



WALGA

Member Contract Conditions (Minor Works)

Version 2 (July 2023)

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1 Definitions

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

Term	Meaning
Approval	each approval, certificate, licence, authority, waiver, exemption, registration, consent, permit or authorisation required to provide the Works in accordance with all applicable Laws.
Approved Subcontractors	a subcontractor listed as an "Approved Subcontractor" in the Procurement Form (if any).
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.
Bank Guarantee	an unconditional, enforceable and irrevocable undertaking or guarantee in favour of the Principal: <ol style="list-style-type: none"> 1 issued by an Australian trading bank; 2 unlimited as to time; and 3 in a form and on terms acceptable to the Principal, provided and administered in accordance with clause 12.
Bank Guarantee Amount	the amount specified as the "Bank Guarantee Amount" in the Procurement Form.
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.
Claim	a claim, demand, action or proceeding of any nature whether actual or threatened arising out of, or in connection with, the Contract or otherwise arising in any way whatsoever.
Completion	the stage in the carrying out and completion of the Works when: <ol style="list-style-type: none"> 1 the Works are complete except for Minor Defects;

Term	Meaning
	<p>2 those tests which are required by the Contract to be carried out and passed before the Works reach 'Completion' have been carried out and passed; and</p> <p>3 any documents or other information required under the Contract which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied (including 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),</p> <p>and "Complete" has a corresponding meaning.</p>
Completion Certificate	a certificate issued by the Principal under clause 10.4 evidencing the Date of Completion.
Completion Notice	has the meaning set out in clause 10.1.
Completion Tests	has the meaning set out in clause 9.1.
Confidential Information	<p>the terms of the Contract and in respect of a party, all information in connection with the party's business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of the Contract) and which:</p> <p>1 is, by its nature, confidential; or</p> <p>2 is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential,</p> <p>but does not include information which:</p> <p>3 is or becomes public knowledge other than by a breach of the Contract; or</p> <p>4 has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.</p>
Contract	<p>the agreement formed between the parties regarding the performance of the Works by:</p> <p>1 with respect to the Works, either:</p> <ul style="list-style-type: none"> – the relevant Procurement Form; or – the details in VendorPanel; and <p>2 the Minor Works Contract Conditions,</p> <p>with the documents forming part of the Contract prevailing in the order of precedence set out in this definition.</p>



Term	Meaning
Contractor	the party defined as the "Contractor" in the Procurement Form.
Contractor IP	any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which: <ol style="list-style-type: none"> 1 is in existence before the date of the Contract or comes into existence after the date of the Contract 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.
Contractor's Obligations	all of the Contractor's obligations under the Contract.
Contractor's Personnel	the Contractor's officers, employees, agents and subcontractors and their respective employees and agents.
Date for Completion	the date specified as the "Date for Completion" in the Procurement Form.
Date of Completion	<ol style="list-style-type: none"> 1 the date evidenced in the Completion Certificate as the date upon which Completion was reached; or 2 where another date is determined in any dispute resolution in accordance with the Contract, or litigation as the date upon which Completion was reached, that other date.
Defect	any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Works.
Defects Liability Period	a period of 12 months commencing on the Date of Completion, which in relation to any Defect rectified during the Defects Liability Period will be extended by further periods of 12 months (from the date of rectification).
Delay Liquidated Damages	the liquidated damages payable under clause 5.3.
Dispute	a difference, dispute or issue arising at any time between the parties arising out of, or in connection with, the Contract.
Dispute Notice	a notice in respect of a Dispute given under clause 23(b).

Term	Meaning
End Date	the date specified as the "End Date" in the Procurement Form.
Environmental Requirements	<p>the requirements set out in the Contract and any of the following related to the protection of the environment, land use, planning, pollution, contamination and the handling or disposal of substances:</p> <ol style="list-style-type: none"> 1 Laws; and 2 directions, notices and the like issued by any Government Agency or in accordance with any Laws.
Excluded Loss	loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature and loss of opportunities.
Final Completion	<p>when the Principal determines that the Contractor has:</p> <ol style="list-style-type: none"> 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 Specifications or otherwise required under the Contract.
Final Completion Certificate	a certificate identified as such and issued by the Principal under clause 10.8(c) certifying that Final Completion has been achieved.
Final Completion Date	<ol style="list-style-type: none"> 1 the date certified by the Principal in a Final Completion Certificate issued under clause 10.8(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 10.9.
Final Payment Schedule	the schedule referred to in clause 10.10(a).
Government Agency	any government or governmental, local governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency or authority in Western Australia or the Commonwealth of Australia.
GST	has the meaning given in section 195-1 of the GST Act.

Term	Meaning
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act, ordinance, regulation, public binding ruling or subordinate legislation relating to the imposition of GST.
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: <ol style="list-style-type: none"> 1 deviations from the Principal's health, safety and environmental Policies and Guidelines; and 2 non-compliances with relevant health, safety and environmental Laws and Approvals and any public complaint regarding the Contractor and relating to its provisions of the Works.
Insolvency Event	in respect of the Contractor: <ol style="list-style-type: none"> 1 the appointment of an administrator, a liquidator, a provisional liquidator or a controller (including any receiver or receiver and manager); 2 any compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors (including a deed of company arrangement), insolvency, bankruptcy; or 3 any similar procedure or situation which involves a moratorium or the suspension of the payment of any debts or, where applicable, changes in the constitution of any partnership or person, or death.
Insurances	the insurances which the Contractor is required to obtain under the Panel Agreement.
Intellectual Property	all intellectual and industrial property rights, including trademarks, 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.
Intended Purpose	the intended purpose of the Works: <ol style="list-style-type: none"> 1 as stated in the Contract (including in the Specifications); and 2 as could be reasonably inferred by a Professional Contractor.
Laws	any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of the State, Territory or Commonwealth (as applicable) in which the Contractor's Obligations are being carried out.

Term	Meaning
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), suit, charge, diminution in value, action, statutory or equitable compensation, demand, legal costs and disbursements.
Materials and Equipment	all materials, equipment and any other items which are used in and form part of the Works.
Maximum Liability Amount	by reference to each party: 1 the amount in the Procurement Form; or 2 where no amount is provided in the Procurement Form, an amount equal to the Price.
Minor Defects	Defects: 1 which do not prevent the Works from being reasonably capable of being used for the Intended Purpose; and 2 which the Principal determines the Contractor has reasonable grounds for not promptly rectifying, the rectification of which will not prejudice the convenient use of the Works.
Minor Works Contract Conditions	this document called "Member Contract Conditions (Minor Works)".
Moral Rights	has the meaning given in the <i>Copyright Act 1968</i> (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 the Contract for the operation, maintenance and repair of the Works.
Panel Agreement	the agreement between WALGA and the Contractor, regarding the panel pursuant to which the Contractor is performing the Works to the Principal.



