontractor to:

### novate the Contractor’s rights and obligations under the Subcontract if requested by the Contractor after the termination of the Contract; and

### execute any document reasonably required by the Principal to give effect to that novation,

provided the Principal pays the Subcontractor any amount owed to it under the Subcontract, as certified by the Principal (acting reasonably).

## Performance of Works by Subcontractors

### The Contractor must manage, control and supervise the performance of the Works by any Subcontractors and must ensure that any and all Works performed by a Subcontractor are performed in compliance with the Contract.

### The Contractor is solely responsible for all costs arising out of or in connection with subcontracting and for any and all consequences, including delays.

### The Contractor is responsible and liable to the Principal for any act, omission, default or negligence of any of the Contractor Personnel as if it were the act, omission, default or negligence of the Contractor.

## Exclusion of personnel

The Contractor must, if requested by the Principal in writing, remove from the performance of the Works any of the Contractor Personnel who in the Principal’s reasonable opinion:

### has engaged in illegal, fraudulent or negligent conduct;

### has performed Work whilst under the influence of alcohol or illegally obtained drugs;

### fails to act with the standard of skill, care and diligence required by the Contract; or

### is otherwise a risk to the safety of any person, property or the Environment,

and ensure that any person removed in accordance with this clause 7.5 has no further involvement in the performance of the Work without the Principal’s prior written consent.

## Key Personnel

### The Contractor must ensure that the Key Personnel are the personnel performing the Work in the roles described in Item 27.

### The Contractor may replace a member of the Key Personnel with the Principal’s prior written approval.

### If a member of the Key Personnel is unable to work, retires or resigns, the Contractor must, as soon as possible, appoint a replacement approved by the Principal.

### The Principal must not unreasonably withhold or delay approval to a member of the Key Personnel proposed under this clause 7.6.

## Industrial relations

### Except to the extent expressly set out in the Contract, the Contractor accepts responsibility and risk for industrial relations relating to the Contractor Personnel, including the management of industrial relations at the Site.

### The Contractor must keep the Principal informed of any industrial relations issues, disputes or action which affect or are likely to affect the Work.

### The Contractor must consult with the Principal before taking any act or making any omission which has the potential to affect industrial relations with the Principal or those performing any other work or activities at or near the Site.

### The Contractor must immediately notify the Principal of any industrial action or dispute affecting the Site, the Work or the Contractor. The Contractor must provide reasonable details, and keep the Principal informed, in relation to such industrial action or dispute.

## Payment of Subcontractors and employees

The Contractor must submit, with each payment claim under clause 19.3 and the Final Payment Claim under clause 17.8, a statutory declaration from an authorised officer or employee of the Contractor who is in a position to know the facts declared, stating that the Contractor Personnel have received all amounts and entitlements due and payable to or on behalf of them in connection with the performance of the Work, other than amounts expressly stated in the statutory declaration to be the subject of a bona fide dispute.

# Sustainable procurement

### The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices (**Sustainability Objectives**).

### The Contractor agrees to:

#### use reasonable endeavours to conduct its business and supply the Works in a manner which seeks to support and is consistent with the Sustainability Objectives;

#### provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives; and

#### undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that the Works are supplied from sustainable sources and free from modern slavery.

### The Contractor acknowledges that a rating system may be implemented by WALGA or the Principal to assess the Contractor’s performance in relation to the Sustainability Objectives, and in considering whether to engage the Contractor or another supplier.

### The Principal may request from time to time, and the Contractor must provide within the timeframe stipulated in such request:

#### evidence of the Contractor’s compliance with the Sustainability Objectives and this clause 8; and

#### any other information reasonably requested by the Principal in connection with this clause 8.

### The Contractor must allow the Principal (or its nominee) prompt access to the Contractor’s records in connection with this clause 8, and to otherwise audit the Contractor’s compliance with this clause 8 and the Sustainability Objectives.

# Progress and programming of the Works

## Progress

Nothing in this clause 9 affects the Contractor’s obligation to achieve Completion by the Date for Completion.

## Construction Program

### The Contractor must prepare and submit to the Principal its proposed Construction Program for approval by the Principal within 10 Business Days following the Commencement Date.

### The Construction Program must be drawn as a critical path network in the form of a time scaled bar chart:

#### showing key dates, float, logic links and constraints; and

#### on a weekly basis with each week ending on the Sunday evening.

### The network must consist of appropriate activities or tasks numbered in a sequential logical order and of sufficiently small duration to represent accurately the Contractor’s proposed method of completing the Works, and must clearly mark the critical path.

### The Construction Program must take into account the requirements and the program constraints set out in the Project Requirements.

### Without limiting clauses 9.2(b) or 9.2(c), the Construction Program must include the following:

#### start and completion dates of design, reviews, audits, approval times, procurement, manufacturing, delivery, installation, all testing (including international, off-site and on-site testing), commissioning and trial operation for each activity or task and show the interdependencies between the activities;

#### the Principal’s approval or review times;

#### delivery of Materials and Equipment to the Site;

#### Works (if any) to be provided by the Principal;

#### mobilisation on and off Site including clean up;

#### public holidays or holidays applicable to the Works;

#### total float for each activity or task;

#### allowance for lost time due to weather or any other cause;

#### testing of the Works;

#### Works (if any) required to be carried out by others;

#### preparation and submission of all Contractor’s Documents;

#### commercial deliverables as required by the Contract; and

#### indication of all interfacing activities with any activities to be completed by the Principal and others which may affect the completion of the Works.

### Once approved by the Principal, the Contractor must comply with the Construction Program.

## Review of the Construction Program

### The Contractor must, within 5 Business Days of the end of each month from the Commencement Date until the Date of Completion, update the Construction Program to reflect the then current status of the Works and submit the updated Construction Program to the Principal.

### Once approved by the Principal, the updated Construction Program is the Construction Program for the purposes of the Contract.

# Site Conditions and access

## Contractor acknowledgement regarding Site and Environment

### The Principal makes no representation and gives no warranty in relation to the Site Conditions, or the adequacy or suitability of the Site Conditions for the performance of the Work.

### The Contractor warrants that before the Commencement Date the Contractor has:

#### had access to the Site;

#### carried out its own inspections of the Site and its Environment; and

#### conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of:

##### the Site and its Environment;

##### all risks and contingencies associated with the Site and its Environment; and

##### the location and extent of Services on the Site,

or has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, in which case the Contractor acknowledges that there will be no adjustment to the Contract Price or Date for Completion, except as expressly stated in the Contract.

## Contamination

### If the Contractor becomes aware of any Contamination at the Site, the Contractor must:

#### immediately notify the Principal of the Contamination;

#### take any urgent action required to protect people, property, the Environment or livestock; and

#### take all reasonable steps to minimise and mitigate any adverse impacts that the Contamination has on the Work, Site and surrounding areas.

### To the extent the Contamination is not Excluded Contamination, the Contractor must, at its cost:

#### dispose of, or otherwise deal with, the Contamination at the Site; and

#### remediate the Site and surrounding areas to the extent affected by the Contamination at the Site,

in accordance with Environmental Requirements and Good Industry Practices.

### To the extent the Contamination is Excluded Contamination, the Contractor must, as soon as possible after giving notice under clause 10.2(a)(1), give the Principal a Variation Quotation which complies with clause 21 for any Variation proposed by the Contractor to deal with or avoid the Excluded Contamination.

### The Principal must, within 10 Business Days after the Contractor gives a Variation Quotation under clause 10.2(c), give the Contractor a Variation Notice for a Variation which enables the Excluded Contamination to be dealt with or avoided.

### The Variation Directed under clause 10.2(d) may differ from that proposed by the Contractor under clause 10.2(c), in which case the Principal may request a Variation Quotation under clause 10.2(c) for the alternative Variation before giving the Variation Notice.

## Artefacts

### All Artefacts found at the Site will, as between the Parties, be the property of the Principal.

### If the Contractor becomes aware of any Artefact at the Site, the Contractor must:

#### immediately notify the Principal of the Artefact;

#### protect the Artefact and not disturb it further; and

#### take all reasonable steps to minimise and mitigate any adverse impacts that the Artefact has on the Work or the Site.

### To the extent the Artefact is not an Excluded Artefact, the Contractor must, at its cost, deal with the Artefact in accordance with Legislative Requirements and Good Industry Practices.

### To the extent the Artefact is an Excluded Artefact, the Contractor must, as soon as possible after giving notice under clause 10.3(b)(1), give the Principal a Variation Quotation which complies with clause 21 for any Variation proposed by the Contractor to deal with or avoid the Excluded Artefact.

### The Principal must, promptly after the Contractor gives a Variation Quotation under clause 10.3(d), give the Contractor a Variation Notice for a Variation which enables the Excluded Artefact to be dealt with or avoided.

### The Variation Directed under clause 10.3(e) may differ from that proposed by the Contractor under clause 10.3(d), in which case the Principal may request a Variation Quotation under clause 10.3(d) for the alternative Variation before giving the Variation Notice.

## Native Title

### The Contractor must comply with the Principal’s Directions and any order of a court relating to any Native Title Claim made in respect of the Site.

### This clause 10.4 does not exclude or reduce the Contractor’s rights under the Contract in relation to Native Title Claims, including under clauses 12.2 or 12.7.

## Inductions

The Contractor must, and must ensure that the Contractor Personnel, have undertaken any inductions or similar required by the Principal prior to accessing the Site.

## Principal to provide access

### Subject to clauses 23 and 28.1, the Principal must ensure that the Contractor has the non-exclusive right to access the Site to perform the Work on and from the date that is 10 Business Days after the Commencement Date.

### The Principal and any person authorised by the Principal may access the Site at any time for any purpose.

## Access requirements

### The Contractor must give the Principal at least 10 Business Days prior written notice:

#### each time that the Contractor accesses the Site for the purposes of carrying out pre-mobilisation site investigations or other pre-mobilisation activities; and

#### before first mobilising or making a delivery to the Site.

### The Contractor must, when accessing the Site, comply with the requirements set out in Schedule 4.

### The Principal must, and must ensure those authorised by it to access the Site under clause 10.6(b), when accessing the Site before the Date of Completion, comply with the Contractor’s reasonable access requirements, including in relation to work health and safety, the protection of the Environment and security.

## Care of Site

### The Contractor is responsible for the care of the Site on and from the date the Contractor first mobilises to it until (and including) the Date of Completion.

### Without limiting clause 10.8(a), the Contractor must keep the Site in good repair, clean and tidy at all times.

## Site facilities for Principal

The Contractor must provide facilities at the Site for use by the Principal and Principal Personnel as required by the Project Requirements.

## Indemnity

### Subject to clause 10.10(b), the Contractor must indemnify the Principal from and against any Claim brought against the Principal arising out of, or in connection with the Contractor’s failure to comply with clause 10.7(b).

### The Contractor’s liability to indemnify the Principal under clause 10.10(a) in respect of a Claim will be reduced to the extent that:

#### a negligent act or omission of the Principal or a Principal Personnel caused or contributed to the Claim; or

#### the Principal failed to take reasonable steps to mitigate the Claim.

## Latent Conditions

### **Latent Conditions** are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions and which could not have reasonably been discovered by a competent contractor if that contractor had inspected:

#### all written information made available by the Principal to the Contractor for the purpose of the Contract, or associated tender (if applicable);

#### all information reasonably obtainable by the making of reasonable enquiries; and

#### the Site and its near surrounds,

prior to the Contract Date.

### The Contractor, upon becoming aware of a Latent Condition while carrying out Works, must promptly, and where possible before the Latent Condition is disturbed, give the Principal written notice of the general nature thereof.

### If required by the Principal promptly after receiving the notice in clause 10.11(b), the Contractor must, as soon as reasonably practicable, give the Principal a written statement of:

#### the Latent Condition encountered and the respects in which it differs materially from the physical conditions which could reasonably have been anticipated by a competent contractor as further described in clause 10.11(a);

#### the additional Work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition; and

#### other details reasonably required by the Principal.

### The effect of the Latent Condition must be a deemed Variation, priced having no regard to additional cost incurred more than 20 Business Days before the date on which the Contractor gave the notice required under clause 10.11(b), in accordance with clause 21, but so as to include the Contractor’s other costs for each compliance with clause 10.11(c).

