

GENERAL CONDITIONS OF CONTRACT

**Town of Claremont
of Number One Claremont
308 Stirling Highway CLAREMONT
(Principal)**

And

***[insert Contractor]* of
[insert address]
[insert ABN]
(Contractor)**

(together, the Parties)

Date of Contract:

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DATE:

PARTIES:

BACKGROUND

- (a) The Contractor provided a tender submission in response to RFT 03-2021.
- (b) The Principal has engaged the Contractor pursuant to a letter of award.
- (c) This Document sets out the terms and conditions upon which the Contractor shall be engaged.

OPERATIVE PART

1 DEFINITIONS

In this Document, except where the context indicates otherwise:

Approval means any certificate, licence, consent, permit, approval, authority, certificates registrations or requirement necessary from any Authority for the WUC.

Authority means any government or governmental, administrative, monetary, fiscal or judicial body, organization, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

Background Intellectual Property Rights means any Intellectual Property Rights owned by a Party prior to the commencement of the Contract or which did not come into existence by reason of the Contract, and which a Party is entitled to exercise and sub-license, which are embodied in, attached to or otherwise relate to the Contract.

Bill of Quantities means a document named as a bill of quantities issued to tenders by or on behalf of the Principal stating estimated quantities of work to be carried out.

Business Days means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

Claim means includes any claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal or any of its agents or employees relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract including any claim, demand, action, proceeding or suit seeking the payment of money, an adjustment to the Contract Price, an extension of the date for practical completion or any costs, expenses, loss or damages on any ground whatsoever including pursuant to the Contract, or otherwise at law.

Confidential Information means:

- (a) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;
- (b) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;
- (c) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and
- (d) any copies, extracts or summaries of the information described in paragraphs (a) to (c) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person. Nothing in this clause derogates from the Contractor's obligations under any other provision of this Contract or the provisions of the Freedom of Information Act.

Conflict of Interest means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively.

Consequential Loss includes any:

- (a) loss of production, revenue, profit, business reputation, opportunities, profit, goodwill or anticipated savings; and
- (b) loss arising from wasted overheads or business interruptions.

Contract means this agreement between the Parties.

Contract Price means

- (a) the lump sum price;
- (b) the sum resulting from calculating the products of the rates and corresponding quantities in the schedule of rates;
- (c) where both lump sum and schedule of rates apply, the aggregate of the sums referred to in (a) and (b); or
- (d) if none of the above is applicable, the amount agreed by the parties as the nominal price being an amount likely to approximate the total moneys likely to be payable to the Contractor under the Contract,

excluding GST.

Contractor means the party who is engaged by the other party to provide the WUC and whose details may be set out on the front page of this Document.

Construction Program means a written statement showing the dates by which, or the times within which, the various stages or parts of the WUC are to be executed or completed. It shall be deemed as contract document.

Compensable cause means any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor).

Cyber Incident means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Principal Data residing on that system.

Date of Practical Completion means the date evidenced in the certificate of practical completion as the date upon which practical completion was reached; or where another date is determined in any litigation as the date upon which practical completion was reached, that other date.

Date for Practical Completion means the date for practical completion but if any EOT for practical completion is directed by the Superintendent or allowed in any litigation, it means the date resulting therefrom.

Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction note, notice, order, permission, rejection, request or requirement.

Defective means defective, of an inferior quality or inconsistent with the requirements of the Contract.

Defects Liability Period means the period of 12 months beginning on the Completion Date.

Delivery Point means the place for the delivery of Goods specified in the Order or agreed in writing by the Parties or directed by the Principal to the Contractor in writing.

Direct Loss means any cost or expense that a party reasonably incurs as a direct result of, and flowing naturally from the other party's breach of Contract, act, omission or negligence, including any liquidated damages or any other payment of loss or damages expressly provided for under this Contract.

Disbursement means reasonable out-of-pocket costs and expenses incurred by a Contractor in providing the Services which are:

- (a) charged to the Principal at cost; and
- (b) incidental to the provision of the Services.

Discrepancy or discrepancies means discrepancy, ambiguity, error, omission or inconsistency.

Dispute means any dispute or difference between the Parties in connection with the Contract.

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

Inclement Weather means the existence of rain or abnormal climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for employees exposed to such conditions to continue working whilst the same prevail.

Insolvency Event means:

in relation to a corporation, where that corporation:

- (a) inform the Principal or creditors generally that it is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against a party by a creditor;
- (c) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
- (d) is otherwise dissolved;
- (e) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
- (f) a mortgagee of any of its property takes possession of that property;
- (g) an application is made to a court for its winding up and not stayed within 14 days;
- (h) it resolves by special resolution that it be wound up voluntarily (other than for member voluntary winding up);
- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- (j) enters into any composition or scheme of arrangement with its creditors;
- (k) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
- (l) is otherwise unable to pay all its debts as and when they fall due; and

in relation to a natural person, where that natural person:

- (a) commits an act of bankruptcy;
- (b) presents a bankruptcy petition;
- (c) is made bankrupt;
- (d) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
- (e) has a deed of assignment or deed or arrangement made, accepts a composition, is required to present a debtors petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 or like provision under the law governing the Contract.
- (f) assigns its estate or enters into (or makes a proposal for) a scheme of arrangement or composition for the benefit of its creditors; or
- (g) is otherwise unable to pay all its debts as and when they fall due.

Insurances means the insurances which the Contractor is required to obtain under the Contract.

Intellectual Property Right means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, semi-conductor, circuit and other eligible layouts, copyright (including future copyright), database rights and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time including any application or right to apply for any of these rights.

Law means Acts, Ordinances, regulations, statute, by laws, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or law of the Principal.

Legislative Requirement means a requirement under any Law or Approval including a requirement to pay any fees and charges in connection with any Law or Approval.

Letter of Award means an Order or Long-Term Award issued by the Principal to the Contractor accepting the Tender Submission .

Loss means any liability, loss, damage, cost (including litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, demand, expense or proceeding whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising.

OSH Laws means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under the Contract are being performed. This includes the *Occupational Health and Safety Act 1984* (WA), in addition to any other relevant legislation or regulations.

Otherwise at law means in the context of a claim, a claim in any legal jurisdiction, including but not limited to a claim under the Contract or for breach of contract, in tort, under statute, for a quantum meruit, for restitution based on unjust enrichment, for rectification or frustration or for any other legal or equitable remedy.

Parties means the Principal and the Contractor.

Personnel means the personnel engaged by the Principal, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, Contractors and Subcontractors and any director, officer, employee or agent of any Contractor or Subcontractor, but when used in the context of the Principal's Personnel, does not include the Contractor or the Contractor's Personnel.

Plant and Equipment means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under the Contract.

Practical Completion means the stage in carrying out and completion of the WUC when:

- (a) the WUC are complete except for minor defects:
 - (i) which do not prevent the WUC from being reasonably capable of being used for their stated purpose;
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the WUC.
- (b) Those tests which are required by the Contract to be carried out and passed before the WUC reach practical completion have been carried out and passed; and
- (c) Documents and other information required under the Contract which, in the Superintendents opinion, are essential for the use, operation and maintenance of the WUC have been supplied.