Term	Meaning
Party Details	the details of each party set out in the Procurement Form.
Plans and Drawings	all drawings, specifications and any other design documents required in order for the Contractor to complete the Works, including As For Construction Drawings, As Built Drawings and Operations and Maintenance Manuals.
Policies and Guidelines	all of the policies and guidelines of the Principal made available to the Contractor, as amended from time to time.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
PPS Law	<ol style="list-style-type: none"> 1 the PPSA; and 2 any amendment made at any time to the <i>Corporations Act 2001</i> (Cth) or any other legislation as a consequence of the PPSA.
Price	the price for the Works set out in the Procurement Form.
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	<ol style="list-style-type: none"> 1 "principal contractor" or similar term as defined in Work Health and Safety Requirements; or 2 where "principal contractor" or similar term is not defined in Work Health and Safety Requirements, the entity that performs a role similar to the role of "principal contractor" within the meaning of the <i>Work Health and Safety (General) Regulations 2022</i> (WA).
Principal Data	information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of performing the Works or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract.
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.
Procurement Form	as appropriate:

Term	Meaning
	<ol style="list-style-type: none"> 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.
Professional Contractor	a contractor with skill and experience in, and the expertise and resources necessary to complete, works the same as, or similar to, the Works in accordance with all applicable Laws and industry standards.
Project IP	is defined in clause 16(b).
Security of Payment Act	the <i>Building and Construction Industry (Security of Payment) Act 2021</i> (WA).
Services	any service or item of infrastructure, including water, electricity, gas, fuel, telephone, drainage, sewerage, fibre optic cable and electronic communications services.
Specifications	the specifications and requirements describing the Works to be performed under the Contract, as set out in the Procurement Form.
Start Date	the date specified as the "Start Date" in the Procurement Form.
Sustainability Objectives	has the meaning given in clause 13(a).
Tax	any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.
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.
Variation	an increase, decrease, addition, omission, substitution or other change to any part of the Works to be performed under the Contract.



Term	Meaning
Variation Notice	a notice issued by the Principal under clause 8(b) directing the Contractor to carry out a Variation requested by the Principal under clause 8(a).
Variation Quotation	a quotation from the Contractor which sets out the Contractor's additional costs or savings and the effect on the Date for Completion for performing a Variation requested under clause 8(a).
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 Requirements	<p>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:</p> <ol style="list-style-type: none"> 1 Laws; 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 Laws; 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, <p>and, for clarity, includes the <i>Work Health and Safety Act 2020</i> (WA) and the <i>Work Health and Safety (General) Regulations 2022</i> (WA).</p>
Works	<p>all work which the Contractor is or may be required to perform to comply with its obligations under the Contract, including designing, engineering, procuring, supplying, constructing and commissioning the works in accordance with the requirements of the Contract, including:</p> <ol style="list-style-type: none"> 1 all works specified in the Specifications (including each separate 'works package', where separate works packages are set out in the Specifications); 2 all works ancillary to those set out in the Specifications which are necessary for the works specified in the Specifications to be completed in accordance with the Contract; 3 all Materials and Equipment; and 4 any Variations the subject of a Variation Quotation approved by the Principal,

Term	Meaning
	and includes, where the context requires, the whole of the work which the Contract requires to be handed over to the Principal.
Works Requirements	<p>that:</p> <ol style="list-style-type: none"> 1 the Works meet the requirements of the Contract (including those set out in the Specifications); and 2 any tests which are required by the Contract to be carried out and passed in respect of the Works have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for works of the same nature as the Works have been carried out and passed).
Works Site	any premises which the Principal owns or which is in the care, control and management of the Principal including any land on which the Principal's property is situated on and which the Contractor or the Contractor's Personnel needs to access to complete the Works in connection with the Contract.
Works Site Requirements	any requirements, including safety requirements, that the Contractor must comply with when on the Works Site, as may be notified by the Principal to the Contractor from time to time.

2 Interpretation

In the Contract unless the context suggests otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of the Contract;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;
- (d) 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;
- (e) a reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, the Contract;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;



- (h) a reference to a party to a document includes that party's successors and permitted assignees;
- (i) a promise on the part of 2 or more persons binds them jointly and severally;
- (j) 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;
- (k) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (l) a reference to 'consent', 'approved' or 'approval' will be deemed to mean 'consent to in writing', 'approved in writing' or 'approval in writing';
- (m) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (n) Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract; and
- (o) to the extent of any inconsistency between the provisions of the documents forming the Contract, the Contractor must give the Principal notice of that inconsistency, and the Principal will direct the Contractor as to the interpretation and construction to be followed.

3 Term

- (a) The Contract commences on the Start Date and ends on the End Date unless terminated under clause 21.
- (b) Subject to clause 21(a), the Contract continues in full force and effect notwithstanding the termination or expiry of the Panel Agreement.

4 Works

4.1 Commencement and performance of Works

The Contractor must:

- (a) undertake the Works in accordance with the Plans and Drawings and the Contract;
- (b) achieve Completion by the Date for Completion; and
- (c) ensure that, once completed, the Works are suitable for their Intended Purpose.

4.2 Plans and Drawings

- (a) To the extent that any Plans and Drawings have not already been completed and included in the Specifications, then the Contractor agrees and acknowledges that:
 - (1) the Contractor must prepare the Plans and Drawings;
 - (2) the Contractor must submit the Plans and Drawings to the Principal for its approval;
 - (3) the Contractor must not commence the Works until the Plans and Drawings have been approved by the Principal; and



- (4) the costs incurred by the Contractor preparing and finalising the Plans and Drawings form part of the Price.
- (b) The Contractor must not make or cause or permit to be made any amendments to the Plans and Drawings which are included in the Specifications or which have otherwise been approved by the Principal in accordance with the Contract without the prior written consent of the Principal.
- (c) The Contractor must submit each relevant part of the Plans and Drawings to the Principal for the Principal's approval:
 - (1) as each relevant part of the Plans and Drawings is completed;
 - (2) prior to the use of any of the Plans and Drawings for the purpose of the Works; and
 - (3) in sufficient time to enable:
 - (A) any amendments required by the Principal to be incorporated into the final Plans and Drawings (which amendments the Contractor must make when requested by the Principal); and
 - (B) Completion to be achieved by the Date for Completion.
- (d) The Contractor must ensure that the Plans and Drawings are suitable and adequate for the Contractor to Complete the Works in accordance with the Works Requirements.
- (e) The Contractor acknowledges and agrees that:
 - (1) any receipt, review, approval or rejection of, or directions or comments on, the Plans and Drawings by the Principal is only for the purpose of giving the Principal an opportunity to comment on or approve (or both) the Plans and Drawings; and
 - (2) the approval or review by the Principal of the Plans and Drawings is not an acknowledgment or confirmation by the Principal that the Plans and Drawings are consistent with the Works Requirements or otherwise with the terms of the Contract.