# Work Health and Safety

## Contractor’s work health and safety obligations

### The Contractor must comply, and ensure that the Contractor Personnel comply, with:

#### all Work Health and Safety Requirements; and

#### all requirements under the Contract relating to work health and safety.

### The Contractor must:

#### only employ or engage people who are appropriately qualified and competent to carry out the Work and, when requested by the Principal, provide evidence of such qualifications and competency;

#### where required, ensure that the Contractor and the Contractor Personnel attend all appropriate and relevant induction courses required by the Principal to enter any Site; and

#### supply all Materials and Equipment necessary to ensure performance of the Works in a manner that is safe and without risks to health. The Contractor must ensure that all Materials and Equipment supplied by it is, and is maintained, in a condition that is safe and without risks to any person and at a minimum complies with all Work Health and Safety Requirements.

### The Contractor warrants that it understands and has the capability and resources to:

#### comply with its duties and obligations under the Work Health and Safety Requirements; and

#### perform and discharge the functions and duties referred to in this clause 11.

### The Contractor must:

#### assist the Principal to comply with the Work Health and Safety Requirements applicable to it in relation to the Works; and

#### comply with any directions given by the Principal or the Principal’s Representative which are necessary for the Principal to comply with its Work Health and Safety Requirements.

### The Contractor must:

#### immediately notify the Principal in writing of any Notifiable Incident that occurs at or in connection with the Works;

#### promptly investigate any Notifiable Incidents, unless directed otherwise by the Principal;

#### allow the Principal to conduct its own investigation into any Notifiable Incidents; and

#### promptly notify the Principal (and, in any case, within 8 hours) and as practicable provide all relevant information and documents, in relation to any accident, injury, property damage, damage to the Environment or other work health and safety issue arising from or in connection with the Works, including:

##### details of any notification provided to a Government Agency;

##### a copy of any notice issued by a Government Agency requiring the Contractor to provide information or documents to the Government Agency;

##### a copy of any information or document provided by the Contractor to a Government Agency;

##### details of any enforcement action taken against the Contractor, including legal proceedings commenced against the Contractor; and

##### a copy of any investigation report prepared by or at the instruction of the Contractor.

### The Contractor must:

#### so far as is reasonably practicable, consult, cooperate and coordinate with the Principal and any other person who has obligations under the Work Health and Safety Requirements; and

#### provide all information and documents to the Principal that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.

## Principal’s right of review

### For the purposes of confirming that the Contractor has complied with its obligations under the Contract, and if requested by the Principal, the Contractor must allow the Principal to review, inspect, audit or otherwise observe the Contractor’s health and safety systems, work practices and procedures related to the Works.

### The Contractor acknowledges:

#### any review by the Principal of the Contractor’s performance of its obligation under this clause 11 does not constitute acceptance of the adequacy of the matters reviewed or a waiver of the Principal of its rights or the Contractor’s obligations under the Contract; and

#### the Contractor has no Claim against the Principal, or any defence to any action or Claim by the Principal, arising from any review, alleged verification, approval or acceptance of any of the Contractor’s health and safety systems, work practices or procedures including any information requested by the Principal under this clause 11.

## Breach of Work Health and Safety Requirements

### If the Principal reasonably considers that:

#### there is a hazard or potential hazard which might give rise to a risk of injury to people or damage to property arising from or in connection with the Works;

#### the Contractor’s health and safety performance is below the standards specified in the Contract; or

#### the Contractor otherwise breaches its obligations under this clause 11,

### the Principal may direct the Contractor to suspend the whole or part of the Works, and the Contractor must immediately comply with such a direction and bear any costs incurred by any person as a result of the suspension.

### The suspension will not be lifted until the work area is made safe, the unsafe practice removed or the breach rectified.

### The Contractor must bear:

#### any cost it incurs and any delay or disruption caused as a result of a suspension under clause 11.3(a); and

#### any costs incurred by the Principal as a result of the suspension, and any such costs become a debt due to the Principal by the Contractor.

## Contractor’s Work Health and Safety Management Plan

### The Work Health and Safety Management Plan must comply with the Work Health and Safety Requirements.

### The Contractor, the Contractor Personnel and any other person engaged by the Contractor to perform the Works must not commence the Works on any Site until the Work Health and Safety Management Plan has been approved by the Principal in accordance with clause 6.3 and the Contractor has provided evidence to the Principal's reasonable satisfaction that the Contractor and any agents or contractors engaged by the Contractor have agreed to comply with the Work Health and Safety Management Plan.

### In addition to any other obligations the Contractor has under the Work Health and Safety Requirements, the Work Health and Safety Management Plan must set out all reasonably practicable steps the Contractor will take to ensure health and safety during performance of the Works.

### The Principal may review the Work Health and Safety Management Plan and notify the Contractor of amendments required. If required, the Contractor must amend the Work Health and Safety Management Plan and resubmit it to the Principal. The Contractor must ensure that all affected parties comply with the Work Health and Safety Management Plan as amended.

### Where the Contractor becomes aware of any person who is not complying with the Work Health and Safety Management Plan the Contractor must notify the Principal in writing and advise the Principal what steps the Contractor will take to ensure compliance with the Work Health and Safety Management Plan.

## Additional obligations

### The Contractor must comply, and ensure that the Contractor Personnel comply, with all duties imposed on a designer under the Work Health and Safety Requirements, including:

#### ensuring, so far as is reasonably practicable, that the plant, substance or structure is designed without risks to health and safety; and

#### consulting, so far as is reasonably practicable, with the Principal about how to ensure that risks to health and safety arising from the design are eliminated or minimised.

### The Contractor must comply, and ensure that the Contractor Personnel comply, with all duties imposed on a manufacturer under the Work Health and Safety Requirements, including, ensuring, so far as is reasonably practicable, that the plant, substance or structure is manufactured without risks to health and safety.

### The Contractor must comply, and ensure that the Contractor Personnel comply, with all duties imposed on an importer under the Work Health and Safety Requirements, including, ensuring, so far as is reasonably practicable, that the plant, substance or structure is without risks to health and safety.

### The Contractor must comply, and ensure that the Contractor Personnel comply, with all duties imposed on a supplier under the Work Health and Safety Requirements, including, ensuring, so far as is reasonably practicable, that the plant, substance or structure is without risks to health and safety.

### The Contractor must comply, and ensure that the Contractor Personnel comply, with all duties imposed on a person that installs, constructs or commissions plant or structures under the Work Health and Safety Requirements, including ensuring, so far as is reasonably practicable, that the plant or structure is installed, constructed or commissioned without risks to health and safety.

## Principal Contractor obligations

### In this clause 11, the terms **Construction Project** and **Principal Contractor** have the meanings given to them under the *Work Health and Safety Act 2020* (WA) and associated regulations.

### For the purposes of the Work Health and Safety Requirements, the Principal:

#### engages the Contractor as the Principal Contractor for the Construction Project forming the whole or part of the Works; and

#### authorises the Contractor to have management or control of the workplace and to discharge the duties of a Principal Contractor imposed by the Work Health and Safety Requirements.

### The Contractor:

#### accepts its engagement as Principal Contractor under clause 11.6(b)(1);

#### agrees to discharge and perform the responsibilities and functions of the Principal Contractor for the Construction Project; and

#### acknowledges that it will retain all responsibilities connected with its engagement as the Principal Contractor for the Works until the Completion of the Works.

## Environmental Requirements

### The Contractor must comply with, and ensure the Contractor Personnel comply with:

#### all Environmental Requirements; and

#### the Contractor’s policies and procedures relating to the protection of the Environment, pollution, Contamination and hazardous substances.

### The Contractor must, and must ensure the Contractor Personnel:

#### transport, store, use and dispose of hazardous substances in a way which:

##### minimises the risk of Contamination, pollution and harm to the Environment; and

##### complies with all Environmental Requirements;

#### do not Contaminate, pollute or harm the Site or the surrounding Environment; and

#### comply with any direction given by the Principal in respect of any Environmental Incident.

### The Contractor must allow the Principal reasonable access to the Site for the purposes of:

#### assessing the environmental impacts of the Work and activities of the Principal, Principal Personnel, Contractor or the Contractor Personnel; and

#### responding to any Environmental Incident.

### The other provisions of this clause 11 do not limit this clause 11.7. Nothing in this clause 11 or elsewhere in the Contract in any way limits or excludes the obligations the Contractor has under Environmental Requirements.

## Power to remove

### If the Contractor or any of the Contractor Personnel fail to comply with any obligation under this clause 11 then the Principal may in its discretion deny that person access to the Site or require that person to leave the Site immediately.

### The Principal is not liable to the Contractor for any Loss or Claim arising from the removal of any person under clause 11.8(a).

## Indemnities

### Subject to clause 11.9(c), the Contractor must indemnify the Principal from and against any Claim or Loss, however caused (including negligence), brought against, suffered or incurred by the Principal arising out of, or in connection with:

#### damage to, or loss or destruction of, any real or personal property (including property of the Principal);

#### Contamination or other harm or adverse impact caused to the Environment; or

#### injury to, or death or disease of, any person,

arising out of or in connection with the performance of the Work or the Contractor’s breach of the Contract.

### Subject to clause 11.9(c), the Contractor must indemnify the Principal from and against any Claim or Loss brought against, suffered or incurred by the Principal arising out of, or in connection with:

#### to the extent permitted by law, the Contractor or the Contractor Personnel failing to comply with the Work Health and Safety Requirements or Environmental Requirements (or any combination);

#### a breach by the Contractor of clause 11; and

#### the Contractor or any of the Contractor Personnel failing to comply with a Legislative Requirement,

including any fines or penalties to the extent permitted by Law.

### The Contractor’s liability to indemnify the Principal under clauses 11.9(a) and 11.9(b) will be proportionately reduced to the extent that:

#### a negligent act or omission of the Principal or the Principal Personnel caused or contributed to the Claim or Loss; or

#### the Principal failed to take reasonable steps to mitigate the Claim or Loss.

# Timing for completion of Works

## Time for Completion

The Contractor must:

### perform the Works with due expedition and without delay and in accordance with the Construction Program;

### achieve Completion by the Date for Completion;

### notify the Principal of any delays or potential delays in the performance of the Works or achieving Completion by the Date for Completion within 5 Business Days after the Contractor became aware of any delay or potential delay (or when the Contractor ought to have become aware of the delay or potential delay, if earlier), which notice must include details of the cause and likely extent of the delay; and

### take all steps necessary to minimise the effect of any delay to the Works.

## Allowable extensions of time

Subject to the other provisions of this clause 12, the Contractor is entitled to Claim an extension to the Date for Completion if the Contractor has demonstrated to the Principal’s satisfaction that it has, or will be, delayed in achieving Completion by the Date for Completion due to one or more of the following reasons, except to the extent caused by the Contractor, the Contractor Personnel or a Defect:

### a Compensation Event;

### a suspension of Work by the Contractor pursuant to section 62 of the Security of Payment Act; or

### a Force Majeure Event,

(in each case, a **Delay Event**).

## Conditions precedent to an extension of time

### The Contractor is not entitled to an extension of time unless the:

#### delay is caused by a Delay Event;

#### Works that are delayed are on the critical path;

#### Contractor has taken all reasonable steps to preclude the occurrence of the cause of the delay;

#### Contractor has established to the Principal’s satisfaction that the extension it seeks because of the delay attributable to a Delay Event does not overlap periods of delay due to any cause for which the Contractor is not entitled to request an extension of time. The Contractor will have no entitlement to an extension of time to the extent of any overlap;

#### Contractor provides updates every 10 Business Days that the Delay Event is continuing, commencing on the date of first notice under clause 12.1(c);

#### Claim for an extension of time is made in writing to the Principal within 10 Business Days after the Contractor became aware, or ought reasonably to have become aware, if earlier, that the Delay Event had ceased; and

#### Contractor has taken and continues to take all reasonable steps possible to minimise the extent and consequences of the delay.

### For clarity, seasonal weather conditions which are typical for the relevant time of year according to the records of the Australian Bureau of Meteorology will not constitute a Delay Event, unless those weather conditions result in a natural disaster or state of emergency being declared in the location of the Site.

## Response to claim

### The Principal must, within 15 Business Days after receipt of a Claim under this clause 12, respond to the Contractor in writing. The Principal’s response must:

#### grant the Contractor the extension of time to the Date for Completion which the Contractor is entitled to (if any);

#### for a Compensation Event, specify the amounts under clause 12.7 which the Contractor is entitled to (if any); and

#### if the extensions of time or amounts under clause 12.7 differ from those claimed, state the reasons for the differences.

### A failure of the Principal to grant an extension of time, or to grant an extension of time within the time provided for in clause 12.4(a), does not cause the Date for Completion to be set at large. However if:

#### the Principal does not respond to a claim for an extension of time within the time provided for in clause 12.4(a); and

#### as a result, the Contractor is entitled to an extension of time under clause 12.2,

the Contractor will be entitled to claim an extension of time in relation to the Principal’s delay in responding (over and above the time provided for in clause 12.4(a)).