Principal means the party engaging the other Party to provide the WUC and whose details may be set out on the front page of this Document.

Principal's Documents means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, the Principal.

Principal's Premises means any property under the control, care and management of the Principal.

Qualifying cause of delay means:

- (a) Any act, default, omission of the Superintendent, the Principal or its consultants, agents or other Contractors (not being employed by the Contractor);
- (b) Other than:
 - (i) A breach or omission by the Contractor.
 - (ii) Industrial conditions or inclement weather occurring after the date for practical completion.

Schedule of Rates means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of the work and which may also include lump sums, provisional sums, other sums, quantities and prices.

Security means:

- (a) Cash;
- (b) Retention moneys;
- (c) Bonds or inscribed stock or their equivalent issued by a national, state or territory, government;
- (d) Interest bearing deposit in a bank carrying on business;
- (e) An approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or insurance company;
- (f) Other form approved by the party having the benefit of the security.

Separable portion means a portion of the WUC identified as such in the Contract or by the Superintendent.

Site means the lands and other place to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract including Mrs Herberts Park.

Specified Personnel means key Personnel of the Contractor proposed and referred to in a Tender Submission.

Standards and Procedures means any procedures, codes of conduct, guidelines, rules, policies, requirements or information regarding site-specific conditions or the Principal's operations made available to the Contractor by the Principal from time to time.

Start Date means the date specified as such in the Principal Request or, where no such date is specified in the Principal Request, means the date that the Parties agree in writing that the Contractor must commence the Services.

Subcontractor means any person or entity engaged by the Contractor in connection with the provision of the WUC and includes consultants, suppliers (including their personnel), Subcontractors, suppliers and other Contractors, and includes any supplier or hirer of materials, plant or equipment but does not include the Contractor's employees.

Survey mark means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purposes of setting out, checking or measuring WUC.

Tender Submission means the offer submitted by the Contractor to supply the WUC made in response to a Principal Request for Tender.

Wilful Misconduct means any wrongful act or omission that was intentionally done or involved reckless disregard to the likely consequences, including an intentional breach of the Contract.

The Works means the whole of the work to be carried out and completed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is handed over to the Principal.

Work includes the provision of materials.

WUC means the work which the Contractor is or may be required to carry out and complete under the Contract and includes variations, remedial work, Plant and Equipment and temporary works.

2 INTERPRETATION

2.1 In this Document, unless the context suggests otherwise:

- (a) a reference to the Contract means the Contract as novated or varied from time to time;
- (b) a reference to 'including' must be read as if it is followed by '(without limitation)';
- (c) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) words in the singular include the plural and vice-versa;

- (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a clause is a reference to a clause of this Document;
- (h) a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;
- (i) headings are for convenience only and do not affect interpretation of this Document;
- (j) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it; and
- (k) time for doing an act or thing under the Contract shall if it ends on a Saturday, Sunday or public holiday, be deemed to end on the day next following which is not a Saturday, Sunday or public holiday.

3 CONTRACTOR TO HAVE INFORMED ITSELF

3.1 The Contractor acknowledges that:

- (a) It has examined carefully, and has acquired actual knowledge of the contents of, its Tender Submission, this Document and any other information made available in writing by the Principal to the Contractor for the purposes of the Tender Submission and the Contract.
- (b) It has satisfied itself as to the correctness and sufficiency of the Tender Submission and that the Contract Price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the proper performance and completion of the Contract.
- (c) It has satisfied itself as to the correctness and adequacy of the Contract Price and the performance of its obligations under the Contract or Otherwise at law.
- (d) It has carefully examined all information relevant to the risks, contingencies and other circumstances and any information provided by the Principal or its agents, employees or consultants which could affect its tender submission, Contract Price or performance of its obligations under the Contract or Otherwise at law.
- (e) To the extent practical, has visited and carefully examined the site and its surroundings and fully informed itself as to the nature of the of the work and materials and Plant and Equipment necessary, the facilities at the site, the means of access and egress from the site, transport facilities for deliveries, any conditions affecting construction activities and the constraints thereon.
- (f) It has satisfied itself of its ability to comply with all legislative requirements.
- (g) It has informed itself as to the availability and cost of labour including the costs of complying with obligations imposed by this Contract.
- (h) It has obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in this clause prior to submitting its tender for the WUC.
- (i) It has relied solely upon its own assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having effect on the Contract Price.
- (j) It has entered into this Contract based on its own investigations, interpretations, deductions, information and determinations and the Contractor acknowledges that it is aware that the Principal has entered into the Contract relying upon this acknowledgment and warranty.

- (k) It has obtained the data, survey marks *and* like information necessary for the *Contractor* to set out the Works, together with those survey marks specified out in the Contract.

Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of any of its obligations or liabilities under the Contract, including its obligation to perform and complete the WUC in accordance with the Contract.

3.2 The Contractor acknowledges that:

- (a) the Principal is relying on the Contractor's advice, skill and judgment in the execution of the WUC,
- (b) the Principal is not required to check documents provided or submitted by the Contractor for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract.
- (c) the Principal has entered into the Contract in reliance on the representations and warranties given by the Contractor in the tender submission.

3.3 The Contractor warrants that, to the best of its knowledge, as at the date of providing the Tender Submission:

- (a) the Contractor has declared in its Tender Submission any Conflicts of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
- (b) the information contained in the Contractor's Tender Submission as to the existence of any Conflicts of Interest is correct and comprehensive.

3.4 If a Conflict of Interest or risk of Conflict of Interest arises, including because of work undertaken by the Contractor for a person other than the Principal, the Contractor must immediately give written notice of the Conflict of Interest, or the risk of it, to the Principal.

4 FORMATION OF CONTRACT

4.1 Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document.

4.2 Where this Document is not executed by the Parties:

- (a) the Contract shall be formed, and shall commence, on the date of the Letter of Award; and
- (b) the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract's existence.

5 RELATIONSHIP OF THE PARTIES

5.1 The Contractor acknowledges and agrees that it is an independent Contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise. 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 this Document.

5.2 The Parties acknowledge that a good working relationship between the Principal, the Superintendent and the Contractor is a significant factor that contributes towards the successful completion of a project. The Contractor, the Principal and the Superintendent jointly commit to establishing and maintaining a project team built on relationships and they agree to observe the following principles:

- (i) act as stated in this Contract and in the spirit of mutual trust, openness, respect and cooperation;
- (ii) at all times deal with each other fairly, honestly and reasonably;

- (iii) communicate and expeditiously reconcile any matter that may affect the proper execution and timely completion of the Works;
- (iv) be dedicated to achieving 'best for project' outcomes (together, the **Relationship Principles**).

The parties agree and acknowledge that the Relationship Principles do not apply where the Contract expressly provides that the Principal or the Superintendent may act in its absolute or sole discretion.