4.3 Compliance with standards and requirements

- (a) The Contractor must ensure that it and the Contractor's Personnel, in performing the Contractor's Obligations under the Contract:
 - (1) have all of the necessary skills and training and hold all of the required qualifications and licences to perform the Works in accordance with all applicable Laws and industry standards;
 - (2) obtain any Approvals required for the performance of the Works, including any approvals set out in the Specifications;
 - (3) comply with all Work Health and Safety Requirements, applicable Laws, the Policies and Guidelines and any reasonable directions given by the Principal;
 - (4) do not interfere with the Principal's activities or the activities of any other person at the Works Site;
 - (5) carry out and perform the Contractor's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;



- (6) provide all such information and assistance as the Principal reasonably requires; and
- (7) at their own expense, supply all materials, equipment, plant and machinery necessary or incidental to the performance of the Works in accordance with the Contract, except for any items of materials, equipment, plant and machinery to be provided by the Principal as set out in the Specifications.

4.4 Services

The Contractor must, at its own cost, provide and maintain all Services (other than those Services which the Principal agrees to maintain as notified to the Contractor in writing) necessary for the Contractor to perform the Works in accordance with the Contract.

4.5 Quality of Works

The Contractor must ensure that:

- (a) the Works match the description of the Works set out in the Procurement Form and comply with the requirements in the Contract;
- (b) the Works are performed with the professional skill, care and diligence expected of a skilled and experienced Professional Contractor;
- (c) 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;
- (d) the Works are fit for the Intended Purpose;
- (e) from transfer of the title in the Materials and Equipment to the Principal, the Principal has the benefit of all usual manufacturers' warranties applicable to the Materials and Equipment and any warranties specifically requested by the Principal and will, where requested by the Principal, pursue any manufacturer warranties on the Principal's behalf; and
- (f) it provides the Principal with copies of all manufacturers' warranties applicable to the Materials and Equipment and any other usual documentation including instruction manuals, technical specifications or drawings when the Works are Completed or when the Principal otherwise reasonably requests.

4.6 Records and Reporting

- (a) The Contractor must keep and maintain accurate and reasonably detailed books and records in connection with the performance of the Contractor's Obligations.
- (b) Within a reasonable time of the Principal's request, the Contractor will permit the Principal to audit and examine any books and records necessary for the verification of compliance with the Contractor's Obligations.
- (c) From time to time, the Principal may request that the Contractor provide a report setting out in detail such information about:
 - (1) the Works; or
 - (2) any other obligations of the Contractor under the Contract,

and the Contractor must provide the report to the Principal within 10 Business Days of that request, unless another timeframe is stipulated in the Principal's request.

5 Timing for Completion of Works

5.1 Extensions of time

- (a) The Contractor must notify the Principal at any time after the Start Date that Completion is unlikely to be achieved by the Date for Completion within 5 Business Days after the Contractor became aware of any likely delay (or where the Contractor ought to have become aware of the likely delay, if earlier), which notice must include details of the cause and likely extent of the delay.
- (b) If a delay in the progress of the Works is caused by:
- (1) the Principal;
 - (2) a Variation which is the subject of a Variation Quotation approved by the Principal under clause 8(b);
 - (3) an industrial 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 Works or the Contractor; or
 - (4) a natural disaster or other act of God,
- (Delay Event)**, and the Contractor:
- (5) notifies the Principal of the Delay Event within 10 Business Days of when the Contractor became aware of the Delay Event occurring (or when the Contractor ought to have become aware of the Delay Event Occurring);
 - (6) gives the Principal a written claim for an extension of the Date for Completion; and
 - (7) has taken all reasonable steps to mitigate the delay,
- then the Principal must grant an extension of the Date for Completion and the Date for Completion is extended accordingly, but subject to clause 5.1(c).
- (c) For clarity, seasonal weather conditions that 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 Works Site.
- (d) If the Principal considers that the period of an extension of the Date for Completion claimed by the Contractor is not reasonable having regard to the circumstances, the Principal must notify the Contractor what period of extension the Principal considers to be reasonable and the parties must act reasonably and endeavour to reach agreement on the appropriate period of extension.
- (e) Where the parties cannot reach agreement under clause 5.1(d), then within 10 Business Days of the Contractor requesting an extension of the Date for Completion, the matter must be determined in accordance with clause 23.

5.2 Acceleration of Works

- (a) Where:



- (1) the Contractor notifies the Principal that the Works are unlikely to reach Completion by the Date for Completion under clause 5.1(a); or
 - (2) the Principal forms its own view that the Works are unlikely to reach Completion by the Date for Completion,
- the Principal may give a direction to the Contractor to accelerate the Works in accordance with this clause 5.2.
- (b) Within 10 Business Days of being directed to do so by the Principal, the Contractor must inform the Principal:
 - (1) whether an acceleration of the Works in the manner contemplated by the Principal is practical;
 - (2) the costs of accelerating the Works in the manner contemplated by the Principal; and
 - (3) any other information relevant to the acceleration of the Works in the manner contemplated by the Principal,

(Acceleration Proposal).
 - (c) If the Principal accepts an Acceleration Proposal, the Principal may notify the Contractor that it requires the Contractor to undertake the acceleration in the manner set out in the Acceleration Proposal within 10 Business Days of receiving the Acceleration Proposal and where the Principal does so:
 - (1) the Contractor must carry out the acceleration in the manner set out in the Acceleration Proposal; and
 - (2) the Price is increased by the costs of the acceleration (provided that the costs do not exceed the costs set out in the Acceleration Proposal).
 - (d) If the Principal does not accept an Acceleration Proposal, it may propose amendments to the Acceleration Proposal and direct the Contractor to respond to the amended Acceleration Proposal within 5 Business Days. In these circumstances, the provisions of clauses 5.2(b) and 5.2(c) will apply to the amended Acceleration Proposal.
 - (e) The Contractor's entitlement to any extension of time which it would otherwise have had under clause 5.1 is reduced to the extent to which any acceleration under this clause 5.2 is intended to overcome the delay.

5.3 Delay Liquidated Damages

- (a) If the Contractor fails to reach Completion by the relevant Date for Completion (as may be extended in accordance with clause 5.1), the Contractor must pay to the Principal Delay Liquidated Damages at the daily rate specified in the Procurement Form for every day after the relevant Date for Completion up to and including the Date of Completion.
- (b) The payment of Delay Liquidated Damages does not relieve the Contractor of its obligations to perform the Works or any of its other obligations under the Contract.
- (c) Delay Liquidated Damages become due immediately on the issue of a notice by the Principal setting out the amount of the Delay Liquidated Damages payable by the Contractor to the Principal.
- (d) The Contractor acknowledges and agrees that the Delay Liquidated Damages:

- (1) are a genuine pre-estimate of the Loss likely to be suffered by the Principal for failure of the Contractor to reach Completion by the Date for Completion; and
- (2) must be paid as liquidated damages and not as a penalty by the Contractor to the Principal.