## Extension of time at Principal’s discretion

### Even though the Contractor is not entitled to an extension of time, the Principal may (in its discretion) extend the Date for Completion at any time for any reason by written notice to the Contractor.

### The Contractor is not entitled to make any Claim against the Principal in relation to an extension of time under clause 12.5(a), including for amounts under clause 12.7.

## Reduction in time for Variation

Subject to this clause 12, if a Variation Directed pursuant to a Variation Notice, or action Directed pursuant to an Acceleration Order, will reduce the time required to achieve a Milestone Event or Completion, the Date for Completion will be brought forward by the period of the reduction (in days).

## Delay costs

### Subject to this clause 12, if the Date for Completion is extended under clause 12.2(a) for a Compensation Event, the Principal must pay to the Contractor the reasonable additional costs and expenses directly incurred by the Contractor as a result of that delay.

### Amounts payable under this clause 12.7:

#### only include costs and expenses relating to Work activities delayed, prolonged or disrupted as a result of the Compensation Event;

#### do not include the cost or expense of Personnel and other resources redeployed, whether on other Work or otherwise; and

#### do not include profit, margins, corporate overheads, or lost opportunities resulting from the delay.

### Amounts are not payable under this clause 12.7 to the extent that:

#### those amounts would have been avoided or mitigated if the Contractor had complied with clause 12.11;

#### the Contractor is entitled to be paid those amounts under another provision of the Contract; and

#### more than one event causes concurrent delay to the Date for Completion and at least one of those events is not a Compensation Event.

### The total amount payable under this clause 12.7 in relation to a single day is limited to the amount set out in Item 30.

## Other provisions relevant to an allowable time extension

### After expiration of the period in clause 12.3(a)(6), any Claim for an extension of time to the Date for Completion that the Contractor could have made against the Principal, but which has not been made, is barred and such failure will constitute a waiver by the Contractor of its right under clause 12.2.

### If the Contractor disputes the Principal’s determination under clause 12.4, it may, within 10 Business Days after the determination, refer the Dispute for resolution under clause 34.

### If the Contractor does not refer the determination for Dispute resolution within the time set out in clause 12.8(b), the Principal’s determination under clause 12.4 will be final and binding on the Contractor and such failure to refer will constitute a waiver by the Contractor of its right under clause 12.8(b).

## Corrective action

### Without limiting clause 12.11, if at any time:

#### the progress of Work has fallen behind that shown in the Construction Program, or otherwise is not in accordance with the Contract; and

#### the delay referred to in clause 12.9(a)(1) is not a result of a Delay Event,

the Contractor must, at its own cost, take the necessary corrective action so as to ensure that progress is maintained in accordance with the Contract. The Principal may from time to time direct the Contractor to provide details of the corrective action it plans to take under this clause 12.9.

### Corrective action taken (or to be taken) by the Contractor under this clause 12.9 may include the working of overtime and additional shifts, the application of more resources to carry out the Work, and the adjustment and rescheduling of activities.

### If the Contractor fails to take corrective action in accordance with this clause 12.9, the Principal may direct the Contractor as to the corrective action it is to take and the Contractor must comply with that direction at its own cost. No direction by the Principal under this clause 12.9(c) will be taken to constitute such a direction unless it is:

#### in writing;

#### signed by the Principal; and

#### expressly states that it is a direction under clause 12.9(c).

## Sole remedy

Extensions of time under clause 12.2 and payment of amounts under clause 12.7 are the Contractor’s sole remedy for delay to the Work, however caused.

## Prevention and mitigation

The Contractor must take all reasonable steps to avoid or mitigate any delay to the Work and amounts under clause 12.7, including re-sequencing Work, redeploying or standing down personnel and demobilising.

## Notice requirements

The Contractor warrants to the Principal that compliance with the notice requirements and pre-conditions in this clause 12 are:

### reasonably possible; and

### not unreasonably onerous.

# Acceleration of Work

## Acceleration proposal requested by Principal

### Without limiting clause 12.9, the Principal may request the Contractor to provide a proposal to accelerate or re-sequence the Work to reduce the time required to achieve Completion.

### The Contractor must, within 10 Business Days after a request, give the Principal:

#### if it is reasonably practicable to accelerate or re-sequence the Work, an acceleration proposal which complies with clause 13.2(a); and

#### otherwise, written notice setting out why it is not reasonably practicable to accelerate or re-sequence the Work.

## Proposal requirements

### An acceleration proposal under clause 13.1(b)(1) must state it is an acceleration proposal under that clause and set out, in reasonable detail:

#### the actions the Contractor could take to accelerate or re-sequence the Work;

#### any adjustments to the Milestone Amounts for those actions; and

#### the adjustment to the Date for Completion as a result of those actions.

### The acceleration proposal must also include:

#### reasonable details of how the matters set out in clause 13.2(a)(2) and 13.2(a)(3) were determined;

#### an itemised breakdown for labour, materials, plant, preliminaries, supervision, overheads and profit; and

#### reasonable supporting evidence, including quotations from Subcontractors.

### The acceleration proposal must be open for acceptance by the Principal for at least 15 Business Days after it is provided (or such longer period of time as the Contractor consents to in writing).

### The Contractor must promptly provide any further information reasonably requested by the Principal for the purposes of assessing an acceleration proposal.

## Acceleration Order

### The Principal may, within 15 Business Days after receipt of an acceleration proposal under clause 13.1(b)(1) (or such longer period of time as the Contractor consents to in writing), give the Contractor an Acceleration Order to take some or all of the action detailed in the acceleration proposal.

### Where the Principal gives the Contractor the Acceleration Order, the Contractor must take the action required by it.

### The Acceleration Order must describe the matters listed in clauses 13.2(a)(2) and 13.2(a)(3) to the extent they have been agreed or determined under the Contract.

### Unless the Acceleration Order requires otherwise, the Contractor must commence taking the action required by it regardless of whether the matters listed in clauses 13.2(a)(2) and 13.2(a)(3) have been agreed or determined.

### The Contractor is not entitled to make any Claim against the Principal in relation to action taken to accelerate or re-sequence the Work without an Acceleration Order.

## Acceleration details

### If the Principal directs the Contractor to take action pursuant to an Acceleration Order, the Parties must seek to agree the matters listed in clauses 13.2(a)(2) and 13.2(a)(3). The matters as agreed by the Parties will apply.

### To the extent the Parties fail to agree any adjustment to the Milestone Amounts within 10 Business Days after the Principal gives an Acceleration Order (or such other date as is agreed by the Parties), the Principal will adjust the Milestone Amounts as follows:

#### if the relevant rates or prices for the Works required under the Variation are set out in Schedule 1, those rates or prices will be used to the extent that the Principal determines it is reasonable to apply them;

#### if clause 13.4(b)(1) does not apply, the Contract rates or prices will be applied to the extent that the Principal determines it is reasonable to apply them; and

#### to the extent that neither clauses 13.4(b)(1) or 13.4(b)(2) apply, a reasonable amount determined by the Principal.

### To the extent the Parties fail to agree the adjustment to the Date for Completion which is required under clause 12.6 within 10 Business Days after the Principal gives an Acceleration Order (or such other date as is agreed by the Parties), either Party may refer the matter for determination under clause 34.

### The Contractor may dispute under clause 34 whether a determination under clause 13.4(b) was made in accordance with that clause.

# Liquidated Damages

### Without prejudice to any other rights the Principal may have under the Contract but subject always to clause 26.2(c), if the Contractor fails to achieve Completion by the Date for Completion, then the Contractor must pay to the Principal liquidated damages determined in accordance with Item 9 for each day after the Date for Completion until (and including) the earlier of the Date of Completion and the date the Contract terminates (**Liquidated Damages Amount**).

### If the Date for Completion is extended after the Contractor has paid liquidated damages under this clause 14, the Principal must promptly repay to the Contractor any liquidated damages received for the period up to (and including) the extended Date for Completion.

### The Liquidated Damages Amount will be a debt due and payable from the Contractor to the Principal. The Principal will be entitled to either:

#### deduct this amount from any payments to be made to the Contractor; or

#### demand payment within 10 Business Days after the Contractor receives a notice from the Principal setting out the calculation of the Liquidated Damages Amount.

### Payment of liquidated damages will not relieve the Contractor from duly performing its obligations under the Contract.

### The Parties acknowledge and agree that:

#### it is not possible to determine with precision the Loss which the Principal will suffer and incur if Completion is not achieved by the Date for Completion;

#### it is in the Parties’ economic and other interests to agree in advance the damages payable to the Principal in such circumstances, including by giving the Parties certainty as to the damages payable; and

#### the liquidated damages payable under this clause 14 are enforceable genuine pre-estimates of such Loss.

### If the Contractor's obligation to pay liquidated damages under this clause 14 is unenforceable for any reason (including because the liquidated damages are a penalty), the Principal may claim general damages for the Contractor’s failure to achieve Completion by the Date for Completion.

# General testing and inspections

## Principal may order tests of or inspect Works

### At any time before the expiry of the Defects Liability Period, the Principal may:

#### inspect or test or arrange for any part of the Works to be inspected or tested; or

#### Direct the Contractor to arrange for any part the Works to be inspected or tested, after which the Contractor must promptly arrange the inspection or testing.

### Inspection or testing required under the Contract must be carried out by an appropriately qualified and skilled person adequately trained for the tasks allocated to them and carried out in a manner that causes the least possible damage to the Works.

### The Contractor must provide any assistance and samples and make accessible any part of the Works as may be required by the Principal for any inspection or testing.

### On completion of the inspections or tests, if there is evidence of non-conformance of, or a Defect in, the Works, the Contractor must promptly make good the Works or any part of the Works inspected or tested so that they fully comply with the Contract.

### The results of inspections or tests must promptly be made available to the Principal.

## Costs of inspecting and testing

### Subject to clause 15.2(b), the Contractor must bear all costs of testing and inspection.

### The Principal must bear the cost of any inspection and testing which shows that the Works are of an acceptable quality and in accordance with the Contract.

### Nothing in this clause 15.2 will make the Principal liable to bear the cost of any tests or inspections referred to in the Project Requirements, the cost of which is included in the Contract Price.

## Notice of tests

Contractor must give the Principal reasonable written notice of its readiness for inspections and tests required under the Contract so that the Principal may witness or have witnessed the same if it so chooses.

# Completion Tests

## Procedure for Completion tests

The Contractor must prepare and perform all tests necessary to confirm whether the Works have reached Completion in accordance with the Contract (**Completion Tests**).

## Completion Test results

### The Contractor must provide to the Principal full and substantiated test results for all Completion Tests within 5 Business Days after completion of the relevant test or the date required (if any) under the Project Requirements or Construction Program.

### Except:

#### with the prior written consent of the Principal; or

#### to the extent necessary to comply with clause 16.3(a),

the Contractor must not adjust (and will not allow the adjustment of) any part of the Works following completion of any test.

## Rectification work

If the whole or any part of the Works fails to pass a Completion Test, the Contractor must:

### promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failures, imperfections or other faults as may be required to ensure that all Completion Tests are satisfied;

### be responsible for all costs and expenses incurred or sustained; and

### if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.

## Failure to perform a Completion Test

If the Contractor fails to perform any Completion Test in accordance with the Contract:

### the Principal must give the Contractor a notice advising that the Contractor has failed to perform a Completion Test and providing that the Contractor has a further 5 Business Days to perform the Completion Test;

### if the Contractor fails to perform the Completion Test in accordance with the notice given by the Contractor under clause 16.4(a), the Principal may perform that Completion Test at a date and time determined by the Principal; and

### the cost incurred by the Principal in performing that Completion Test will be a debt due and payable immediately from the Contractor to the Principal.

# Completion of Works

## Completion Notice

The Contractor must notify the Principal and the Principal’s Representative when the Contractor considers that the Works have achieved Completion (**Completion Notice**).

## Inspection

Within 10 Business Days of a Completion Notice being given by the Contractor to the Principal and the Principal’s Representative under clause 17.1, the Principal will:

### inspect the Works and Direct the Contractor to undertake any Completion Tests; or

### Direct the Contractor to perform the Completion Tests in the presence of the Principal (on a date specified by the Principal).

## Completion claim requirements

After the Contractor has complied with all Directions of the Principal under clause 17.2, the Contractor may notify the Principal that the Works have reached Completion and the notice must include full and substantiated results for all tests which the Contractor is required to perform under the Contract (including the Completion Tests).