- 5.4 The Contractor will co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time.

6 REPRESENTATIVE

- 6.1 Each Party may appoint a Representative, and give them authority, to act on its behalf for the purpose of the Contract within delegation limits advised in writing to the other Party.
- 6.2 The Contractor shall superintend WUC personally or by a competent representative. If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor shall appoint another representative.

7 PRICE BASIS

- 7.1 The Contractor acknowledges that the Contract Price shall be firm and not subject to rise and fall or other adjustment for any reason except to the extent expressly provided for in the Contract.
- 7.2 The Contract Price includes supply of everything necessary for the proper performance of the Contractors obligations and discharge of the Contractors liabilities including but not limited to:
- (a) all costs, expenses, fees and charges, approvals;
 - (b) all survey, inspection, measuring and testing to comply with relevant specifications and any legislative requirements;
 - (c) all labour, materials, plant, equipment, machinery and any other necessary items for the proper execution of the WUC whether or not such items are specifically referred to in the Contract;
 - (d) all goods, services, works, minor items and incidentals;
 - (e) the Contractor's profit, attendance, preliminaries, supervision and on-site and off-site overheads in connection with the performance of all of its obligations under the Contract.
- 7.3 The Contractor shall carry out and complete the WUC in accordance with the Contract and directions authorized by the Contract. The Principal shall pay the Contractor:
- (a) For work for which the Principal accepted a lump sum, the lump sum;
 - (b) For work for which the Principal accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate accepted by the Principal for the section or item,

Adjusted by any additions or deductions made pursuant to the Contract.

8 SEPARABLE PORTIONS

- 8.1 Separable portions may be directed by the Superintendent, who shall clearly identify for each:
- (a) The portion of Works;

- (b) Date for practical completion; and
- (c) Respective amounts for security, liquidated damages and delay damages (all calculated pro rata according to the ratio of the Superintendent's valuation of the separable portions to the Contract Price).

9 CONTRACTORS SECURITY

- 9.1 Security shall be provide in accordance with item 9 in Schedule 1.
- 9.2 Security shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.
- 9.3 Security shall be subject to recourse by the Principal including when on or more of the following occurs:
 - (a) the Principal remains unpaid after the time for payment of a claim for monies;
 - (b) the Superintendent has certified that monies are due and payable to the Principal;
 - (c) the Principal has or asserts an entitlement to payment of money (including by way of set off) by the Contractor in connection with this Contract or otherwise at law;
 - (d) the Principal asserts that the Contractor is in breach of any of its obligations in connection with this Contract (whether or not the financial consequences to the Principal of any such breach have been ascertained) in all such cases as if the security were a sum of money due or to become due to the Principal by the Contractor; or
 - (e) a Contractor Insolvency Event.

Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or Claim or any balance that remains owing. Any balance owing is a debt due and payable. This clause shall survive the termination of the Contract.

- 9.4 Upon the issue of a certificate of practical completion, a party's entitlement to security shall be reduced by the percentage listed in item 9 in schedule 1.
- 9.5 Upon a party's entitlement to security ceasing (in whole or part) the party shall release and return the security to the other party within 14 days.

10 DISCREPANCY

- 10.1 The Contractor will advise the Superintendent of any inconsistency, ambiguity or discrepancy in any document prepared by for the purpose of carrying out the WUC. The Superintendent shall direct the Contractor as to the interpretation and construction to be followed.
- 10.2 If compliance with any such direction under this clause causes the Contractor to incur more or less cost than otherwise would have been incurred had the direction not been given, the difference shall be assessed by the Superintendent and added to or deducted from the Contract Price.

11 ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Contractor shall not:
 - (a) assign all or any part of its rights and obligations under the Contract; or
 - (b) sub-contract the whole or any part of the Contract,
without:
 - (c) the Principal's prior written approval, which must not be unreasonably withheld; and
 - (d) in the case of any agreed assignment where obligations are to be assigned, the proposed assignee executing a deed in favour of the Principal agreeing to comply with and be bound by the obligations of the Contractor under the Contract.

- 11.2 With a request for approval, the Contractor shall provide to the Superintendent particulars in writing, of the work to be subcontracted and the name and the address of the proposed Subcontractor.
- 11.3 If the value of the services subcontracted to a Subcontractor exceeds \$50,000, the Principal may require the subcontract for that work to incorporate AS 4901—1998 Subcontract Conditions, subject only to such amendments and annexure entries as are necessary to reflect the conditions of this Contract. Any Subcontract Conditions shall not impose terms, conditions or risk on a Subcontractor that is materially different to those imposed on the Contractor under this Contract.
- 11.4 To avoid doubt, the Principal's approval to sub-contract does not discharge or release the Contractor from any liability or obligation under the Contract. The Contractor shall be liable to the Principal for the acts, defaults and omission of Subcontractors and employees and agents of the Subcontractor as if they were the Contractors.
- 11.5 The Principal may require the Contractor to execute a deed of novation.

12 CONTRACTORS PERSONNEL

- 12.1 The Contractor warrants to the Principal, and agrees to ensure, that its Personnel engaged to perform the WUC:
- (a) are appropriately qualified, trained and experienced and have the necessary skills, experience, expertise;
 - (b) hold valid licences, registrations, permits, approvals and certificates that they are required under all Laws and otherwise at law, including to operate any machinery, vehicles or related equipment to provide the Services;
 - (c) shall exercise due care, skill and diligence in the carrying out and completion of the WUC;
 - (d) are adequate in numbers to carry out the requirements of the Contract;
 - (e) will comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the WUC;
 - (f) wear suitable clothing and personal protective equipment to the satisfaction of the Town at all times;
 - (g) do not cause any damage, loss or injury to any property or person; and
 - (h) act, in all circumstances and at all times, in a fit and proper manner.

The Contractor will use reasonable endeavours to ensure that Subcontractors satisfy the requirements of clause 12.1 in relation to the Subcontractors' own employees.

- 12.2 If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Specified Personnel, it must obtain the prior written approval of the Principal.
- 12.3 If the Superintendent reasonably considers at any time that Personnel employed by the Contractor do not satisfy the requirements of this clause he or she may, acting reasonably, request the Contractor remove such personnel and replace them with a suitably qualified replacement.
- 12.4 The Contractor must provide the Principal with an Australia-wide police clearance in respect of any of its Personnel and Subcontractors within 30 Business Days of such a request being made in writing by the Principal to the Contractor.
- 12.5 If any police clearance obtained evidences that any of the Contractor's Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to its other rights under the Contract, request the Contractor to promptly remove that person from

involvement in the provision of the WUC, and the Contractor must comply with such a request as soon as possible.

13 LEGISLATIVE REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES

13.1 The Contractor shall comply without limitation with all Legislative Requirements, Codes, Standards and Procedures affecting or applicable to the Works, WUC and/or the performance of the Contract and ensure that its Personnel also comply with the same, at the Contractor's cost.