5.4 Failure to complete Works

If the Contractor fails to complete the Works by the Date for Completion, the Principal may, at any time after the Date for Completion:

- (a) direct the Contractor to complete the relevant Works within a reasonable time;
- (b) complete the Works itself or procure others to complete the Works at the Contractor's risk and cost, in which case the costs properly incurred by the Principal in completing those Works must be deducted from the Price or, at the Principal's option, paid to the Principal by the Contractor on demand;
- (c) require the Contractor to grant the Principal a reasonable reduction in the Price to be agreed or fixed by the Principal and issue a Final Completion Certificate, notwithstanding that the Works are not complete; or
- (d) exercise its rights under clause 21(a).

5.5 Notice requirements

The Contractor warrants to the Principal that compliance with the notice requirements and pre-conditions in this clause 5 are:

- (a) reasonably possible; and
- (b) not unreasonably onerous.

6 Price

6.1 Payment of the Price

- (a) The Principal must pay the Price to the Contractor for the Works in accordance with this clause 6.
- (b) The Contractor acknowledges and agrees that:
 - (1) the Price represents its full and complete payment for:
 - (A) all matters and things necessary for the performance and Completion of the Works in accordance with the Contract; and
 - (B) all of the Contractor's Obligations; and
 - (2) the Contractor is not entitled to any adjustment in the Price except:
 - (A) in accordance with clause 5.2 in respect of any 'acceleration' required by the Principal;
 - (B) in accordance with clause 8 as a result of a Variation which is the subject of a Variation Quotation that is accepted by the Principal under clause 8(b);

- (C) for any cost and expense being included or excluded from being paid under the Contract in accordance with the terms of the Panel Agreement; and
- (D) for any other amounts payable as set out in the Procurement Form.

6.2 Payments claims

- (a) Subject to clause 6.2(b), on or promptly after the Date of Completion, the Contractor may submit to the Principal a written payment claim showing the Works completed and the Contractor's calculation of the amount of the Price attributable to the Works in accordance with the Contract.
- (b) If set out in the Procurement Form, the Contractor may submit a payment claim to the Principal at the end of each month, or any other period agreed by the Principal in writing, showing the Works completed since the previous payment claim (or, in the case of the first payment claim, showing all Works completed prior to that payment claim) and the Contractor's calculation of the amount of the Price attributable to those Works in accordance with the Contract.
- (c) Each payment claim must:
 - (1) set out the total amount claimed and an itemised breakdown of that amount;
 - (2) include details and supporting information reasonably required to assess whether the amounts claimed are payable in accordance with the Contract; and
 - (3) otherwise be in the form and include the information reasonably required by the Principal.
- (d) The Contractor must provide any further information and assistance reasonably requested by the Principal for the purposes of assessing a payment claim.

6.3 Payment schedule

- (a) Within 10 Business Days of receipt of the payment claim under clause 6.2, the Principal must assess the payment claim and issue a payment schedule to the Contractor.
- (b) The payment schedule must identify the payment claim to which it relates (if any) and set out:
 - (1) the amount claimed which is payable to the Contractor;
 - (2) the reasons for any difference (including, if applicable, the reasons for withholding or setting off any amount); and
 - (3) any other amounts that are payable to the Contractor in accordance with the Contract (including any relevant additional amounts for authorised Variations under clause 8).
- (c) The Principal may, at any time, issue a payment schedule correcting any error discovered in a previous payment schedule.



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6.4 Tax invoice

- (a) Within 2 Business Days of the Principal issuing a payment schedule to the Contractor, the Contractor must provide the Principal with a Tax Invoice for the amount specified in the payment schedule.
- (b) A Tax Invoice must include:
 - (1) the Procurement Form number;
 - (2) a description of the Works performed;
 - (3) the amount being claimed for the Works;
 - (4) the amount of any applicable GST; and
 - (5) any further information reasonably requested by the Principal.
- (c) Tax Invoices must be submitted to the details provided by the Principal in writing, as updated from time to time.
- (d) The Contractor warrants that it is registered for GST purposes in Australia and, if requested by the Principal, must provide to the Principal sufficient evidence to substantiate that the Contractor is registered for GST purposes.

6.5 Payment

Subject to clause 6.6, the Principal must pay the Contractor the amount stated as due to the Contractor in a payment schedule within 8 Business Days after the provision by the Contractor of a Tax Invoice in compliance with clause 6.4.

6.6 Principal's right of set-off

The Contractor agrees that the Principal may:

- (a) 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
- (b) withhold payment of any amounts payable under the Contract pending resolution of any Dispute.

6.7 Payment not approval

Any payment schedule issued or payment of moneys by the Principal to the Contractor under this clause 6 is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; and
- (c) approval by the Principal of the Contractor's performance or compliance with the Contract,

and is only to be taken as payment on account and does not prevent the Principal subsequently disputing an amount claimed for payment.



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7 Testing and Inspections

7.1 Principal may order tests of or inspect Works

- (a) At any time before the expiry of the Defects Liability Period, the Principal may:
 - (1) inspect or test or arrange for any part of the Works to be inspected or tested; or
 - (2) 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.
- (b) 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.
- (c) 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.
- (d) 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 the Works meet the Works Requirements.
- (e) The results of inspections or tests must promptly be made available by each party to the other.

7.2 Costs of inspecting and testing

- (a) Subject to clause 7.2(b), the Contractor must bear all costs of testing and inspecting.
- (b) The Principal must bear the cost of any inspecting and testing which:
 - (1) shows that the Works are of an acceptable quality and in accordance with the Contract; or
 - (2) the Principal does not have reasonable grounds for requesting.
- (c) Nothing in this clause 7.2 will make the Principal liable to bear the cost of any tests or inspections referred to in the Specifications, the cost of which is included in the Price.

7.3 Other obligations remain unaffected by inspecting or testing

- (a) The obligations of the Contractor in relation to the quality and suitability of the Works are not in any way limited or reduced by carrying out any inspections or tests under this clause 7.
- (b) Except as expressly stated in clause 7.2(b), the Principal is not liable to the Contractor (and the Contractor is absolutely barred from making any Claim) concerning any matter arising out of, or in connection with:
 - (1) complying with the requirements of this clause 7; or
 - (2) any act permitted by this clause 7 by either the Principal or the Contractor.