## Completion Certificate

When the Principal is satisfied that Completion has been achieved, the Principal must issue a Completion Certificate for the Works.

## Ownership of Works

All rights, title and ownership in each part of the Works passes to the Principal upon the earlier of:

### delivery of that part of the Works on a Site; and

### payment by the Principal in relation to that part of the Works.

## Cleaning up following Completion

Within 10 Business Days after the Date of Completion or any earlier period as determined by the Principal (acting reasonably), the Contractor must:

### remove all unused materials, equipment and Construction Plant which do not form part of the Works from the Site; and

### leave the Site in a clean and tidy condition.

## Final Completion

### When the Contractor considers the Works have reached Final Completion, the Contractor must give notice to the Principal.

### Within 20 Business Days of a notice being given by the Contractor under clause 17.7(a), the Principal may inspect the Works and require the Contractor to undertake any tests under clause 16.

### Upon Final Completion, the Principal must issue a Final Completion Certificate.

## Final Payment Claim

### Within 10 Business Days after the Final Completion Date, the Contractor must lodge with the Principal and the Principal’s Representative in respect of the Works, a final payment claim entitled “Final Payment Claim”.

### The Final Payment Claim must include the details of all sums claimed as being due to the Contractor arising out of, or in connection with, the Contract.

### Upon payment under clause 17.9(c), except as set out in the Final Payment Claim:

#### the Principal is not liable for any Claim by the Contractor; and

#### the Contractor is absolutely barred from making any Claim,

arising out of, or in connection with, the Contract.

## Final Payment Schedule

### Within 10 Business Days after receipt of the Final Payment Claim, the Principal must issue to the Contractor, a payment schedule entitled “Final Payment Schedule” which states the amount (if any) which is finally due from:

#### the Principal to the Contractor; or

#### the Contractor to the Principal,

(as the case may be) in respect of the Contract.

### If the Final Payment Schedule states monies are due from the Principal to the Contractor, within 2 Business Days after issue of the Final Payment Schedule, the Contractor must provide to the Principal a Tax Invoice for the amount set out in the Final Payment Schedule owing to the Contractor.

### The Principal must pay the Contractor the amount shown in the Tax Invoice including GST, within 8 Business Days after the provision by the Contractor of a Tax Invoice, subject to clause 17.9(d).

### The Contractor agrees that the Principal may:

#### deduct from amounts due to the Contractor any money due or which may become due from the Contractor to the Principal under, or in connection with, the Contract; and

#### withhold payment of any amounts payable under the Contract pending resolution of any Dispute.

### If the Final Payment Schedule states monies are due from the Contractor to the Principal, that amount will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides a Tax Invoice to the Contractor.

# Defects

## Contractor to complete outstanding work

The Contractor must, within 20 Business Days after the Date of Completion, or such other period as the Principal may agree, rectify any Defects in the Works existing at the Date of Completion.

## Defects Liability Period for the Works

A Defects Liability Period will apply to the Works. The Defects Liability Period will:

### start on the date after the Date of Completion; and

### end the period specified in Item 28 after the Date of Completion.

## Defects Liability Period for Remedial Work

A Defects Liability Period will apply to the Remedial Work carried out under clause 18.5. The Defects Liability Period for particular Remedial Work will:

### start on the day after the Remedial Work is complete; and

### end the period specified in Item 29 after that, or at the end of the Defects Liability Period under clause 18.2, whichever is the later, provided that in no circumstances will the Defects Liability Period in respect of all Remedial Work extend beyond 2 multiples of the period specified in Item 28.

## Direction to rectify

### The Principal may Direct the Contractor in writing to rectify a Defect at any time during the Defects Liability Period.

### The Principal may, after consulting with the Contractor, specify a reasonable time within which the Contractor must complete the Remedial Work by written notice.

## Contractor to rectify

### After a Direction under clause 18.4(a), the Contractor must perform the Remedial Work.

### Subject to clause 18.5(c), the Contractor must complete the Remedial Work within:

#### where the Principal has specified a reasonable time under clause 18.4(b), that time; or

#### otherwise, a reasonable time.

### Where, in the Principal’s reasonable opinion, a Defect endangers people, livestock, property or the Environment, the Contractor must either complete the Remedial Work, or a temporary fix which prevents the danger, within 48 hours after a Direction under clause 18.4(a), or such other time as agreed between the Parties having regard to the urgency of the case.

## Contractor may request extension

### If the Contractor is unable to complete Remedial Work by the time required under clause 18.5(b), the Contractor may request an extension by written notice to the Principal.

### If the Principal is reasonably satisfied that the Contractor is diligently progressing the Remedial Work, the Principal may extend the time for completing it by a single reasonable further period promptly after a request under clause 18.6(a).

### In determining an extension under clause 18.6(b), the Principal must take into account the nature of the Remedial Work.

## Failure to rectify

### If the Contractor fails to remedy a Defect in accordance with clause 18.1, fails to satisfactorily carry out the Remedial Work within the time specified in the Principal's notice, or in the event of an emergency or urgency, the Principal may (without limiting any other right available to it) carry out the Remedial Work, or have the Remedial Work performed by other contractors, without further notice to the Contractor.

### The costs and expenses incurred by the Principal in having the Remedial Work carried out will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.

## Defects register

### As soon as possible after the Date of Completion, the Contractor must prepare and keep up to date a register of all Defects notified to the Contractor under this clause 18 or which the Contractor is aware of.

### The Defects register must include, for each Defect:

#### the date the Defect was identified;

#### the date the Contractor expects the Defect will be rectified; and

#### the date the Defect is rectified.

### The Contractor must give the Principal an up to date copy of the Defects register within 2 Business Days after a request.

## Acceptance of defective works

If:

### the Principal discovers that any Materials and Equipment or part of the Works are not in accordance with the Contract; or

### the Contractor has failed to comply with a Direction under clause 18.4(a),

the Principal may elect to accept the Defect notwithstanding that such Works are not in accordance with the Contract, and if applicable and acting reasonably, the Contract Price must be reduced by an amount determined by the Principal to reflect the reduced value of the applicable Works.

## Investigation of Defects by Contractor

Where the Principal claims that there is a Defect in part of the Works during the Defects Liability Period, the Contractor may access the Works as reasonably required to investigate and test whether there is a Defect.

## Contractor to minimise disruption

The Contractor must perform Remedial Work under clause 18.5 at times and in a manner which causes as little inconvenience and disruption to the Principal’s operations and people accessing or using the Site and surrounding areas as is reasonably possible.

## Rights additional

The Principal’s rights under this clause 18 are in addition to, and do not reduce or exclude, its other rights under the Contract and at Law.

# Contract Price

## Contract Price

### The Principal must pay the Contract Price to the Contractor for the Works in accordance with this clause 19.

### The Contractor acknowledges and agrees that:

#### the Contract Price represents its full and complete payment for all matters and things necessary for the complete performance and Completion of the Works in compliance with the Contract;

#### the Contractor is not entitled to any adjustment in the Contract Price except:

##### in accordance with clause 19.2(a) in respect of Provisional Sum Items;

##### in accordance with clause 21 as a result of a Variation which is the subject of a Variation Quotation that is accepted by the Principal under clause 21.3(a);

##### any cost and expense being included or excluded from being paid under the Contract in accordance with the terms of the Panel Agreement; and

##### any amounts payable as set out in the Procurement Form; and

#### the Contract Price and any rates or prices included in the Contract are not subject to adjustment for rise and fall in respect of any site allowance or by reason of fluctuations in exchange rates, changes in the cost of labour and materials, or for any other matter, even where there is an extension of time to the relevant Date for Completion.

## Provisional sums

### Subject to clause 19.2(b), a provisional sum included in the Contract is not itself payable by the Principal but where, at the Direction of the Principal, the work or item to which the provisional sum relates (**Provisional Sum Item**) is performed or supplied by:

#### the Contractor, the work or item will be valued in accordance with Schedule 1; and

#### a Subcontractor, the Principal must pay the Contractor the amount payable by the Contractor to the Subcontractor for the Provisional Sum Item performed or supplied, disregarding any damages payable by the Contractor to the Subcontractor or vice versa.

### In addition to the amounts payable pursuant to clause 19.2(a), the Contractor will be entitled to be remunerated for attendance and profit in relation to Provisional Sum Items as follows:

#### the Contractor will not be entitled to any profit and attendance margin in relation to:

##### any Provisional Sum Item not performed or supplied; or

##### any Provisional Sum Item if performed or supplied, where the value of the Provisional Sum Item does not exceed the amount thereof as specified in the Contract; and

#### if a Provisional Sum Item is performed or supplied and the value thereof exceeds the amount thereof as specified in the Contract (**Provisional Amount Excess**), the Principal must pay the Contractor the percentage stated in Item 33 on the Provisional Amount Excess as profit and attendance margin.

### The amount payable to a Subcontractor for materials or goods is to be taken to be the net cost to the Contractor (disregarding any deduction of cash discount for prompt payment).

## Payments claims

### On the 28th day of each month, the Contractor may submit to the Principal a written payment claim.

### In the payment claim, the Contractor may claim:

#### (**lump sum**) if the Contract Price is a lump sum, the Milestone Amounts that are attributable to the Milestone Events completed since the previous payment claim (or, in the case of the first payment claim, all Milestone Events completed prior to that payment claim) (**Completed Milestone Events**) plus any other amounts that are payable to the Contractor in accordance with the Contract; or

#### (**schedule of rates**) if the Contract Price is based on a schedule of rates, the amounts that are attributable to the Works completed (determined by reference to the rates in Schedule 1) following the previous payment claim (or, in the case of the first payment claim, the Works completed prior to that payment claim) as determined by reference to Schedule 1 plus any other amounts that are payable to the Contractor in accordance with the Contract.

### Each payment claim must:

#### set out the total amount claimed and an itemised breakdown of that amount;

#### include details and supporting information reasonably required to assess whether the amounts claimed are payable in accordance with the Contract;

#### include the statutory declaration required under clause 7.8; and

#### otherwise be in the form and include the information reasonably required by the Principal.

### The Contractor must not:

#### claim payment for any Milestone Event which has not only been partially achieved; or

#### submit more than one payment claim each month.

### The Contractor must provide any further information and assistance reasonably requested by the Principal for the purposes of assessing a payment claim.

## Payment schedule

### Within 10 Business Days of receipt of the payment claim under clause 19.3(a), the Principal must assess the payment claim and issue a payment schedule to the Contractor.

### The payment schedule must identify the payment claim to which it relates (if any) and set out:

#### the amount claimed which is payable to the Contractor;

#### the reasons for any difference (including, if applicable, the reasons for withholding or setting off any amount);

#### if the Contract requires the Contractor to provide retention as security for the Contractor’s performance:

##### amounts previously deducted for Retention Monies pursuant to clause 5.10; and

##### Retention Monies to be deducted pursuant to clause 5.10 as security; and

#### any other amounts that are payable to the Contractor in accordance with the Contract (including any relevant additional amounts for authorised Variations under clause 21).

### The Principal may, at any time, issue a payment schedule correcting any error discovered in a previous payment schedule.

## Tax invoice

### Within 2 Business Days of the Principal issuing a payment schedule to the Contractor under clause 19.4, the Contractor must provide the Principal with a Tax Invoice for the amount specified in the payment schedule.

### A Tax Invoice must include:

#### the Procurement Form number;

#### a description of the Works performed;

#### the amount being claimed for the Works;

#### the amount of any applicable GST; and

#### any further information reasonably requested by the Principal.

## Payment

Subject to clause 19.8, the Principal must pay the Contractor the amount stated as due to the Contractor in a payment schedule within 8 Business Days after receipt of a Tax Invoice in compliance with clause 19.5.

## Payment not approval

Payment by the Principal to the Contractor under this clause 19 is payment on account only and not approval of the Works to which the payment relates. The issue of a payment schedule and payment by the Principal does not, of itself, affect the Principal’s rights to dispute whether an amount was payable under the Contract or whether the Works complies with the Contract.

## Principal’s right of set-off

The Principal may set-off from any amount due and payable from the Principal to the Contractor under or in connection with the Contract, any amount due and payable from the Contractor to the Principal under, or in connection with, the Contract.

## All costs included

Except as expressly stated in the Contract (including clause 21), the Contract Price is deemed to include provision for all costs, expenses and charges incurred by the Contractor in performing its obligations under the Contract.

## Interest on overdue payments

If a Party fails to pay an amount due to the other Party under the Contract by the due date, the Party that failed to pay must pay the other Party interest on that amount at the Default Interest Rate for the period from (but excluding) the due date until (and including) the date payment is made.