13.2 The Contractor shall:

- (a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor or Otherwise at Law for the purposes of providing the WUC;
- (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;
- (c) ensure that Plant and Equipment and other items which the Contractor uses or supplies in connection with the Contract comply with Legislative Requirements and are fit for their usual and intended purpose;
- (d) to the extent practicable, use reasonable endeavours to ensure that its Subcontractors satisfy the requirements of this clause in relation to the Subcontractors' own employees; and
- (e) ensure that it pays each of its Subcontractors in accordance with the Contractor's agreement with that Subcontractor, subject to the Contractor's acceptance of the WUC.

13.3 If a legislative requirement:

- (a) necessitates a change:
 - (i) to the Works;
 - (ii) in a fee or charge or payment of a new fee or charge.
- (b) Comes into effect before the 7th day before the closing of the tenders but could not reasonably have been anticipated by a competent Contractor; and
- (c) Causes the Contractor to incur more or less cost than otherwise would have been incurred,
The difference shall be assessed by the Superintendent and added to or deducted from the contact sum.

14 SAFETY OBLIGATIONS

14.1 The Contractor must:

- (a) comply with the Principal's work health and safety policies to the extent that such policies require a higher standard than what the Contractor is otherwise required to comply with;
- (b) do all things reasonably necessary to ensure that the WUC are provided in a manner that is safe and not likely to cause injury or illness to any person; and
- (c) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under OSH Laws.

- 14.2 The Contractor is not entitled to make any Claim in connection with complying with the OHS Laws or the work health and safety requirements under this Contract. The Contractor acknowledges it has allowed for the cost of compliance in the Contract Price.
- 14.3 Where any injury, property damage, accident or incident which is notifiable under any Legislative Requirement occurs, the Contractor must:
- (a) ensure that the relevant regulator or Authority and Superintendent is notified immediately or as soon as is reasonably practicable;
 - (b) as soon as possible but no later than 12 hours of receiving a request from the Superintendent to do so, provide the Superintendent with a copy of any notification to the regulator or Authority for work health and safety of a safety or health-related incident.
 - (c) as soon as practicable, but in any event within 24 hours, notify the Superintendent in writing of that injury, property damage, accident or incident;
 - (d) provide the Principal with any further information requested by the Principal;
 - (e) keep the Superintendent informed of the status of any safety or health-related incidents that have occurred in relation to or in connection with the Site;
 - (f) do all that is necessary to assist the Superintendent with any investigations into any safety or health related incident in relation to or in connection with the site, including requiring, to the extent possible, Personnel to assist the Superintendent.
- 14.4 The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter premises under the control of the Principal or the Principal's Personnel they must comply with the Principal's occupational health and safety policies and procedures and do so at the Contractor's own risk.
- 14.5 The Contractor shall, to the extent permitted by law, indemnify and keep indemnified the Principal and its officers, employees and agents against any action, Claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:
- (a) any injury, accident or safety related incident on or adjacent to the site; and
 - (b) the enforcement of, or any breach by the Contractor of, its obligations under this clause.

15 PROTECTION OF PEOPLE AND PROPERTY

- 15.1 Insofar as compliance with the requirements of the Contract permits, the Contractor shall:
- (a) provide all things and take all measures necessary to protect people and property;
 - (b) avoid unnecessary interference with the passage of people and vehicles; and
 - (c) prevent nuisance and unreasonable noise and disturbance.
- 15.2 Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.
- 15.3 If Working hours and working days are not stated elsewhere they shall be as approved by the Principal.
- 15.4 If the Contractor or its Personnel damage property, and services and/or property on or adjacent to the site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

- 15.5 If the Contractor fails to comply with an obligation under this clause, the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

Urgent protection

- 15.6 If urgent action is necessary to protect the WUC, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Superintendent may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the Superintendent shall certify the costs incurred as moneys due from the Contractor to the Principal. If time permits the Superintendent shall give the Contractor notice.
- 15.7 The Contractor shall take all reasonable steps to minimise disruption to individual land owners and/or occupiers in disconnecting, relocating and reconnecting public utilities, including , when requested in writing by the Principal to:
- (a) consult with all affected land owners and/or occupiers to arrange for a mutually acceptable time for the carrying out of such works, at least five business days before the anticipated event; and
 - (b) identify and consulting with any land owner and/or occupier with special requirements regarding continuity of supply of any public utility and taking all measures necessary to satisfy such requirements.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

Care of the Works

- 16.1 Except as provided below in clause 16.4 (Excepted Risks), the Contractor shall be responsible for the care of:
- (a) the whole WUC from and including the date of commencement of WUC to 5pm on the date of practical completion, at which time the responsibility shall pass to the Principal; and
 - (b) outstanding work and items to be removed from the Site by the Contractor after 5pm on the date of practical completion until completion of outstanding work and/or defects.

Without limiting the generality of (a) the Contractor shall be responsible for the care of unfixed items accounted for in a progress certificate and the care and preservation of things entrusted to the Contractor by the Principal or brought onto the Site by Personnel and Subcontractors for carrying out WUC.

Reinstatement of Damage

- 16.2 If loss or damage, other than caused by an excepted risk, occurs to the WUC during the period of Contractor's care, the Contractor shall, at its cost, rectify such loss or damage.
- 16.3 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 shall to the extent directed by the Superintendent, rectify the loss or damage and such rectification shall be deemed a variation. If loss or damage is caused by a combination of excepted risk and other risks, the Superintendent in pricing the variation shall assess the proportional responsibility of the parties.

Excepted Risks

- 16.4 The excepted risks causing loss or damage, for which the Principal is liable, are:
- (a) any negligent act or omission of the Superintendent, the Principal or its consultants, agents, employees or other Contractors (not being employed by the Contractor);

- (b) any risk specifically excepted elsewhere in the Contract;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or gents;
- (e) use or occupation of any party of WUC by the Principal or its consultants, agents or other Contractors (not being employed by the Contractor); and
- (f) defects in the design of WUC, other than design provided by the Contractor.

17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

Indemnity by Contractor

17.1 Insofar as this clause applies to property, it applies to property other than WUC. The Contractor shall indemnify the Principal against:

- (a) loss of or damage to the Principal's property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of WUC, but the indemnity shall be reduced proportionally to the extent that the act or omission of the Superintendent, the Principal or its consultants, agents or other Contractors (not being employed by the Contractor) may have contributed to the injury, death, loss or damage.

This clause shall not apply to:

- (a) the extent that the Contractor's liability is limited by another provision of the Contract;
- (b) exclude any other right of the Principal to be indemnified by the Contractor;
- (c) things for the care of which the Contractor is responsible under clause 16.4 (Excepted Risks).
- (d) damage which is the unavoidable result of the construction of the Works in accordance with the Contract; and
- (e) claims in respect of the Principal's right to have WUC carried out.

Indemnity by Principal

17.2 The Principal shall indemnify the Contractor in respect of damage referred to in paragraph (d) above and claims referred to in paragraph (e) above.