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8 Variations

- (a) If at any time prior to the Date of Completion, the Principal notifies the Contractor that it requires a Variation, the Contractor must promptly provide a Variation Quotation.
- (b) If the Principal accepts a Variation Quotation, the Principal will issue a Variation Notice to the Contractor and:
 - (1) the Contractor must then carry out the Variation;
 - (2) the Price will be adjusted by the amount set out in the relevant Variation Quotation; and
 - (3) the Date for Completion will be adjusted as set out in the Variation Quotation.
- (c) The Contractor will not be entitled, in any circumstances, to an adjustment to the Price or any extension of the Date for Completion except as set out in a Variation Notice.

9 Completion tests

9.1 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**).

9.2 Test results

- (a) 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.
- (b) Except:
 - (1) with the prior written consent of the Principal; or
 - (2) to the extent necessary to comply with clause 9.3(a),
 the Contractor must not adjust (and will not allow the adjustment of) any part of the Works following completion of any test.

9.3 Rectification work

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

- (a) 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;
- (b) be responsible for all costs and expenses incurred or sustained; and
- (c) if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.



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9.4 Failure to perform a test

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

- (a) 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;
- (b) if the Contractor fails to perform the Completion Test in accordance with the notice given by the Contractor under clause 9.4(a), the Principal may perform that Completion Test at a date and time determined by the Principal; and
- (c) 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.

10 Completion of Works

10.1 Completion Notice

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

10.2 Inspection

Within 20 Business Days of a Completion Notice being given by the Contractor to the Principal under clause 10.1, the Principal will:

- (a) inspect the Works and direct the Contractor to undertake any Completion Tests; or
 - (b) direct the Contractor to perform the Completion Tests in the presence of a representative of the Principal (on a date specified by the Principal),
- (or both).

10.3 Completion claim requirements

After the Contractor has complied with all directions of the Principal under clause 10.2, 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).

10.4 Completion Certificate

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

10.5 Defects liability

- (a) As soon as possible after the Date of Completion, the Contractor must rectify any Defects in the Works existing at the Date of Completion.
- (b) At any time prior to the expiration of 10 Business Days after the Defects Liability Period, the Principal may direct the Contractor to rectify any Defect in the Works existing at the Date of Completion or which become apparent prior to the



expiration of the Defects Liability Period and the Contractor must rectify the Defect promptly following receipt of the direction from the Principal to do so.

- (c) Nothing in this clause 10.5 prejudices any other right that the Principal may have against the Contractor arising out of the failure of the Contractor to perform the Works in accordance with the Contract.
- (d) If the Principal directs the Contractor to rectify a Defect and the Contractor fails to rectify that Defect within a reasonable time specified by the Principal:
 - (1) the Principal may, without prejudice to any other rights the Principal may have against the Contractor, rectify the Defect itself; and
 - (2) the rectification costs incurred by the Principal will be a debt due and payable on demand from the Contractor to the Principal.

10.6 Ownership and passage of risk

- (a) All rights, title and ownership in each part of the Works passes to the Principal upon the earlier of:
 - (1) delivery of that part of the Works on the Works Site; and
 - (2) any payment by the Principal in relation to that part of the Works.
- (b) The Contractor is responsible from and including the Start Date, to 4:00 pm on the date of the Completion Certificate, for the care of the Works (including, without limitation, all unfixed Materials and Equipment).
- (c) After 4:00 pm on the date of the Completion Certificate, the Principal is responsible for the care of the Works.
- (d) If any damage or loss occurs to the Works during the period for which the Contractor is responsible for the care of any part of the Works under clause 10.6(b), the Contractor must, at the Contractor's cost, rectify such damage or loss so that the Works conform in every respect with the provisions of the Contract.

10.7 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:

- (a) remove all unused materials, equipment, plant and machinery which do not form part of the Works from the Works Site; and
- (b) leave the Works Site in a clean and tidy condition.

10.8 Final Completion

- (a) When the Contractor considers the Works have reached Final Completion, the Contractor must give notice to the Principal.
- (b) Within 20 Business Days of a notice being given by the Contractor under clause 10.8(a), the Principal may inspect the Works and require the Contractor to undertake any tests under clause 9.
- (c) Upon Final Completion, the Principal must issue a Final Completion Certificate.



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10.9 Final Payment Claim

- (a) Within 10 Business Days after the Final Completion Date, the Contractor must lodge with the Principal in respect of the Works, a final payment claim entitled "Final Payment Claim".
- (b) 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.
- (c) Upon payment under clause 10.10(c), except as set out in the Final Payment Claim:
 - (1) the Principal is not liable for any Claim by the Contractor; and
 - (2) the Contractor is absolutely barred from making any Claim, arising out of, or in connection with, the Contract.

10.10 Final Payment Schedule

- (a) Within 10 Business Days after receipt of the Contractor's 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:
 - (1) the Principal to the Contractor; or
 - (2) the Contractor to the Principal,
 (as the case may be) in respect of the Contract.
- (b) 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.
- (c) 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 10.10(d).
- (d) The Contractor agrees that the Principal may:
 - (1) 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
 - (2) withhold payment of any amounts payable under the Contract pending resolution of any Dispute.
- (e) 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.

11 Assignment and subcontracting

11.1 Assignment

- (a) 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.

- (b) The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior consent of the Principal.

11.2 Subcontracting

- (a) Unless otherwise provided for in the Panel Agreement, the Contractor must not, without the prior written approval of the Principal, subcontract any part or all of the performance of the Works.
- (b) Approved Subcontractors are taken to have the approval of the Principal for the purposes of clause 11.2(a).
- (c) The Principal may request further information regarding a subcontractor and the particulars of the Works to be subcontracted in order to approve (or otherwise) a subcontractor under clause 11.2(a).
- (d) Approval to subcontract does not relieve the Contractor from any liability or obligation under the Contract, and the Contractor is absolutely liable:
 - (1) to the Principal for the acts and omissions of any subcontractor, its personnel and the Contractor's Personnel as if they were acts or omissions of the Contractor;
 - (2) for undertaking the appropriate due diligence to ensure that the subcontractor is able to perform the Works that it has been subcontracted in accordance with this clause 11.2; and
 - (3) for the direct payment of all subcontractors,
 notwithstanding the Principal's approval (or otherwise) of any subcontractor (including Approved Subcontractors).