## Conditions for payment

Notwithstanding anything else in the Contract, the Principal is not required to make any payment to the Contractor unless all insurances that the Contractor is required to effect under the Contract have been effected and are being maintained.

## Accounting and audit

### The Contractor must, and must ensure that its Subcontractors, keep and maintain in accordance with generally accepted accounting practice, accurate and reasonably detailed books and financial records in connection with the performance of the Works, including personnel records, correspondence, receipts, vouchers, memoranda, computerised data and such other information necessary for an accurate audit and verification of any costs, for the duration of the Contract and for a period of 7 years following the expiry of the Defects Liability Period or the expiry or termination of the Contract, whichever is the later.

### The Contractor will permit the Principal and its representatives to audit (or have audited), examine and copy any books and financial records necessary for the verification of any sum paid or payable under the Contract.

### If as a result of any review or audit it is established that the invoices submitted under the Contract are erroneous, the Contractor must promptly adjust such error and send to the Principal the corresponding invoice or credit note.

# Taxes and duties

## GST

### Any reference in this clause 20.1 to terms defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.

### Any amount referred to in the Contract which is relevant in determining a payment to be made by one of the Parties to another is exclusive of GST unless indicated otherwise.

### If GST is imposed on a supply made under or in connection with the Contract then the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is, subject to the supplier providing the recipient with a tax invoice as required by the GST Act, payable at the same time and in the same manner as the consideration to which it relates.

### If a Party refunds to another Party any amount on which GST has been paid, that Party must also refund an amount in respect of any GST paid in respect of that amount.

### If a Party is entitled to be reimbursed for an expense or outgoing incurred in connection with the Contract, then the amount of the reimbursement will be net of any input tax credits which may be claimed by the Party being reimbursed in relation to that expense or outgoing.

### Each Party must have an ABN and be registered for GST.

## Other taxes and duties

Subject to clause 20.1, the Contractor must pay, or reimburse the Principal for, any of the following and any interest, fine, penalty, charge, fee or other amount imposed on or in relation to the following:

### any Tax on revenue or income received by the Contractor;

### any Tax on any thing exported or imported in the performance of the Works;

### any long service benefits levy, training levy, or similar Taxes relating to the Works;

### payroll tax or similar Tax relating to the Contractor Personnel; and

### any other Tax which the Contractor or a Contractor Personnel is liable for under any Legislative Requirement, including as a result of or in connection with its performance of the Contract.

# Variations

## Variation proposals

### If at any time prior to the Date of Completion the Principal notifies the Contractor that it requires a Variation, the Contractor must promptly, and in any event within 10 Business Days after a request, provide a Variation Quotation which complies with clause 21.2.

### The Contractor may, at any time, propose a Variation by giving the Principal a Variation Quotation which complies with clause 21.2. The Principal has no obligation to give a Variation Notice for the convenience of the Contractor.

## Quotation requirements

### A Variation Quotation under clause 21.1 must state it is a Variation Quotation under the relevant clause and set out, in reasonable detail:

#### the proposed scope and technical requirements for the Variation;

#### any proposed adjustments to the Contract Price for the Variation;

#### any proposed adjustments to the Construction Program, including the Date for Completion, as a result of the Variation;

#### any proposed amounts under clause 12.7 payable as a result of the Variation;

#### any proposed adjustments to the Contractor’s warranties and other obligations under the Contract required as a result of the Variation; and

#### for a proposal under clause 21.1(b), any benefits or detriments to the Principal associated with the Variation.

### The Variation Quotation must also include:

#### reasonable details of how the matters set out in clauses 21.2(a)(2) to 21.2(a)(5) were determined;

#### an itemised breakdown for labour, materials, plant, preliminaries, supervision, mobilisation costs, transport costs, overheads and profit; and

#### reasonable supporting evidence, including quotations from Subcontractors.

### If the relevant rates or prices for the Works required under the Variation are set out in Schedule 1, those rates or prices must form the basis for the Variation Quotation.

### If the relevant rates or prices for the Works required under the Variation are not set out in Schedule 1, the Variation Quotation must:

#### use reasonable rates for the performance of the proposed Variation;

#### specify the rates upon which the Variation Quotation is based; and

#### explain the basis for the use and calculation of those rates.

### The Variation Quotation must be open for acceptance by the Principal for at least 20 Business Days after it is provided (or such later date as the Contractor consents to in writing).

### The Contractor must promptly provide any further information reasonably requested by the Principal for the purposes of assessing a Variation Quotation.

## Variation Notice

### The Principal may give the Contractor a Variation Notice to perform a Variation. The Principal may not give a Variation Order after the Date of Completion.

### The Principal need not issue a notice that it requires a Variation or receive a Variation Quotation before giving the Variation Notice.

### Where the Principal gives the Contractor a Variation Notice, the Contractor must perform the Work as varied by the Variation Notice. However, the Contractor is not required to perform a Variation that is beyond the general scope of the Contract.

### The Variation Notice must specify the Variation and detail the matters listed in clauses 21.2(a)(1) to 21.2(a)(5) to the extent they have been agreed or determined under the Contract.

### Unless the Variation Notice requires otherwise, the Contractor must commence a Variation Directed pursuant to a Variation Notice regardless of whether the matters listed in clauses 21.2(a)(1) to 21.2(a)(5) have been agreed or determined under the Contract.

### If the Contractor disagrees with the Principal’s determination of the valuation of a Variation, then the Contractor may dispute the determination in accordance with clause 34.

### The Contractor will not be entitled, in any circumstances, to an adjustment to the Contract Price or any extension of the Construction Program (including the Date for Completion) except as set out in a Variation Notice.

### The Principal may Direct a Variation omitting any part of the Work, and nothing in the Contract prevents the Principal from engaging a third party to perform such omitted Works.

## Variation details

### If the Principal Directs the Contractor to perform a Variation pursuant to a Variation Notice, the Parties must seek to agree the matters listed in clauses 21.2(a)(1) to 21.2(a)(5). The matters as agreed by the Parties will apply, including to the Contract Price and Date for Completion.

### If Principal and Contractor are unable to agree upon the valuation of the Variation within 10 Business Days after the Principal gives a Variation Notice (or such other date as is agreed by the Parties), the Principal must determine the valuation of any Variation Notice as follows:

#### if the relevant rates or prices for the Works required under the Variation are set out in Schedule 1, those rates or prices will be used to the extent that the Principal determines it is reasonable to apply them;

#### if clause 21.4(b)(1) does not apply, the Contract rates or prices will be applied to the extent that the Principal determines it is reasonable to apply them; and

#### to the extent that neither clauses 21.4(b)(1) or 21.4(b)(2) apply, a reasonable amount determined by the Principal.

### In determining the deduction to be made for scope which is taken out of the Contract, or for a Variation which results in a saving to the Contractor, the deduction will include a reasonable amount for overhead and profit.

### To the extent the Parties fail to agree the adjustment to the Date for Completion under clause 12.2 or any amount under clause 12.7 within 10 Business Days after the Principal gives a Variation Notice (or such other date as is agreed by the Parties), the adjustment or amount will be determined as set out in clause 12.

### To the extent the Parties fail to agree the adjustment to the Date for Completion under clause 12.6 within 10 Business Days after the Principal gives a Variation Notice (or such other date as is agreed by the Parties), either Party may refer the matter for determination under clause 34.

# Damage to property and care of the Works

## Protection of property

### If the Contractor or the Contractor Personnel damage property, including Services and property on or adjacent to any Site, the Contractor must promptly:

#### make good the damage; and

#### pay any compensation which the Contractor is required to pay under the Contract or under any Law.

### If the Contractor fails to comply with an obligation under this clause 22.1, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor’s behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

## Care of the Works

### The Contractor is responsible for the care of the Works from the date set for commencement of those Works and until 4:00 pm on the Date of Completion.

### After 4:00 pm on the Date of Completion, the Principal is responsible for the care of the Works the subject of the Completion Certificate.

## Loss to the Works

### Notwithstanding the passage of title in accordance with clause 17.5, Contractor must, from commencement of the Works to the Date of Completion, take full responsibility for the care of the Works and should any damage or loss occur to any part of the Works from any cause (save in respect of Excepted Risks) must at its own cost and expense repair or replace the same so that at the Date of Completion the Works are in good order and condition and in conformity in every respect with the requirements of the Contract.

### In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor must, to the extent Directed by the Principal, rectify the loss or damage and such rectification will be a deemed Variation. If loss or damage is caused by a combination of Excepted Risks and other risks, the Principal in pricing the Variation must assess the proportional responsibility of the Parties.

## Contractor fails to rectify Loss

### If the Contractor fails to rectify such Loss referred to in clause 22.3:

#### where the Principal advises a time period for such rectification, within that time period; or

#### where clause 22.4(a)(1) does not apply, as soon as possible,

then the Principal may, in its discretion, by notice in writing to the Contractor, remedy the Loss at the sole risk and expense of the Contractor.

### The provisions of this clause 22.4 and the remedies incorporated for the benefit of the Principal are in addition to and will not prejudice any other warranty, condition or remedy incorporated in the Contract.

# Insurance

### The Contractor acknowledges and agrees that:

#### it is obliged under the Panel Agreement to take out and maintain Insurances, which, as a minimum, Insurances will apply in respect of contracts with WALGA members (including the Principal) for the procurement of goods, services and works under the Panel Agreement;

#### due to the nature of the Works, the Procurement Form may require that levels of insurances greater than those required under clause 23(a)(1) be provided by the Contractor; and

#### in circumstances where the Procurement Form requires higher levels of insurance, the Contractor must ensure that it has insurances sufficient to meet such requirements.

### The Parties acknowledge and agree that the relevant provisions of the Panel Agreement are repeated and apply in the Contract, as modified for the application to the provision of the Works under the Contract.

### Subject to clause 7, if the Contractor subcontracts any part of the Works, the Contractor must ensure that each Subcontractor effects and maintains all of the insurances required under the Panel Agreement, as appropriate for the Works being performed by that Subcontractor, before the Subcontractor commences providing any part of the Works.

### In addition to the Principal’s rights under clause 29.1, if the Contractor fails to comply with any of its obligations under this clause 23, the Principal may, immediately suspend the Contract in accordance with clause 28.1(a)(5) or refuse payment of any amount due to the Contractor until evidence of the Insurances required by this clause 23 is produced to the Principal.

### The Insurances contemplated by this clause 23 are primary and not secondary to the indemnities referred to in the Contract.

# Intellectual Property

## Contractor IP and Principal IP

### Subject to clause 24.1(b), the Contractor IP remains vested in the Contractor and Principal IP remains vested in Principal.

### The Contractor grants to Principal a non-exclusive, perpetual, royalty-free, irrevocable, sub-licensable, transferable licence (with the right to assign and sub-license on the same terms) to use the Contractor IP to use, deal with, maintain, remedy defects or omissions in, modify and develop the Works.

## Project IP

### The Principal will own all Intellectual Property in the subject matter developed by the Contractor in the performance of the Works or otherwise under the Contract (**Project IP**). The Contractor hereby assigns the unencumbered ownership of all Project IP to the Principal.

### The Principal grants to the Contractor a non-transferable, non-exclusive right to exercise the Intellectual Property rights comprised in the Project IP, to the extent required by the Contractor to perform its obligations under the Contract in accordance with the terms of the Contract.

## Moral Rights

### The Contractor must procure from all authors and holders of Moral Rights in the Project IP and Contractor IP an unconditional, irrevocable consent in writing authorising the Principal (and its successors in title, and licensees and persons authorised by the Principal, its successors in title or licensees) to:

#### use the Project IP and Contractor IP without attribution of the author;

#### subject the Project IP and Contractor IP to derogatory treatment; and

#### falsely attribute the authorship of the Project IP and Contractor IP.

### Upon the Commencement Date and during the performance of the Works the Contractor warrants that it has obtained all the written consents needed to allow the Principal to perform the acts and omissions specified in clause 24.3(a) from the relevant authors and other holders of Moral Rights.

### On request from the Principal, the Contractor must immediately provide the Principal with copies of the consents referred to in clause 24.3(a).

## Intellectual Property warranties

The Contractor represents and warrants for the benefit of the Principal that:

### the Contractor has the right and authority, by ownership, licence or otherwise, to provide the Principal with the rights described in clauses 24.1 and 24.2; and

### the Contractor’s Documents, the Design Documents and any other written materials provided under the Contract will not infringe the Intellectual Property rights of any Third Party.