18 INSURANCE

Insurance of the Works

18.1 Before commencing WUC, the Contractor shall insure all the things referred to in clause 16.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

- 18.2 Without limiting the generality of the obligation to insure, such insurance shall cover the Contractor's liability under clause 16.2 and 16.3 and things in storage off site and in transit to the site but may exclude:
- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
 - (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
 - (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
 - (d) damages for delay in completing or for the failure to complete the Works;
 - (e) loss or damage resulting from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
 - (f) loss or damage resulting from the excepted risks referred to in paragraphs (b) and (c) of clause 16.4.
- 18.3 The insurance cover shall be for an amount not less than Contract Price.
- 18.4 Insurance shall be in the joint names of the parties, shall cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interests and liabilities and, except where the Contract otherwise provides, shall be with an insurer and in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).
- 18.5 The insurance shall be maintained until the Contractor ceases to be responsible under clause 16.1 for the care of anything. The Contractor must ensure that its Subcontractors have appropriate and reasonable insurance.

Public Liability Insurance

- 18.6 Before commencing WUC, the Contractor shall effect and maintain for the duration of the Contract, a public liability policy. The policy shall:
- (a) be in the joint names of the parties;
 - (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties, of the parties, the Superintendent and subcontractors from time to time, whenever engaged in WUC;
 - (c) cover the parties; respective liability to each other for loss or damage to property (other than property required to be insured by clause 18) and the death of or injury to any person (other than liability which the law requires to be covered under the workers compensation insurance policy);
 - (d) be endorsed to cover the use of any Plant and Equipment not covered under the comprehensive or third party motor vehicle insurance policy;
 - (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum \$20 million; and
 - (f) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

Insurance of Employees

- 18.7 Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be maintained until completion of all WUC and to a value not less than \$50m.
- 18.8 Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.
- 18.9 The Contractor shall ensure that the Subcontractor have similarly insured their employees.

Vehicle, Plant and Equipment Insurance

- 18.10 The Contractor shall maintain insurance for replacement value for its vehicles, plant and equipment.

Proof of Insurance

- 18.11 Before the contractor commences WUC and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.
- 18.12 Insurance shall not limit liability or obligations under other provision of the Contract.
- 18.13 If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.

Notices from or to Insurer

- 18.14 The party insuring under clause 18 shall ensure that each insurance policy contains provision acceptable to the other party which:
- (a) required the insurer to inform both parties, whenever the insurer gives a party or a Subcontractor a notice in connection with the policy;
 - (b) provides that a notice of claim given to the insurer by either party, the Superintendent or a contractor shall be accepted by the insurer as a notice of claim given by both parties, the Superintendent and the Subcontractor; and
 - (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

Notification of potential claims

- 18.15 A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 18 and shall keep the other party informed of subsequent development concerning the claim. The Contractor shall ensure that Subcontractor in respect of their operations similarly inform the parties.

Settlement of claims

- 18.16 Upon settlement of a claim under the insurance above:
- (a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names

of the parties. As the Contractor reinstates the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and

- (b) to the extent that the reinstatement has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the Contractor.

Cross Liability

- 18.17 Any insurance required to be effected in joint names in accordance with the Contract shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).
- 18.18 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.

19 SITE

Clean and tidy

- 19.1 The Contractor must keep the Site and WUC clean and tidy and regularly remove rubbish and surplus materials.
- 19.2 Within 14 days after the date of practical completion the Contractor shall remove temporary works and Plant and Equipment. If the Contractor fails to comply with this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.
- 19.3 If the Contractor fails to comply with the direction and that failure has not been made good within 5 days, the Superintendent may have the works so carried out and shall certify the costs incurred as money due from the Contractor to the Principal. These rights are in addition to any other rights and remedies.

Possession

- 19.4 Provided the Contractor has complied with clause 18.10, the Principal shall before the expiry of the time for giving possession give the Contractor possession of sufficient of the site for the commencement of WUC on site. If the Principal has not given the Contractor possession of the whole site, the Principal shall give the Contractor possession of such further portions of the site as may, from time to time, be necessary for carrying out WUC. Subject to clause 33.10 (Principals Default), delay by the Principal in giving possession shall not be a breach of the Contract.
- 19.5 Possession of the site shall confer on the Contractor a right to only such use and control as is necessary to enable to Contractor to carry out the WUC and shall exclude camping, residential purposes and any purpose not connected with WUC, unless approved by the Superintendent.

Access for Principal and others

- 19.6 The Principal and the Principal's employees, consultants and agents may at any time after reasonable written notice to the Contractor, have access to any part of the site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the site other than WUC and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.
- 19.7 The Contractor shall at all reasonable times give the Superintendent access to WUC.
- 19.8 The Principal shall ensure that none of the persons referred to in this clause impedes the Contractor.

Minerals, fossils and relics

- 19.9 Valuable minerals, fossils, articles or objects of antiquity or of anthropological interest, treasure trove, coins, articles of value found on the site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:
- (a) take precautions to prevent their loss, removal or damage; and
 - (b) give the Superintendent written notice of the discovery.
- 19.10 All costs so incurred by the Contractor shall be assessed by the Superintendent and added to the Contract Price.

Advertising

- 19.11 The Contractor must not erect on the Site or Principals premise, or permit to be erected on the Site, any sign, advertisement, promotion or other display without the written approval of the Principal or the Principal's Representative.
- 19.12 Unless directed otherwise by the Superintendent, the Contractor shall remove any approved signs within 10 business days of the date of practical completion.
- 19.13 All expenses incurred in the provision, erection, relocation (if necessary) and removal of such signs shall be borne by the Contractor.
- 19.14 The Contractor shall not disclose any information concerning the WUC for distribution through any communications media without the Principal's prior written approval (which may be withheld at the Principal's discretion). The Contractor shall refer to the Principal any enquiries from any media concerning the Project.

20 LATENT CONDITIONS

Scope

- 20.1 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 which should reasonably have been anticipated by a competent Contractor at the time of the Contractor's tender if the Contractor had inspected:
- (a) all written information made available by the Principal to the Contractor for the purpose of tendering;
 - (b) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and
 - (c) the site and its near surrounds.

Notification

- 20.2 The Contractor, upon becoming aware of a latent condition while carrying out WUC, shall promptly, and where possible before the latent condition is disturbed, give the Superintendent written notice of the general nature thereof.
- 20.3 If required by the Superintendent promptly after receiving that notice, the Contractor shall, as soon as practicable, give the Superintendent a written statement of:
- (a) the latent condition encountered and the respects in which it differs materially;
 - (b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the latent condition; and

- (c) other details reasonably required by the Superintendent.

Deemed Variation

- 20.4 The effect of the latent condition shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the Contractor gave the notice required by the clause 20.2 but so as to include the Contractor's other costs for each compliance with clause 20.2 and 20.3.

21 QUALITY

Quality of material

- 21.1 Unless otherwise provided the Contractor shall use suitable new materials and proper and tradesman like workmanship.