12 Security

- (a) If a Bank Guarantee Amount is specified in the Procurement Form, the Contractor must provide a Bank Guarantee for the Bank Guarantee Amount to the Principal within 10 Business Days after the date of the Contract.
- (b) The Principal may present the Bank Guarantee to recover any loss, expense or damage which the Principal incurs arising from any act or omission of the Contractor under the Contract including if:
 - (1) the Principal makes a Claim that it is owed any amount by the Contractor under the Contract or any document contemplated by the Contract and has not been paid that amount by the Contractor by its due date;
 - (2) the Contractor suffers an Insolvency Event; or
 - (3) the Contractor is otherwise in breach of the Contract.
- (c) 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 present the Bank Guarantee.
- (d) A notice of intention from the Principal in accordance with clause 12(c) must:

- (1) identify the Contract and this clause 12;
 - (2) describe the circumstances that entitle the Principal to present the Bank Guarantee; and
 - (3) be in the approved form pursuant to the Security of Payment Act (if any).
- (e) The Contractor covenants that it will not take any steps (including commencing proceedings or seeking an injunction or declaration) to prevent the issuer of the Bank Guarantee paying a demand by the Principal.
 - (f) 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 12(e).
 - (g) The Contractor's liability is not limited to the Bank Guarantee Amount and the presentation of the Bank Guarantee does not affect any of the Principal's rights arising from a default by the Contractor under the Contract.
 - (h) The Bank Guarantee will be returned to the Contractor by the Principal no later than 10 Business Days after the later of:
 - (1) the issue of a Final Completion Certificate; and
 - (2) when all sums of money owed by the Contractor to the Principal under the Contract have been paid in full.

13 Sustainable procurement

- (a) The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices (**Sustainability Objectives**).
- (b) The Contractor agrees to:
 - (1) use reasonable endeavours to conduct its business and perform the Works in a manner which seeks to support and is consistent with the Sustainability Objectives;
 - (2) provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives; and
 - (3) undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that the Works are performed (including the use of any Materials and Equipment) in a manner that is consistent with sustainable sources and free from modern slavery.
- (c) 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.
- (d) The Principal may request from time to time, and the Contractor must provide within the timeframe stipulated in such request:
 - (1) evidence of the Contractor's compliance with the Sustainability Objectives and this clause 13; and
 - (2) any other information reasonably requested by the Principal in connection with this clause 13.



- (e) The Contractor must allow the Principal (or its nominee) prompt access to the Contractor's records in connection with this clause 13, and to otherwise audit the Contractor's compliance with this clause 13 and the Sustainability Objectives.

14 Working on the Works Site

14.1 Work health and safety obligations

- (a) From the Start Date until the Date of Completion, the Principal must provide the Contractor with access to, and control of, the Works Site.
- (b) The Contractor acknowledges and agrees that:
- (1) it is not entitled to exclusive access to the Works Site while performing the Works; and
 - (2) the Principal, any person performing any other works on the Works Site, any representative of the Principal and any insurer may at any reasonable time have access to any part of the Works Site or the Works.
- (c) The Principal must use reasonable endeavours to ensure that the Contractor is not impeded in the performance of the Works by the Principal, while the Principal is exercising a right of access under this clause 14.
- (d) Without limiting the Contractor's obligations under clause 4.3, the Contractor agrees to comply, and to ensure that the Contractor's Personnel comply, with the following when undertaking the Works and in respect of the Works Site:
- (1) the Works Site Requirements;
 - (2) the Principal's health, safety and environmental Policies and Guidelines applicable from time to time;
 - (3) all relevant Work Health and Safety Requirements, environmental Laws and Approvals;
 - (4) all reasonable directions from a representative of the Principal; and
 - (5) the health, safety and environmental conditions in this clause 14.
- (e) The Contractor must:
- (1) promptly notify the Principal (and, in any case, within 48 hours) in writing of any Notifiable Incident that occurs at or in connection with the Works;
 - (2) promptly investigate any Notifiable Incidents, unless directed otherwise by the Principal;
 - (3) allow the Principal to conduct its own investigation into any Notifiable Incidents; and
 - (4) promptly notify the Principal (and, in any case, within 48 hours) and so far 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:
 - (A) details of any notification provided to a Government Agency;



- (B) a copy of any notice issued by a Government Agency requiring the Contractor to provide information or documents to the Government Agency;
 - (C) a copy of any information or document provided by the Contractor to a Government Agency;
 - (D) details of any enforcement action taken against the Contractor, including legal proceedings commenced against the Contractor; and
 - (E) a copy of any investigation report prepared by or at the instruction of the Contractor.
- (f) The Contractor must work co-operatively with any other contractors working at the Works Site, and must use best endeavours to avoid any conflict between the Contractor's activities and the activities of other contractors.
 - (g) Where required, each of the Contractor's Personnel must attend all appropriate and relevant induction courses required by the Principal, at the Contractor's cost, to enter the Works Site.
 - (h) The Contractor must ensure that the Contractor's Personnel entering the Works Site:
 - (1) maintain the Works Site in a safe, secure, clean and orderly manner having regard to the condition of the Works Site immediately before such entry; and
 - (2) do not interfere with the activities of the Principal or any other person while on the Works Site.
 - (i) The Contractor must notify the Principal as soon as possible of any Incident.
 - (j) If the Contractor or any of the Contractor's Personnel fail to comply with any obligation under this clause 14, then the Principal may in its discretion deny that person access to the Works Site or require that person to leave the Works Site immediately.
 - (k) The Principal is not liable to the Contractor for any Loss or Claim arising from the removal of any person under clause 14.1(j).
 - (l) Nothing in this clause 14 affects any obligation or duty imposed on the Contractor or the Contractor's Personnel to secure and have proper regard to the health and safety of any of the Contractor's Personnel.

14.2 Principal Contractor obligations

- (a) This clause 14.2 only has application where the Procurement Form provides that the Contractor is appointed the "Principal Contractor".
- (b) In this clause 14.2, the terms **Construction Project** and **Principal Contractor** have the meanings given to them under the *Work Health and Safety Regulations 2022 (WA)*.
- (c) For the purposes of the Work Health and Safety Requirements, the Principal:
 - (1) engages the Contractor as the Principal Contractor for the Construction Project forming the whole or part of the Works; and
 - (2) 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.



- (d) The Contractor:
- (1) accepts its engagement as Principal Contractor under clause 14.2(c)(1);
 - (2) agrees to discharge and perform the responsibilities and functions of the Principal Contractor for the Construction Project; and
 - (3) acknowledges that it will retain all responsibilities connected with its engagement as the Principal Contractor for the Works until the Completion of the Works.

15 Confidentiality, publicity and data security

15.1 Confidentiality

- (a) Each party must:
- (1) keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
 - (A) to the extent necessary for the performance of its obligations under the Contract;
 - (B) that a party may disclose to its legal advisers or auditors who are under a duty of confidence;
 - (C) that a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
 - (D) that the Principal may (where applicable) disclose to the Minister responsible for administering the *Local Government Act 1995 (WA)* or that Minister's department; and
 - (2) 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.
- (b) The Contractor must 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, at the earliest of the following:
- (1) immediately on demand by the Principal; or
 - (2) on the termination or expiry of the Contract.
- (c) 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)*.