## Indemnity by Contractor

The Contractor indemnifies the Principal from and against any Claim that the Contractor’s performance of the Contract or any Project IP infringes any Intellectual Property rights or Moral Rights of a Third Party.

# Confidentiality, publicity and data security

## Non-disclosure

Subject to clause 25.2, each Party must keep the Confidential Information of the other Party confidential, and not directly or indirectly disclose or make available that Confidential Information to any other person.

## Permitted disclosure

### Subject to clauses 25.2(b) and 25.3, each Party may disclose Confidential Information of the other Party:

#### with the prior written consent of that other Party;

#### to comply with Legislative Requirements or the requirements of any recognised stock exchange;

#### to the extent necessary to perform the Contract;

#### to its Related Bodies Corporate;

#### to its professional advisers, bankers, financiers, insurers or auditors;

#### in relation to the Principal, in the exercise of the licence of Intellectual Property granted under clause 24.1(b);

#### to enforce its rights or defend any claim or action arising out of or in connection with its performance of the Contract or the Works; or

#### in relation to the Principal, the Principal may (where applicable) disclose to the Minister responsible for administering the *Local Government Act 1995* (WA) or that Minister’s department.

### Each Party must, if practicable before disclosing Confidential Information of the other Party under clause 25.2(a)(2), give the other Party prior notice of the disclosure and consult with the other Party regarding the form and content of the disclosure.

### Each Party must immediately provide notice to the other Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other Party’s Confidential Information.

## Undertakings by third parties

### Each Party must ensure that any person that it discloses Confidential Information to under clauses 25.2(a)(3) to 25.2(a)(6) complies with the Party’s obligations under this clause 25 as if it were the Party.

### The Contractor must, if requested by the Principal, ensure that a person to whom the Contractor has or will disclose Confidential Information of the Principal under clause 25.2(a)(3) to 25.2(a)(6) executes and delivers to the Principal a confidentiality undertaking on terms no less onerous than this clause 25.

## Publicity and reputation

### The Contractor must not:

#### make any public announcement or issue any media release relating to the Contract or the performance of the Works or exploit the fact that it has entered into the Contract, without the prior written approval of the Principal, which may be withheld at the Principal’s discretion or given subject to any conditions; and

#### commit any act or omission that damages or adversely affects, or has the potential to damage or adversely affect, the Principal’s reputation, trade mark or brand.

### The Contractor must promptly refer to the Principal any enquiries concerning the Works or the Contract from the media.

### The Contractor indemnifies the Principal from and against any Claim or Loss, however caused, brought against, suffered or incurred by the Principal arising out of or in connection with the performance of the Works, the Contractor’s breach of the Contract, or the negligence of the Contractor or the Contractor Personnel, in respect of reputational damage to the Principal.

### The indemnity in clause 25.4(c) will be reduced to the extent that the Loss is caused, or contributed to, by the Principal’s negligence or breach of the Contract.

## Freedom of information

The Contractor acknowledges that the Principal is subject to the *Freedom of Information Act 1992* (WA) and that the Contract or documents relating to the Contract may become the subject of an application under that Act and access to them may need to be given to a Third Party in accordance with that Act. The Principal has no liability to the Contractor whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

## Data security

The Contractor must:

### do all things, in accordance with Good Industry Practice, to ensure that the Principal’s Confidential Information is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;

### provide protective measures for the Principal’s Confidential Information that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal’s Confidential Information; and

### either return to the Principal or destroy or delete as the Principal directs, all original documents and copies (including in electronic form) in the Contractor’s possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information of the Principal immediately following the termination or expiry of the Contract, provided that the Contractor may retain one copy of any document comprising Confidential Information solely for the purposes of its own records or if required by Law.

# Limits of liability

## Excluded Loss

To the extent permitted by Law, but subject to clause 26.3(a), each Party will have no liability to the other Party arising under or in connection with the Contract (howsoever arising, including negligence) for Excluded Loss.

## Limit generally

### To the extent permitted by Law, despite any other provision of the Contract but subject to clause 26.3(a), the Contractor’s liability to the Principal arising out of or in connection with the Contract (however arising, including for negligence) is limited to the Contractor Maximum Liability Amount.

### To the extent that the Principal is liable to the Contractor under any Law or under the Contract, the Principal’s liability to the Contractor arising out of or in connection with the Contract (however arising, including for negligence) is limited to the Principal Maximum Liability Amount.

### To the extent permitted by Law, despite any other provision of the Contract, the aggregate liability of the Contractor to the Principal for liquidated damages payable under clause 14, and general damages referred to in clause 14(f), is limited to the Liquidated Damages Cap.

## Carve-outs to limits of liability

### A Party’s liability for the following is not limited by clauses 26.1, 26.2(a) or 26.2(b), and is not counted towards the limit under clauses 26.2(a) or 26.2(b):

#### payment of the Contract Price by the Principal to the Contractor in consideration for Work performed by the Contractor;

#### personal injury or death, including Third Party claims in connection with personal injury or death;

#### damage to, or loss or destruction of, any property;

#### breach of Law;

#### breach of the Party’s obligations under the Contract relating to Intellectual Property rights or confidentiality;

#### the infringement of the Intellectual Property rights or Moral Rights of a Third Party or the other Party;

#### liability for a Third Party’s Loss under an indemnity in clause 10.10, 11.9, 24.5, 31.4 or 32(e);

#### to the extent the Contractor recovers insurance proceeds in respect of the liability, or would have recovered insurance proceeds if it had complied with the Contract, complied with the insurance policy and taken all reasonable steps to do so;

#### the Contractor abandoning all or substantial part of the Work;

#### any liquidated damages payable under clause 14 or general damages referred to in clause 14(f); or

#### fraud, criminal offence, wilful default, wilful misconduct or Gross Negligence.

### When determining the insurance proceeds that would have been recovered for the purposes of clause 26.3(a)(8), the exclusions and limits of liability under clauses 26.1 or 26.2(a) will not be taken into account.

### Liability to which a limit under clause 26.2(a) or 26.2(b) applies is counted towards the limit when discharged by a Party.

# Default

## Contractor Events of Default

Each of the following is a **Contractor Event of Default**:

### the Contractor fails to perform the Works in an efficient, workmanlike, skilful and careful manner in accordance with the requirements of the Contract;

### the Contractor suspends its performance of the Work, except as permitted by clause 28.2;

### the Contractor provides a statutory declaration under clause 7.8 which it knows to be false or misleading in a material respect;

### an Approval is revoked, suspended or cancelled as a result of an act or omission of the Contractor or any Contractor Personnel;

### the Contractor fails to satisfy the health, safety, Environment or business ethics requirements of the Contract;

### the Contractor fails to pay an amount under the Contract within 10 Business Days after it is due, but only if the amount is not the subject of a bona fide Dispute;

### the Contractor fails to ensure that insurance is effected and maintained in accordance with clause 23 or to provide evidence of insurance in accordance with clause 23;

### the Contractor fails to provide Performance Security or a Parent Company Guarantee in accordance with the requirements of the Contract;

### the Parent Company Guarantee provided by the Contractor under clause 5.9 is or becomes unenforceable (in whole or in part) for any reason;

### the Contractor assigns or transfers any of its rights arising out of or under the Contract, except as permitted by clause 36.1(b);

### the Contractor commits multiple breaches of the Contract which, taken together, demonstrate a substantial failure to ensure compliance with the Contract;

### any Change of Control of the Contractor, without the prior written consent of the Principal; and

### the Contractor otherwise commits a substantial breach of the Contract.

## Principal may give default notice

### The Principal may give the Contractor a written default notice if a Contractor Event of Default occurs.

### The default notice must:

#### expressly state that it is a default notice under this clause 27.2;

#### describe the Contractor Event of Default in reasonable detail; and

#### specify the cure period within which the Contractor must remedy the Contractor Event of Default or overcome its effects.

### The cure period specified in the default notice must be reasonable, provided that the Principal may limit the cure period for the Contractor Events of Default listed in:

#### clauses 27.1(b), 27.1(c), 27.1(e) to 27.1(j) to not more than 10 Business Days; and

#### all other clauses in clause 27.1 to not more than 20 Business Days.

## Principal may request cure plan

### The Principal may, after giving a default notice under clause 27.2, request the Contractor to provide a cure plan by written notice to the Contractor.

### The Contractor must, within 10 Business Days after such a request, give the Principal a written cure plan which sets out the actions that the Contractor will take to remedy the Contractor Event of Default or overcome its effects on the Principal within the cure period specified in the default notice.

### The Contractor must:

#### revise the cure plan to incorporate any changes reasonably required by the Principal to ensure the Contractor Event of Default will be remedied or its effects overcome within the cure period specified in the default notice; and

#### submit the revised cure plan to the Principal,

within 10 Business Days after receipt of the Principal’s comments, in which case this clause 27.3(c) will reapply.

### The Contractor must comply with any cure plan submitted under clause 27.3(b) as revised under clause 27.3(c).

## Principal Events of Default

Each of the following is a **Principal Event of Default**:

### the Principal fails to ensure the Contractor has a non-exclusive right of access in accordance with clause 10.6 and such failure is not rectified within 15 Business Days after a written request by the Contractor; and

### the Principal fails to pay an amount on account of the Contract Price within 5 Business Days after it is due under clause 19.6, but only if the amount is not the subject of a bona fide Dispute.

## Contractor may give default notice

### The Contractor may give the Principal a written default notice if a Principal Event of Default occurs.

### The default notice must:

#### expressly state that it is a default notice under this clause 27.5;

#### describe the Principal Event of Default in reasonable detail; and

#### specify the cure period within which the Principal must remedy the Principal Event of Default or overcome its effects.

### The cure period specified in the default notice must be reasonable and be:

#### for a failure to pay, not less than 20 Business Days; or

#### for any other Principal Event of Default, not less than 40 Business Days.

# Suspension of Work

## Suspension by Principal

### The Principal may, by written notice to the Contractor, suspend the performance of all or part of the Work, or the Contractor’s or any Contractor Personnel's access to all or part of the Site for any reason, including if:

#### the Principal reasonably believes that the Contractor or the Contractor Personnel is not complying or will not comply with clause 11.1 to 11.8;

#### the Principal reasonably believes that the Contractor or any Contractor Personnel is endangering, or will endanger, any person, property or the Environment;

#### the Principal reasonably believes that suspension is necessary to avoid any interference, impediment or delay with or to the Related Activities, as a result of the Contractor’s failure to comply with its coordination under clause 3.12;

#### the Contractor has failed to provide a Performance Security as required by clause 5; or

#### the Contractor has failed to ensure insurance is effected and maintained in accordance with clause 23 or to provide evidence of insurance in accordance with clause 23.

### The Principal’s notice must state the Principal’s reasons for the suspension.

## Suspension by Contractor

### The Contractor may, after giving a default notice under clause 27.5 regarding a failure to pay, notify the Principal in writing that the Contractor intends to suspend the performance of all or part of the Work.

### The Contractor may, by written notice to the Principal, suspend the performance of all or part of the Work if the Principal has not paid the relevant amount within 20 Business Days after receipt of the notice under clause 28.2(a).

### The Contractor must not suspend the performance of the Work, except:

#### as directed by the Principal under clause 28.1;

#### as permitted by section 62 of the Security of Payment Act;

#### if the Contractor reasonably believes that suspension is required to protect people, property or the Environment; or

#### with the prior written approval of the Principal.

## Recommencement

The Contractor must re-commence any Work suspended under this clause 28 as soon as possible after the reason for the suspension has been resolved. The Contractor must notify the Principal in writing before re-commencing suspended Work.

## Liability for suspension

The Contractor is not entitled to make any Claim against the Principal arising out of, or in connection with, a suspension under this clause 28, except to the extent the suspension entitles the Contractor to an extension of time under clause 12.2 or amounts under clause 12.7, or to the extent that the Contractor is entitled to payment of any amount under section 63(2) of the Security of Payment Act.