Defective work

- 21.2 If the Superintendent becomes aware or work done (including material provided) by the Contractor which does not comply with the Contract, the Superintendent shall as soon as practicable give the Contractor written details thereof. If the subject work has not been rectified, the Superintendent may direct the Control to do any one or more of the following (including times for commencement and completion):

- (a) removed the material from the site;
- (b) demolish the work;
- (c) reconstruct, replace or correct the work; and
- (d) not deliver it to the site.

If:

- (a) the Contractor fails to comply with such a direction; and
- (b) that failure has not been made good within 8 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work rectified by others,
- (c) the Principal may have the work so rectified and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal.

Acceptance of defective work

- 21.3 Instead of a direction pursuant to clause 21.2, the Superintendent may direct the Contractor that the Principal elects to accept the subject work, whereupon there shall be a deemed variation.
- 21.4 The Superintendent may give a direction pursuant to this clause at any time before the expiry of the last defects liability period.

22 EXAMINATION AND TESTING

- 22.1 At any time before the expiry of defects liability period the Superintendent may direct that any WUC be tested. The Contractor shall give such assistance and samples and make accessible such parts of the WUC as may be directed by the Superintendents.

- 22.2 If testing is carried out to fulfil a requirement of the any specification for the purpose of verifying conformance with the Contract, the costs of and incidental to that testing shall be borne by the Contractor.
- 22.3 If further testing is carried out as result of a direction by the Superintendent, costs of and incidental to testing shall be borne by the Principal unless:
- (a) the test shows that the material or work is not in accordance with the Contract;
 - (b) the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent's prior approval where such was required; or
 - (c) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.
- 22.4 On completion of testing, the Contractor shall make good WUC so that it fully complies with the Contract.

23 PROGRAMMING

- 23.1 The Contractor shall give the Superintendent reasonable advance notice of when the Contractor needs information, materials, documents or instructions from the Superintendent or the Principal.
- 23.2 The Principal and the Superintendent shall not be obliged to give any information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the date of acceptance of tender.
- 23.3 The Superintendent may direct in what order and at what time the various stages or portions of WUC shall be carried out. If the Contractor can reasonably comply with the directions, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Superintendent written notice of the reasons.

24 CONSTRUCTION PROGRAM

- 24.1 If not submitted with the tender submission, the Contractor shall, within 14 business days after the date of acceptance of tender, prepare and submit a Construction Program to the Principal for a direction as to its suitability and acceptance.
- 24.2 The Construction Program shall take either of the following forms
- (a) a critical path network; or
 - (b) a bar chart.
- 24.3 The Construction Program shall show the Contractor's bona fide planned work activities and sequences for bringing the WUC to practical completion by the date for practical completion.
- 24.4 The Contractor shall implement and maintain a Construction Program.
- 24.5 The Contractor is fully responsible for maintaining the progress of all WUC in accordance with its Construction Program, including works carried out by the Contractor and by its Personnel.
- 24.6 The Contractor shall not, without reasonable cause, depart from an approved Construction Program.

25 CONFERENCES AND REPORTING

- 25.1 The Contractor must keep the Principal fully informed about:
- (a) any matters that may adversely affect the Contractor's ability to provide the WUC; and
 - (b) delivery of the Goods and/or completion of the WUC.

- 25.2 Prior to the commencement of WUC, the Contractor shall contact the Principals Representative in order to arrange a conference (**Prestart Conference**). The Prestart Conference shall:
- (a) be attended by the Superintendent and representatives of the Contractor and the Principal;
 - (b) establish lines of communication and clarify all relevant responsibilities and delegations;
 - (c) discuss frequency, location and attendees for Site Conferences;
 - (d) establish frequency of written reporting by the Contractor. The report shall be a brief written summary of the status of the works, plus any details of safety matters, industrial matters, weather conditions and lost time;
 - (e) discuss arrangements for submission and review of the Construction Program and Traffic Management Plan (where required);
 - (f) determine arrangements for site inspections and access to Site by Contractor and Principal;
 - (g) discuss arrangements for project records, including access by the Principals Representative, submission of test results and other reports, and disposition of records upon completion of the Contract;
 - (h) discuss setting out of the Site and delivery of materials;
 - (i) define arrangements for management of progress claims; variations; and non-conformances;
 - (j) discuss arrangements for all administrative requirements;
 - (k) deal with any other matters nominated by the Contractor or the Principal; and
 - (l) deal with requirements for a post-construction review.

25.3 The Pre start meeting shall be minuted and within five business days of the Prestart Conference, the Principal Representative shall issue to the Contractor a copy of the minutes. Within two business days of receipt of the copy of the minutes, the Contractor shall notify the Superintendent in writing of any item from the minutes which, in its opinion, has not been correctly recorded or accept the minutes. If necessary, within a further two business days, the Principal Representative shall arrange to amend the minutes where necessary and will return two copies to the Contractor for confirmation of the minutes. The Contractor shall confirm the minutes by returning a signed copy to the Superintendent within two business days of receipt.

25.4 The Contractor shall arrange for conferences to be held at the site (**Site Conferences**) to:

- (a) review progress of the WUC;
- (b) review the Construction Program;
- (c) review non-conformances and dispositions; and
- (d) discuss any matters of concern related to the project with a view to their resolution as far as possible.

26 SUPERINTENDENT

26.1 The Principal shall ensure that all times there is a Superintendent and that the Superintendent fulfills all aspects of the role and functions reasonably and in good faith. The Superintendent will be responsible for the overall administration of this Contract.

26.2 The Superintendent shall exercise of the functions under the following clauses:

- (a) clause 27 (Suspension);
- (b) clause 28 (Assessment of an EOT);

- (c) clause 28 (Issuing a certificate of practical completion);
 - (d) clause 30 (Pricing variations);
 - (e) clause 31 (Valuing progress certificates); and
 - (f) clause 32 (issuing final certificate).
- 26.3 The Superintendent shall act fairly and reasonably, within the time prescribed under the Contract or where no time is prescribed, within a reasonable time, and arrive at a reasonable measure or value of work, quantities or time.
- 26.4 In the exercise of all other functions of the Superintendent under the Contract, the Superintendent acts as the agent of the Principal (not as an independent certifier).
- 26.5 If pursuant to a provision of the Contract enabling the Superintendent to give directions, the Superintendent gives a direction, the Contractor shall comply with the direction.
- 26.6 Except where the Contract otherwise provides, a direction may be given orally, but the Superintendent shall as soon as practicable confirm it in writing.
- 26.7 If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent confirms it in writing.
- 26.8 Unless stated otherwise, where the Contractor is required to seek approval or an acceptance, the Superintendent is responsible for the decision whether to grant the approval or acceptance.
- 26.9 Notwithstanding any approval or acceptance granted by the Superintendent:
- (a) the Contractor is not relieved of its responsibilities and obligations under the Contract;
 - (b) the Superintendent does not owe any duty to the Contractor to review the Contractor's work or documentation for errors or omissions; and
 - (c) the Principal or Superintendent shall have no liability whatsoever to the Contractor by reason of any errors, deficiencies, defects or omissions in any work or documentation which has been provided by the Contractor.
- 26.10 Unless stated otherwise, where this Contract requires the Contractor to provide notice, samples, advice, plans, documentation, records, test results or other information, this shall be provided to the Superintendent.
- 26.11 A joint inspection means an inspection with the Contractor and Superintendent present.
- 26.12 The Superintendent may from time to time appoint an individual to exercise delegated Superintendents functions provided that notice has been provided in writing to the Contactor. The notice must provide the length of the appointment and the name of the individual and their contact details.