15.2 Publicity and reputation

The Contractor must not:



- (a) 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
- (b) commit any act or omission that damages or adversely affects, or has the potential to damage or adversely affect, the Principal's reputation, trademark or brand.

15.3 Data security

The Contractor must:

- (a) do all things that a Professional Contractor would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- (b) provide protective measures for the Principal Data 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 Data; and
- (c) either return to the Principal or destroy any Principal Data immediately following the termination or expiry of the Contract, provided that the Contractor may retain one copy of any Principal Data solely for the purposes of its own records or if required by Law.

16 Intellectual Property

- (a) Subject to clause 16(c), the Contractor IP remains vested in the Contractor and the Principal IP remains vested in the Principal.
- (b) The Principal will own all Intellectual Property that the Contractor creates in the performance of the Works (**Project IP**).
- (c) The Contractor grants to the Principal a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Contractor IP to the extent necessary to perform the Works.

17 Insurance

- (a) The Contractor acknowledges and agrees that:
 - (1) 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;
 - (2) due to the nature of the Works, the Procurement Form may require that levels of insurances greater than those required under clause 17(a)(1) be provided by the Contractor; and

- (3) in circumstances where the Procurement Form requires higher levels of insurance, the Contractor must ensure that it has insurances sufficient to meet such requirements.
- (b) 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.
- (c) Subject to clause 11.2, if the Contractor subcontracts any part of the Services, 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.
- (d) In addition to the Principal's rights under clause 21(a), if the Contractor fails to comply with any of its obligations under this clause 17, the Principal may, immediately suspend the Contract in accordance with clause 20(a)(4) or refuse payment of any amount due to the Contractor until evidence of the Insurances required by this clause 17 is produced to the Principal.
- (e) The Insurances contemplated by this clause 17 are primary and not secondary to the indemnities referred to in the Contract.

18 Indemnity and Limits of Liability

18.1 Indemnity

- (a) 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's Personnel, in respect of:
 - (1) damage to, or loss or destruction of, any property (including damage to the environment);
 - (2) injury to, or death or disease of, any person;
 - (3) reputational damage to the Principal;
 - (4) any breach of Law; or
 - (5) any breach of a party or third party's Intellectual Property.
- (b) The indemnity in clause 18.1(a) will be reduced to the extent that the Loss is caused, or contributed to, by the Principal's negligence or breach of the Contract.

18.2 Limits of liability

- (a) To the extent permitted by Law, but subject to clause 18.2(c), 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.
- (b) Subject to clause 18.2(c), the Contractor's liability to the Principal, and the Principal's liability to the Contractor, in respect of Loss arising out of or in connection with the Contract, in the aggregate for all Claims, is limited to the Maximum Liability Amount.



- (c) The Contractor's liability in respect of the following is not limited by clause 18.2(a) or 18.2(b), and is not counted towards the limit under clause 18.2(b):
- (1) personal injury and death, including third party Claims in connection with personal injury or death;
 - (2) damage to, or loss or destruction of, any property;
 - (3) breach of any Laws, confidence or privacy;
 - (4) the infringement of any Intellectual Property of a party or third party;
 - (5) any amount agreed as the Price under the Contract; and
 - (6) to the extent that the Contractor recovers proceeds under insurances required by the Contract 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.
- (d) When determining the insurance proceeds that would have been recovered for the purposes of clause 18.2(c)(6), the exclusions and limits of liability under clauses 18.2(a) and 18.2(b) will not be taken into account.
- (e) A party's liability in respect of the following is not limited by clauses 18.2(a) or 18.2(b), and is not counted towards the limit under clause 18.2(b):
- (1) fraud, deliberate default, wilful misconduct; or
 - (2) any act or omission done or not done with a reckless disregard for the consequences by the party or any other party for whom the party is responsible.
- (f) Liability to which a limit under clause 18.2(b) applies is counted towards the limit when discharged by a party.

19 GST

- (a) Words or expressions used in this clause 19 which are defined in the GST Act have the same meaning as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under the Contract are exclusive of GST and where the value of any supply is to be calculated with reference to a monetary turnover figure, the GST exclusive value of the monetary turnover will be used in calculating the value of the supply.
- (c) If a party (**supplier**) makes a taxable supply under or in connection with the Contract:
- (1) the consideration otherwise payable or to be provided for that supply is increased by, and the party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;
 - (2) subject to the supplier complying with clause 19(c)(3), the recipient must pay the GST amount in Australian dollars, at the same time and in the same manner as it must pay or provide the consideration for that supply; and

- (3) the supplier must issue a valid Tax Invoice or adjustment note to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (d) Where an amount is payable to a party as a reimbursement, indemnification or similar payment calculated by reference to a Loss, cost, expense or any other amount incurred by that party, then such amount must be reduced by any part of that Loss or other amount which is attributable to GST for which that party, or the representative member of any GST group of which that party is a member, is entitled to an input tax credit.

20 Suspension by Principal

- (a) The Principal may, by written notice to the Contractor, suspend the performance of all or part of the Works if:
 - (1) the Contractor breaches a provision of the Contract and fails to comply with a written notice issued by the Principal within 10 Business Days of receiving such notice;
 - (2) the Principal reasonably believes that the Contractor, or the Contractor's Personnel, is not complying or will not comply with clause 14;
 - (3) the Principal reasonably believes that the Contractor, or any Contractor's Personnel, is endangering or will endanger any person, property or the environment; or
 - (4) the Contractor has failed to ensure insurance is effected and maintained in accordance with clause 17, or to provide evidence of insurance in accordance with clause 17.
- (b) The Principal's written notice must state the Principal's reasons for the suspension.
- (c) The Contractor must recommence any Works suspended under this clause 20 as soon as practicable after receiving written notice from the Principal directing the Contractor to recommence the Works. The Contractor must notify the Principal in writing before recommencing the suspended Works.
- (d) Subject to clause 20(e), the Contractor is not entitled to make any Claim against the Principal arising out of, or in connection with, a suspension under this clause 20.
- (e) If the Principal suspends the Works for a reason other than the reasons identified in clause 20(a), the Contractor will be paid the standby rates approved by the Principal (acting reasonably).