# Termination

## Termination for Contractor default or insolvency

The Principal may immediately terminate the Contract by giving the Contractor written notice if, at the time notice is given:

### any of the following has occurred in relation to a Contractor Event of Default:

#### the Contractor has not provided a cure plan which complies with clause 27.3 within the time required by that clause;

#### the Contractor has not provided a revised cure plan that incorporates the changes required by clause 27.3(c) within the time required by that clause; or

#### the Contractor has not complied with a cure plan provided under clause 27.3, including the timeframes specified in the cure plan,

and the Contractor has not addressed or remedied the relevant occurrence referred to in clauses 29.1(a)(1), 29.1(a)(2) or 29.1(a)(3) of the Contractor Event of Default within 10 Business Days after being requested to do so in writing by the Principal;

### the Contractor has not remedied a Contractor Event of Default or overcome its effects on the Principal and the time specified under clause 27.2(b)(3) in relation to the Contractor Event of Default has expired;

### an Insolvency Event exists in relation to the Contractor or Contractor Guarantor;

### the Contractor’s aggregate liability for liquidated damages reaches the Liquidated Damages Cap and the Liquidated Damages Cap is not increased by at least 10% by agreement between the Parties,

### the Contractor’s aggregate liability to which the limit in clause 26.2 applies reaches that limit;

### the Principal becomes aware that WALGA has suspended or terminated the Panel Agreement, in accordance with the terms of the Panel Agreement; or

### the Contractor has wholly or substantially abandoned the Work.

## Termination for Principal default or insolvency

The Contractor may immediately terminate the Contract by giving the Principal written notice if, at the time notice is given:

### the Principal has not remedied a Principal Event of Default or overcome its effects on the Contractor and the time specified under clause 27.5(b)(3) in relation to the Principal Event of Default has expired; or

### an Insolvency Event exists in relation to the Principal.

## Termination for convenience

### The Principal may, in its discretion and for any reason, terminate the Contract at any time at its own convenience by giving the Contractor no less than 10 Business Days' prior notice. The Principal may act solely in its own interests in exercising its right to terminate for convenience under this clause 29.3 and is not required to give reasons for doing so.

### The Principal’s right under this clause 29.3 is in addition to any other rights it may have under the Contract and is regardless of whether or not any such rights have been:

#### wholly or partially exercised; or

#### disputed under the Contract.

### The Principal may engage and pay other persons to perform the Works.

## Obligations on termination

Upon termination of the Contract, the Contractor must immediately:

### cease performing the Work;

### not place any further orders or enter into any further contracts or binding arrangements in respect of the terminated or taken over Works;

### except to the extent required to ensure the Works at the Site are secure and safe, remove from the Site the Construction Plant and other things that the Principal no longer requires;

### protect property in the possession of the Contractor in which the Principal has or might acquire an interest;

### after ensuring the Works at the Site are secure and safe, leave the Site;

### return the Principal Supplied Items, and any property of the Principal in the possession or control of the Contractor or a Contractor Personnel, to the Principal;

### if and as requested by the Principal, give the Principal any Materials and Equipment in the possession or control of the Contractor or any Contractor Personnel;

### if and as requested by the Principal, assign or novate (as Directed by the Principal) to the Principal all rights and benefits under Subcontracts with Subcontractors;

### give the Principal a copy of any designs, drawings, specifications, records and other documents (in both hard copy and native file format) relating to the Work in the possession or control of the Contractor or a Contractor Personnel and reasonably requested by the Principal for the purpose of:

#### completing the design, manufacture, supply, construction, testing and commissioning of the Works; and

#### operating, maintaining, repairing, upgrading, altering, selling or financing the Works; and

### do all things and execute any documents necessary to affect the termination or take over by the Principal.

## Rights on termination

### If the Contract is terminated under clause 29.1, each Party’s rights will be the same at common law as if the Contractor had repudiated the Contract and the Principal had accepted that repudiation and elected to treat the Contract as at an end and recover damages.

### If the Contract is terminated under clause 29.2, each Party’s rights will be the same at common law as if the Principal had repudiated the Contract and the Contractor had accepted that repudiation and elected to treat the Contract as at an end and recover damages.

### Subject to clause 29.6, if the Contract is terminated under clauses 29.3 or 30.2(a), neither Party will have a Claim against the other Party in respect of that termination, except the Principal must pay to the Contractor:

#### if the Contract Price is a lump sum, for any Milestone Event which was achieved prior to the termination date that the Principal has not already paid for, the relevant Milestone Amount;

#### if the Contract Price is a lump sum, for any Milestone Event that is partially complete prior to the termination date, a reasonable amount for Work performed in achieving that Milestone Event prior to the termination date;

#### if the Contract Price is based on a schedule of rates, the amount due for all Works completed up to the date of termination (as determined by the Principal);

#### the cost of Materials and Equipment reasonably ordered by the Contractor which the Contractor is liable to accept, provided the Principal receives title and possession to the Materials and Equipment upon payment; and

#### the reasonable costs and expenses incurred by the Contractor in demobilising from the Site.

### The Contractor must take all reasonable steps to mitigate the amounts referred to in clause 29.5(c)(4) and 29.5(c)(5).

## Return of advanced payment

### If the Contract is terminated, the Contractor must refund to the Principal any portion of any advanced payment as a debt due and payable 10 Business Days after the termination date.

### Any refund of any advanced payment by the Contractor pursuant to clause 29.6(a):

#### does not limit, but may be taken into account when determining, the quantum of damages a Party is entitled to under clauses 29.5(a) or 29.5(b); and

#### does not limit the Contractor’s right to recover amounts pursuant to clause 29.5(c).

## Principal not restricted

The Principal may commence discussions and negotiations with potential replacement contractors to complete the remaining Work if the Principal believes it is possible that the Contract will terminate (including before the Contract is terminated).

## Accrued rights and obligations unaffected

The termination of the Contract does not affect the Parties’ rights or obligations under the Contract which accrued prior to the termination date.

# Force Majeure

## Force Majeure Event process

### In the occurrence of a Force Majeure Event, the Party affected by the Force Majeure Event must promptly notify the other Party of the occurrence of the Force Majeure Event including details of:

#### full particulars of the Force Majeure Event;

#### the effect of the Force Majeure Event on the performance of the affected Party's obligations;

#### the likely duration of the delay in performance of those obligations; and

#### the steps taken to minimise the effect of the Force Majeure Event.

### Each Party must do everything reasonably possible to minimise the effects of the Force Majeure Event. The Parties must meet without delay after notice is given under clause 30.1(a) to attempt to agree a mutually acceptable course of action to minimise the effects of the Force Majeure Event.

### The Party affected by the Force Majeure Event and who has given notice under clause 30.1(a):

#### is excused from the performance of any of its obligations under the Contract that it is prevented, hindered or delayed from performing by reason of the Force Majeure Event for the duration of the Force Majeure Event; and

#### must keep the other Party informed of developments regarding the declared Force Majeure Event, including giving prompt notice of the expected or foreseeable end date.

### Any extension to the Date for Completion as a result of a Force Majeure Event will be determined under clause 12.2.

### Each Party must bear separately all financial consequences arising out of or in connection with the Force Majeure Event and no extra payment or compensation is due to the Contractor by the Principal due to the Force Majeure Event.

### Upon the end of the Force Majeure Event the affected Party must, as soon as reasonably practicable, recommence the performance of its obligations under the Contract.

## Termination of the Contract for a Force Majeure Event

### If:

#### the Force Majeure Event continues for more than 60 Business Days; or

#### in the opinion of the Principal, the completion of the Works is made impossible on account of the Force Majeure Event,

then the Principal may at any time terminate the Contract by giving notice to the Contractor.

### If the Contract is terminated under clause 30.2(a), the Principal will pay the Contractor the amounts determined in accordance with clause 29.5(c).

### The Contractor will be responsible for all costs resulting from the Force Majeure Event, including stand-by costs, delays and the like.

### Payments under clause 29.5(c) will constitute the full and final amount payable by the Principal to the Contractor under the Contract and the Contractor will have no Claim against the Principal in relation to such termination.

### If the Force Majeure Event affects only a part of the Works, the Principal may withdraw such part from the Contract and the provisions of this clause 30.2 apply to such part, with the Contract remaining in force for those parts of the Works unaffected by the Force Majeure Event.

## COVID-19

### Notwithstanding any other provision of the Contract, the Contractor must allow for the impacts of COVID-19 on the performance of the Work of which the Contractor is aware as at the Contract Date (or would have been aware had it made all reasonable enquiries).

### Without limiting clause 30.3(a), the Contractor warrants that, immediately before the Contract Date, it obtained written notice from each material Subcontractor regarding the impacts of COVID-19 on the performance of the relevant Work to be subcontracted to that Subcontractor of which the relevant Subcontractor is aware (or would have been aware had it made all reasonable enquiries). For the purposes of this clause 30.3(b), a ‘material’ Subcontractor is a Subcontractor to whom the aggregate value of all Work to be subcontracted to it, and its Related Bodies Corporate, is equal to or greater than the amount in Item 24.

### The Contractor will not be entitled to make any Claim as a result of the impacts of COVID-19 on the performance of the Work (including under any of clauses 12, 21 and 30) to the extent the Contractor failed to allow for those impacts in breach of clause 30.3(a).

### The Contractor must comply with, and ensure the Contractor Personnel comply with, the Contractor’s policies and procedures relating to the management of current and future epidemics, pandemics and public health emergency measures, including the Contractor’s Pandemic Management Plan (if applicable).

### The Contractor will not be entitled to make any Claim as a result of the impacts of any quarantine or public health emergency measures to the extent the Contractor or the Contractor Personnel failed to have policies and procedures in place to manage and respond to current and future epidemics, pandemics and public health emergency measures in breach of clause 30.3(d).

# Anti-Bribery, Anti-Corruption and Human Rights

## ABCHR Obligations

### The Principal is committed to operating in a manner consistent with the Laws of the jurisdictions in which it operates, including those Laws relating to anti-bribery, anti-corruption, and Human Rights.

### Without limiting the generality of clause 3.5(d), the Contractor must, and must ensure that the Contractor Personnel:

#### at all times comply with all Legislative Requirements and codes relating to anti-bribery, anti-corruption, improper payments and Human Rights, including the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), the *Bribery Act 2010* (United Kingdom*), Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2015* (United Kingdom) (**Relevant Requirements**);

#### have and maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the Relevant Requirements and enforce them where appropriate;

#### promptly report to the Principal any request or demand for any undue financial or other advantage of any kind that the Contractor receives in connection with the performance of the Contract that will or may be in breach of the Relevant Requirements;

#### respect Human Rights in a manner taking into consideration the recommendations for businesses set out in the most relevant international standards, including the UN Guiding Principles on Business and Human Rights; and

#### comply with any rules, requirements, policies and standards of the Principal relating to Human Rights, as notified by Principal to the Contractor from time to time.

### The Contractor must not, and must ensure that none of its shareholders or any of the Contractor Personnel (**Associated Parties**), directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of the Contract which:

#### would violate any anti-corruption Laws applicable to the Contractor;

#### is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;

#### is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or

#### a reasonable person would otherwise consider to be unethical, illegal or improper,

(each a **Corrupt Act**).

### The Contractor agrees that the ABCHR Obligations will be incorporated into all contracts to which the Contractor may become a party in the course of the performance of the Contract (including all Subcontracts entered into with Subcontractors).

### The Contractor must maintain in place throughout the term of the Contract policies and procedures to ensure compliance with the ABCHR Obligations (which policies and procedures must be disclosed to the Principal) and will enforce them where appropriate. In the event several applicable provisions from the ABCHR Obligations are in contradiction, the Contractor’s policies and procedures must adopt the most stringent of such provisions.

## Recording and reporting obligations

### The Contractor must keep proper books and records relating to its compliance with the ABCHR Obligations, and policies and procedures referred to in clause 31.1(e), and must promptly provide upon request by the Principal:

#### evidence of the Contractor’s compliance with this clause 31; and

#### in relation to Human Rights:

##### a summary of the results of its ongoing Human Rights due diligence;

##### the grievances addressed by its operational-level grievance mechanism; and

##### a list of corrective and remedial measures to be implemented for improvement,

which are applicable to the past year or other period as requested by the Principal.

### If the Principal has reasonable grounds to believe that the Contractor has breached any part of this clause 31, the Contractor must allow the Principal, or a person nominated by the Principal, immediate access to inspect such books and records, and otherwise audit the Contractor’s compliance with this clause 31.

### The Contractor must notify the Principal immediately upon it becoming aware of:

#### the occurrence of a Corrupt Act or breach of the ABCHR Obligations; and

#### any circumstances which would reasonably indicate that a Corrupt Act or breach of the ABCHR Obligations may have occurred, or will occur.

### In the event the Contractor gives notice in accordance with clause 31.2(c), or when Directed by the Principal due to the Principal otherwise becoming aware of the circumstances referred to in clause 31.2(c), each Party will immediately:

#### take all adequate measures proportionate to the identified adverse impacts; and

#### report without delay to the Principal the identified situation and the remedial measures implemented or proposed to be implemented.