27 SUSPENSION

Superintendent suspension

- 27.1 The Superintendent may direct the Contractor to suspend the carrying out of the whole or part of the WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:
- (a) because of an act, default or omission of:

- (i) the Superintendent, the Principal or its employees, consultants, agents or other Contractors (not being employed by the Contractor; or
 - (ii) the Contractor, a Subcontractor or either's employees or agents;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

Contractor suspension

27.2 If the Contractor wishes to suspend the carrying out of the whole or part of WUC, otherwise than pursuant to clause 32.12, the Contractor shall obtain the Superintendent's prior written approval. The Superintendent may approve the suspension and may impose conditions of approval.

Recommencement

27.3 As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence suspended WUC as soon as reasonably practicable.

27.4 The Contractor may recommence WUC suspended pursuant to clause 27.2 or 32.12 at any time after reasonable notice to the Superintendent.

27.5 The Contractor shall bear the cost of suspension pursuant to clause 27.1 and clause 27.2. If the Contractor made the protection, safety or court order necessary, the Contractor shall bear the cost of suspension pursuant to clause 27.1. If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the Superintendent and added to or deducted from the Contract Price.

28 TIME AND PROGRESS (EOT)

Progress

28.1 The Contractor shall ensure that WUC reaches practical completion by the date for practical completion.

Notice

28.2 A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

Claim

28.3 The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching practical completion) as the Superintendent assesses ('EOT'), if:

- (a) the Contractor is or will be delayed in reaching practical completion by a qualifying cause of delay; and
- (b) the Contractor gives the Superintendent, within 28 days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent).

28.4 If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (b) of this clause, the Contractor shall claim an EOT for such delay by promptly giving the Superintendent a written claim evidencing the facts of that delay.

Assessment

28.5 When both non-qualifying and qualifying causes of delay overlap, the Superintendent shall apportion the resulting delay to WUC according to the respective causes' contribution.

28.6 In assessing each EOT the Superintendent shall disregard questions of whether:

- (a) WUC can nevertheless reach practical completion without an EOT; or
- (b) The Contractor can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the Contractor.

Extension of time

28.7 Within 28 days after receiving the Contractor's claim for an EOT, the Superintendent shall give to the Contractor and the Principal a written direction evidencing the EOT so assessed. If the Superintendent does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

28.8 Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the final certificate direct an EOT.

Practical completion

28.9 The Contractor shall give the Superintendent at least 21 days written notice of the date upon which the Contractor anticipates that practical completion will be reached.

28.10 When the Contractor is of the opinion that practical completion has been reached, the Contractor shall in writing request the Superintendent to issue a certificate of practical completion. Within 14 days after receiving the request, the Superintendent shall give the Contractor and the Principal either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.

28.11 If the Superintendent is of the opinion that practical completion has been reached, the Superintendent may issue a certificate of practical completion even though no request has been made.

Liquidated damages

28.12 If WUC does not reach practical completion by the date for practical completion, the Superintendent shall certify, as due and payable to the Principal, liquidated damages in Item 10 in Schedule 1 for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

28.13 If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal shall forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.

Delay damages

28.14 For every day the subject of an EOT for a compensable cause and for which the Contractor gives the Superintendent a claim for delay damages pursuant to clause 40, damages certified by the Superintendent under clause 40 shall be due and payable to the Contractor.

29 DEFECTS LIABILITY

29.1 The defects liability period shall commence on the date of practical completion at 4:00pm.

29.2 The Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

- 29.3 As soon as possible after the date of practical completion, the Contractor shall rectify all defects existing at the date of practical completion.
- 29.4 During the defects liability period, the Superintendent may give the Contractor a direction to rectify a defect which:
- (a) shall identify the defect and the date for completion of its rectification; and
 - (b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefore (not exceeding 12 months).
- 29.5 If the rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable to the Principal.

30 VARIATIONS

Directing variations

- 30.1 The Contractor shall not vary WUC except as directed by the Superintendent in writing.
- 30.2 The Superintendent, before the date of practical completion, may direct the Contractor to vary WUC by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provision of the Contract:
- (a) increase, decrease or omit any part;
 - (b) change the character or quality;
 - (c) change the levels, lines, positions or dimensions;
 - (d) carry out additional work;
 - (e) demolish or remove material or work no longer required by the Principal.

Proposed variations

- 30.3 The Superintendent may give the Contractor written notice of a proposed variation.
- 30.4 The Contractor shall as soon as practicable after receiving such notice, notify the Superintendent whether the proposed variation can be effected, together with, if it can be effected, the Contractor's estimate of the:
- (a) effect on the construction program (including the date for practical completion); and
 - (b) cost (including all time-related costs, if any) of the proposed variation.
- 30.5 The Superintendent may direct the Contractor to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost.
- 30.6 The Contractor's cost for each compliance with this clause shall be certified by the Superintendent as moneys due to the Contractor. A variation may also be a credit to the Principal.

Variations for convenience of Contractor

- 30.7 If the Contractor requests the Superintendent to direct a variation for the convenience of the Contractor, the Superintendent may do so. The direction shall be written and may be conditional. Unless the direction provides otherwise, the Contractor shall be entitled to neither extra time nor extra money.

Pricing

30.8 The Superintendent shall, as soon as possible, price each variation using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the Contract;
- (c) rates or prices in a priced bill of quantities, schedule of rates or schedule of prices, even though the Contract documents, to the extent that is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deduction shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the Contract Price.

31 PROGRESS CLAIMS

Progress claims

31.1 The Contractor shall claim payments progressively either at the end of each month or in stages.

31.2 All progress claims must:

- (a) be supported by evidence of the amount due to the Contractor, including a breakdown of the value of works executed since the commencement of the Contract and since the previous progress claim was made;
- (b) include a breakdown of all adjustments to the Contract Price certified by the Superintendent;
- (c) details of any amounts claimed by the Contractor which are disputed by the Superintendent;
- (d) include the total amount of all payments made by the Principal prior to the date of the progress claim;
- (e) when requested, provide a completed statutory declaration certifying the truth of the invoice or progress claim and supporting documentation; and
- (f) when requested, provide documentary evidence (to the satisfaction of the Superintendent) of payment of moneys due and payable to Personnel and/or Subcontractors in respect of that claim.