21 Termination

- (a) The Principal may terminate the Contract by notice to the Contractor:
 - (1) at any time and in its discretion by giving the Contractor not less than 20 Business Days' notice;



- (2) if the Contractor commits a breach of the Contract and fails to remedy that breach within 10 Business Days of the Principal giving notice of the breach;
 - (3) immediately if an Insolvency Event occurs; or
 - (4) immediately if the Principal becomes aware that WALGA has suspended or terminated the Panel Agreement, in accordance with the terms of the Panel Agreement.
- (b) The Contractor may terminate the Contract by notice to the Principal if the Principal does not comply with its obligations under clause 10.10(c) and fails to remedy that default within 15 Business Days of notice of that default from the Contractor.
- (c) On termination of the Contract, the Contractor must:
- (1) immediately cease performance of the Contractor's Obligations;
 - (2) ensure that accurate notes are made of the Works performed up to the date of termination and delivered to the Principal; and
 - (3) promptly comply with its obligations under clause 15.1(b) and deliver to the Principal all employee lists, working papers, correspondence, documents and other property belonging to the Principal that may be in the Contractor's possession or under its control.
- (d) If the Contract is terminated under clause 21(a) or 21(b):
- (1) the Principal must pay the Contractor that part of the Price for any Contractor's Obligations performed prior to termination that have not already been paid by the Principal; and
 - (2) the Contractor is not entitled to, and the Principal is not liable for, any additional parts of the Price whatsoever.
- (e) Subject to clause 21(d), termination of the Contract, however it may occur, does not prejudice any Claim that either party may have against the other under the Contract on termination.

22 Notices

22.1 How and where notices may be sent

- (a) Subject to clause 22.1(b), a notice must be in writing and:
- (1) delivered by hand or sent by post, to the address of the party set out in the Party Details or otherwise notified; or
 - (2) sent by email, as an attachment to an email, to the email address of the party set out in the Party Details or otherwise notified.
- (b) A notice under clause 21 may only be delivered by hand or sent by post.

22.2 When notices are taken to have been delivered and received

A notice is effective:

- (a) if delivered by hand, on the date it is delivered to the recipient;
- (b) if sent by post:



- (1) within Australia to an Australian address, on the third Business Day following the postage date; or
- (2) from a place within Australia to an address outside of Australia, or from a place outside Australia to an address within Australia, on the eighth Business Day following the postage date; or
- (c) if sent by email, on the earlier of:
 - (1) an email delivery confirmation report being received by the sender; or
 - (2) 4 hours after the email was sent unless the sender receives notification from its or the recipient's email server that the email is undeliverable, was not delivered, or the recipient is out of the office,

provided that where any notice is sent by email and is received after 4:00 pm (recipient's time) or on a day other than a Business Day (recipient's time), then the notice will be deemed as being received at 9:00 am on the next Business Day (recipient's time).

23 Dispute Resolution

- (a) 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 23.
- (b) 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**).
- (c) A Dispute Notice must specify the:
 - (1) alleged facts on which the Dispute is based;
 - (2) legal basis on which the Dispute is made, including any issues of law relevant to the Dispute (if any); and
 - (3) relief that is claimed.
- (d) Within 3 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.
- (e) If a Dispute is not resolved within 3 Business Days of the parties' senior representatives meeting to attempt to resolve the Dispute in accordance with clause 23(d), the parties may escalate the Dispute to WALGA, for WALGA to assist the parties in the resolution of the Dispute.
- (f) 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 23(b) and complied with this clause 23 may end the dispute resolution process and commence court proceedings in relation to the Dispute.
- (g) 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.



WALGA

24 PPSA

- (a) Words and phrases used in the Contract that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- (b) If the Principal determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
 - (1) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (2) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Principal has the priority required by it; or
 - (3) enabling the Principal to exercise rights in connection with the security interest.
- (c) If the Contractor holds any security interests for the purposes of the PPS Law and if failure by the Contractor to perfect such security interests would materially adversely affect the security interests the Principal holds or affect its business, the Contractor agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Contractor must take all steps under the PPS Law to continuously perfect any such security interests including all steps necessary:
 - (1) for it to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
 - (2) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (d) Notwithstanding clause 15, neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 24(d) does not prevent disclosure where that disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

25 Security of Payment Act

- (a) This clause 25 only applies to the extent that the Works constitute '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).
- (b) Nothing in the Contract will affect, restrict or limit the Contractor's right to:
 - (1) make an adjudication application pursuant to section 28 of the Security of Payment Act; and



- (2) suspend the Works under section 62 of the Security of Payment Act.
- (c) Notwithstanding anything else in the Contract, the Contractor must:
 - (1) promptly give the Principal a copy of any notice the Contractor receives from a subcontractor; and
 - (2) 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.
- (d) If the Principal becomes aware that a subcontractor is entitled to suspend work (which forms part of the Works) 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 Works, and any amount paid by the Principal is recoverable from the Contractor as a debt due to the Principal. The Principal:
 - (1) must notify the Contractor prior to making payment pursuant to this clause 25(d); and
 - (2) will not make a payment pursuant to this clause 25(d) where the Contractor demonstrates to the Principal that it has reasonable grounds to have withheld payment to the subcontractor.
- (e) The Contractor indemnifies, and holds harmless, the Principal against all Loss of any nature suffered or incurred by the Principal arising out of:
 - (1) a suspension by a subcontractor of work (which forms part of the Works) under section 62 of the Security of Payment Act;
 - (2) 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 Works; and
 - (3) a failure by the Contractor to comply with its obligations under clause 25(c).
- (f) For the purposes of this clause 25, 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 Works.

26 General

26.1 Governing law and jurisdiction

The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

26.2 Entire agreement and reliance

- (a) 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.



- (b) Neither party has relied on any statement by the other party not expressly included in the Contract.

26.3 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. In this clause 26.3, "waiver" includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

26.4 Relationship of the parties

- (a) The Contractor acknowledges and agrees that:
 - (1) it is an independent contractor and not an agent of the Principal;
 - (2) the Contract is entered into in accordance with the Panel Agreement;
 - (3) the Contract is entered into between the Principal and the Contractor, and WALGA is not a party to the Contract; and
 - (4) the Contractor has no authority to bind the Principal or WALGA by contract or otherwise.
- (b) 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.
- (c) 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).

26.5 Amendment

An amendment of any term of the Contract must be in writing and signed by both parties.

26.6 Invalidity and enforceability

- (a) 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.
- (b) 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.

26.7 Executing the Contract

- (a) 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.
- (b) The Contractor represents and warrants that it:



- (1) has full power and authority to enter into and perform its obligations under the Contract; and
 - (2) has taken all necessary action to authorise the execution, delivery and performance of the Contract.
- (c) 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.

26.8 Rights under the Contract

- (a) Unless the Contract provides otherwise:
- (1) a party may exercise a right, power or remedy in any way at its discretion; and
 - (2) the rights, powers and remedies provided by the Contract are in addition to any rights, powers and remedies provided at Law.
- (b) Nothing in the Contract:
- (1) gives a party authority to bind any other party in any way; or
 - (2) imposes any fiduciary duties on a party in relation to any other party.
- (c) The Principal is not required to engage the Contractor exclusively to perform the Works.

26.9 Survival

Clauses 1, 2, 15, 16, 17, 18, 21(e), 22 and 26, and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract, will survive termination or expiry of the Contract, and are enforceable at any time at Law.