### For the avoidance of doubt, the circumstances described under clause 31.2(c) are not Force Majeure Events.

## Contractor’s warranties in relation to ABCHR Obligations

### The Contractor represents and warrants that it and its Associated Parties have not:

#### breached or will imminently breach any ABCHR Obligation; or

#### engaged in any Corrupt Act,

prior to the Contract Date.

### To the best of the Contractor's knowledge and belief, neither the Contractor nor any of its Associated Parties:

#### has at any time been found by a court in any jurisdiction to have breached any ABCHR Obligation or engaged in any Corrupt Act (or similar conduct);

#### has at any time admitted to having breached any ABCHR Obligation or engaged in any Corrupt Act (or similar conduct); or

#### has at any time been investigated or been suspected in any jurisdiction of having breached any ABCHR Obligation or engaged in any Corrupt Act (or similar conduct).

## Breach of ABCHR Obligations

### Compliance with the ABCHR Obligations is an essential element of the Contract and a determining criterion taken into account by the Parties when deciding to enter into the Contract.

### The Contractor will indemnify and compensate the Principal for any costs, losses, expenses, charges, damage or the like (including legal and other professional expenses) incurred by the Principal and arising from or related to breach by the Contractor or any Associated Parties of the ABCHR Obligations.

# Security of Payment Act

### This clause 32 only applies to the extent that the Work constitutes ‘construction work’ carried out within Western Australia or involves the supply of ‘related goods and services’ (both as defined in the Security of Payment Act).

### Nothing in the Contract will affect, restrict or limit the Contractor’s right to:

#### make an adjudication application pursuant to section 28 of the Security of Payment Act; and

#### suspend the Work under section 62 of the Security of Payment Act.

### Notwithstanding anything else in the Contract, the Contractor must:

#### promptly give the Principal a copy of any notice the Contractor receives from a Subcontractor; and

#### ensure that each Subcontractor promptly gives the Principal a copy of any notice that the Subcontractor receives from another party (including the Contractor), under any of sections 28, 30, 57 or 62 of the Security of Payment Act.

### If the Principal becomes aware that a Subcontractor is entitled to suspend work (which forms part of the Work) under section 62 of the Security of Payment Act, the Principal may (at its discretion) pay the Subcontractor such money that is or may be owing to the Subcontractor in respect of work forming part of the Work, and any amount paid by the Principal is recoverable from the Contractor as a debt due to the Principal. The Principal:

#### must notify the Contractor prior to making payment pursuant to this clause 32(d); and

#### will not make a payment pursuant to this clause 32(d) where the Contractor demonstrates to the Principal that it has reasonable grounds to have withheld payment to the Subcontractor.

### The Contractor indemnifies, and holds harmless, the Principal against all damage, expense (including lawyers’ fees and expenses on a solicitor/client basis), loss (including financial loss) or liability of any nature suffered or incurred by the Principal arising out of:

#### a suspension by a Subcontractor of work (which forms part of the Work) under section 62 of the Security of Payment Act;

#### a subcontractor exercising a statutory lien, under section 64 of the Security of Payment Act, over unfixed plant or materials supplied by the Subcontractor for use in carrying out work forming part of the Work; and

#### a failure by the Contractor to comply with its obligations under clause 32(c).

### For the purposes of this clause 32, a reference to a Subcontractor refers to any party engaged by the Contractor, any of its Subcontractors or any other party to carry out work which forms part of the Work.

# Security interests in personal property

### Terms used in this clause 33 which are defined in the PPS Act have the same meaning.

### The Contractor must, if requested by the Principal, promptly take any action and provide any information reasonably required for the Principal to:

#### ensure that any Relevant Security Interest, or the Principal’s rights in relation to any Relevant Security Interest, are effective, enforceable against the Contractor and Third Parties and perfected with the contemplated priority; or

#### exercise or enforce its rights in relation to any Relevant Security Interest.

### Where the Principal has title to or a Relevant Security Interest in personal property, and the Contractor will obtain a security interest in the personal property because a Third Party will have or has possession of the personal property, the Contractor must perfect its security interest against the Third Party.

### The Contractor must obtain the best priority achievable by it for security interests perfected under clause 33(c), including perfecting the security interest as a purchase money security interest with first ranking priority where possible.

### Where the Principal receives title in any items before possession, the Contractor warrants that these items will be free from all security interests held by the Contractor or a Third Party when it enters the Principal’s possession.

### The parties agree in accordance with section 115(1) of the PPS Act that the following provisions of the PPS Act will not apply in relation to any Relevant Security Interest:

#### section 95 (notice of removal or accession), to the extent that it requires the secured party to give notice to the grantor;

#### subsection 121(4) (enforcement of liquid assets--notice to grantor);

#### section 125 (obligation to dispose of or retain collateral);

#### section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;

#### paragraph 132(3)(d) (contents of statement of account after disposal);

#### subsection 132(4) (statement of account if no disposal); and

#### section 135 (notice of retention).

### Except to the extent prohibited by the PPS Act, the Contractor waives its right to receive any notice otherwise required to be given by the Principal under section 157 or any other provision of the PPS Act in connection with any Relevant Security Interest.

### Each Party agrees not to disclose, or authorise the disclosure of, any information of the kind mentioned in section 275(1) of the PPS Act in connection with any Relevant Security Interest for the purposes of section 275(1) of the PPS Act, except where section 275(7) of the PPS Act applies.

# Dispute resolution

## Notice of Dispute

### Neither Party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief from a court in respect of a Dispute until they have complied with the dispute resolution process in accordance with this clause 34.

### If any Dispute arises between the Parties in relation to the Contract, either Party may give notice of the Dispute to the other Party (**Dispute Notice**).

### A Dispute Notice must specify:

#### that it is a notice under this clause 34.1;

#### the alleged facts on which the Dispute is based;

#### the legal basis on which the Dispute is made, including any issues of Law relevant to the Dispute (if any); and

#### the relief that is claimed.

## Negotiation

### Within 10 Business Days of a Party receiving a Dispute Notice, the Parties must arrange for a senior representative from the Principal and a senior representative from the Contractor to meet to attempt to resolve the Dispute.

### If the Dispute is not resolved within 3 Business Days of the Parties’ senior representatives meeting to attempt to resolve the Dispute in accordance with clause 34.2(a), the Parties may escalate the Dispute to WALGA, for WALGA to assist the Parties in the resolution of the Dispute.

### Unless otherwise agreed in writing, all communications at or in relation to these meetings are without prejudice and confidential.

### Any agreement reached under this clause 34.2 must be in writing and signed by both Parties.

## Litigation

If a Dispute is not resolved within 20 Business Days of the party receiving a Dispute Notice, either party who has given a Dispute Notice under clause 34.1(b) and complied with this clause 34 may end the dispute resolution process and commence court proceedings in relation to the Dispute.

## Continued performance of the Contract

If a Dispute exists, each Party must continue to comply with its obligations under the Contract, except with respect to any aspect that is in Dispute.

## Proceedings for urgent relief

### Subject to clause 34.5(b), nothing in this clause 34 prejudices either Party’s right to commence legal proceedings to seek urgent injunctive or urgent declaratory relief in respect of a Dispute.

### The Contractor must not commence proceedings for injunctive relief to prevent the Principal from exercising its rights under clause 5.

# Notices

### All notices to be given under the Contract must be:

#### in writing in English;

#### signed by, or on behalf of, an authorised person of the Party giving it; and

#### delivered by hand, pre-paid post or email to the other Party at the address set out in Item 4 (or to such other address if notified to the other Party in accordance with this clause 35 with 10 Business Days’ prior notice).

### Subject to clause 35(c), a notice is deemed to be delivered:

#### if personally delivered, on receipt;

#### if sent by post:

##### if the address specified in Item 4 is an Australian address, on the 2nd Business Day following the date of postage; or

##### if the address specified in Item 4 is not an Australian address, on the 8th Business Day following the date of postage; or

#### if sent by email, 1 hour after it is sent, unless the sender receives notification from its or the recipient’s email server that the email is undeliverable or was not delivered.

### A notice delivered or received other than on a Business Day or after 4:00 pm (recipient’s time) is regarded as received at 9:00 am on the following Business Day, and a notice delivered or received before 9:00 am (recipient’s time) is regarded as received at 9:00 am.

# General

## Assignment

### The Principal may, without the Contractor’s consent, assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity who is solvent and able to make the payments required by the Contract, and able to comply with the Principal’s other obligations.

### The Contractor must not assign, novate, transfer or otherwise deal with its interests, rights or obligations (including any payment due) under the Contract, or any part of it, without the Principal’s prior written approval.

### The Contractor must not permit a Change of Control of the Contractor without the prior written consent of the Principal, which must not be unreasonably withheld.

## Governing law and jurisdiction

### The Contract, including the procedures in clause 34 and any Disputes is governed by the law of Western Australia.

### Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with clause 34.5. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## Costs and expenses

Any action to be taken by either Party in performing its obligations under the Contract must be taken at its own cost and expense unless otherwise provided in the Contract.

## Entire agreement

The Contract states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understandings and agreements in respect of its subject matter.

## Relationship of the Parties

### The Contractor acknowledges and agrees that:

#### it is an independent contractor and not an agent of the Principal;

#### the Contract is entered into in accordance with the terms of the Panel Agreement;

#### the Contract is entered into between the Principal and the Contractor, and WALGA is not a Party to the Contract; and

#### the Contractor has no authority to bind the Principal, or WALGA, by contract or otherwise.

### In carrying out their respective obligations under the Contract, each Party is acting independently of the other Party. Nothing in the Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated.

### In the event that the Contractor assigns or novates any right, benefit or interest under the Panel Agreement in accordance with the terms of the Panel Agreement, the Contractor must provide the Principal with such reasonable assistance as may be necessary to assign or novate (as applicable) the Contractor’s rights, benefit or interest under the Contract to the assignee or novatee (as applicable).

## Waiver

No Party to the Contract may rely on the words or conduct of any other Party (including any delay in exercising a right) as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver. For the purposes of this clause 36.6, waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## Variation

A variation of any term of the Contract must be in writing and signed by both Parties.

## Invalidity and enforceability

### Any provision of the Contract which is invalid or unenforceable will not affect the remaining provisions of the Contract which remain in full force and effect.

### If any provision of the Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid.

## Further action

Each Party must do all things and execute all documents necessary to give full effect to its obligations under the Contract and the transactions contemplated by it.

## No reliance

Neither Party has relied on any statement by the other Party not expressly included in the Contract.

## Counterparts

The Contract may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A Party may execute the Contract by signing any counterpart.

## Exercise of rights

Unless the Contract provides otherwise:

### a Party may exercise a right, power or remedy in any way at its discretion; and

### the rights, powers and remedies provided by the Contract are in addition to any rights, powers and remedies provided at Law.

## Cumulative rights

The rights and remedies contained in the Contract are cumulative and not exclusive of any rights or remedies provided by Law.

## International Sale of Goods Convention excluded

To the extent permitted by law, the *United Nations Convention on Contracts for the International Sale of Goods 1980* does not apply to the Contract.

## Survival

Clauses 1, 3.11, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10, 10.10, 11.9, 19.8, 19.10, 19.12(b), 19.12(c), 20, 22.1(b), 22.3, 22.4, 23, 24, 25, 26, 29.4, 29.5, 29.6, 34, 35 and 36 and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract will survive the termination or expiry of the Contract.

Schedule 1

Pricing Schedule

[**Insert**]

[***Drafting note: There are three pricing options available under this template – (1) lump sum; (2) schedule of rates; and (3) schedule of rates and lump sum (see item 34 and clause 19.3).***

***If the Contract Price is a lump sum, this Pricing Schedule should set out the Milestone Amounts applicable for each Milestone Event.***

***If the Contract Price is based on a schedule of rates, this Pricing Schedule should set out the rates applicable for each component of the work and activities to be undertaken by the Contractor (for eg, rates for labour and plant hire).***

***If the Contract Price is calculated based on lump sums and a schedule of rates, this Pricing Schedule should set out the following information:***

* + - ***the Milestone Amounts applicable for each Milestone Event; and***
    - ***rates applicable for each component of the work and activities to be undertaken by the Contractor (for eg, rates for labour and plant hire).*]**

[***Drafting Note: This template is not intended to be used for cost-plus projects. If cost-plus pricing is to be adopted, the Member should approach Herbert Smith Freehills for additional drafting to make this template suitable for a cost-plus project.***]

Schedule 2

Form of Performance Securities

[**Insert agreed form of bank guarantee**]

Schedule 3

Form of Parent Company Guarantee

[**Insert agreed form of guarantee]**

Schedule 4

Access Requirements

[**Insert**]

Schedule 5

Policies and Guidelines

[**Insert**]