31.3 The Superintendent may request reasonable further information from the Contractor in respect of any progress claim. The Contractor must provide the information requested to the Superintendent within the time and in the form requested by the Superintendent before the Superintendent is required to assess any progress claim.

31.4 The Principal may withhold moneys certified as due and payable in respect of progress claims until the Contractor has complied with this clause in full.

31.5 Before final payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys directly to Personnel or a Subcontractor where:

- (a) permitted by law;
- (b) given a court order in favour of the Personnel or Subcontractor; or
- (c) requested in writing by the Contractor.

- 31.6 Such payment and a payment made to Personnel or Subcontractor in compliance with a legislative requirement shall be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to clause 31 or 32.

Certificates

- 31.7 The Superintendent shall, within 21 days after receiving such a progress claim, issue to the Principal and the Contractor:
- (a) a progress certificate evidencing the Superintendent's opinion of the moneys due from the Principal to the Contractor pursuant to the progress claim and reasons for any difference ('progress certificate'); and
 - (b) a certificate evidencing the Superintendent's assessment of retention moneys and moneys due from the Contractor to the Principal pursuant to the Contract.
- 31.8 If the Contractor does not make a progress claim in accordance with clause 28, the Superintendent may issue the progress certificate with details of the calculations and shall issue the certificate in paragraph (b).
- 31.9 If the Superintendent does not issue the progress certificate within 21 days of receiving a progress claim in accordance with clause 31.1, that progress claim shall be deemed to be the relevant progress certificate.
- 31.10 The Principal shall within 7 days after receiving both such certificates, or within 30 days after the Superintendent receives the progress claim, pay to the Contractor the balance of the progress certificate after deducting retention moneys and setting off such of the certificate in paragraph (b) as the Principal elects to set off. If that setting off produces a negative balance, the Contractor shall pay that balance to the Principal within 7 days of receiving written notice thereof.
- 31.11 Neither a progress certificate nor a payment of moneys shall be evidence that the subject WUC has been carried out satisfactorily. Payment other than final payment shall be payment on account only.

32 FINAL PAYMENT CLAIM AND CERTIFICATE

- 32.1 When the last of the following occurs:
- (a) the expiration of 21 days after receipt of the Contractor's final payment claim;
 - (b) where the Contractor fails to lodge such claim, the expiration of the period specified in this clause for the lodgement of the final payment claim by the Contractor; and
 - (c) all Services has been finally and satisfactorily executed and the Contractor has fulfilled all the Contractor's other obligations under the Contract,
- the Superintendent shall issue to the Contractor and to the Principal a final certificate endorsed 'Final Certificate'.
- 32.2 The final certificate the Superintendent shall certify the amount which in the Superintendent's opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.

Final payment claim and certificate

- 32.3 Within 28 days after the expiry of the last defects liability period, the Contractor shall give the Superintendent a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the Contract.

- 32.4 Within 42 days after the expiry of the last defects liability period, the Superintendent shall issue to both the Contractor and the Principal a final certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract.
- 32.5 Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 7 days after the debtor receives the final certificate.
- 32.6 The Final certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the Contract except for:
- (a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the final certificate;
 - (b) any defect or omission in the Works or any part thereof which was not apparent at the end of the last defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final certificate;
 - (c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
 - (d) unresolved issues the subject of any notice of dispute pursuant to clause 41, served before the 7th day after the issue of the final certificate.

33 DEFAULT

- 33.1 If a party breaches (including repudiates) the Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

Contractor's default

- 33.2 If the Contractor commits a substantial breach of the Contract, the Principal may, by hand or by post, give the Contractor a written notice to show cause. Substantial breaches include, but are not limited to:
- (a) Failing to:
 - (i) provide security;
 - (ii) provide evidence of insurance;
 - (iii) comply with a direction of the Superintendent pursuant to clause 29.3; or
 - (iv) use the materials or standards or work required by the Contract;
 - (c) wrongful suspension of work;
 - (d) substantial departure from a construction program without reasonable cause or the Superintendent's approval;
 - (e) where there is no construction program, failing to proceed with due expedition and without delay; and
 - (f) in respect of clause 31, knowingly providing documentary evidence containing an untrue statement.
- 33.3 A notice under this clause shall state that:
- (a) It is a notice under clause 35 of this Contract.
 - (b) The alleged substantial breach.
 - (c) That the Contractor is required to show cause in writing why the principal should not exercise a right referred to in this clause;
 - (d) The date and time by which the Contractor must show cause (which shall not be less than 7 clear days after the notice is received by the Contractor).
 - (e) The place at which cause must be shown.

Principal's rights

- 33.4 If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:
- (a) Take out of the Contractors hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant clause 33.8.
 - (b) Terminate the Contract.

Take out

- 33.5 The Principal shall complete work taken out of the Contractors hands and may:
- (a) Use materials, equipment and other things intended for WUC; and
 - (b) Without payment of compensation to the Contractor
 - (c) Take possession of and use such of the Plant and Equipment and other things on or in the vicinity of the site as were used by the Contractor; and
 - (d) Contract with such of the Contractors Subcontractors and Consultants as are reasonably required by the Principal to facilitate completion of WUC.
- 33.6 If the Principal takes possession of Plant and Equipment or other things the Principal shall maintain them and, subject to clause 33.8, on completion of the work, shall return such of them as are surplus.
- 33.7 The Superintendent shall keep records of the costs of completing the Work.

Adjustment on completion of works taken out

- 33.8 When works taken out of the Contractor's hands has been completed, the Superintendent shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations thereof) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
- 33.9 If the Contractor is indebted to the Principal, the Principal may retain Plant and Equipment or other things taken under clause 33.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Plant and Equipment or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

Principals default

- 33.10 If the Principal commits a substantial breach of the Contract, the Contractor may give the Principal a written notice to show cause. Substantial breaches include:
- (a) Failing to:
 - (i) provide security;
 - (ii) provide evidence of insurance;
 - (iii) rectify inadequate Contractor possession of the site. If that failure continues for longer than set out in item 11 of Schedule 1.
 - (iv) Make a payment due and payable pursuant to the Contract;
 - (b) The Superintendent not giving a certificate of practical completion.
- 33.11 A notice under this clause shall state that:
- (a) It is a notice under this clause 33.10.

- (b) The alleged substantial breach
- (c) That the Contractor is required to show cause in writing why the principal should not exercise a right referred to in this clause;
- (d) The date and time by which the Contractor must show cause (which shall not be less than 7 clear days after the notice is received by the Contactor).
- (e) The place at which cause must be show.

Contractors rights

33.12 If the Principal fails to show reasonable cause by the stated date and time, the Contractor may by written notice to the Principal suspend the whole or part of the WUC.

33.13 The Contractor shall remove the suspension if the Principal remedies the breach.

33.14 The Contractor may by written notice to the Principal terminate the Contract, if within 28 days of the date of suspension the Principal fails:

- (a) To remedy the breach; or
- (b) If the breach of not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.

33.15 Damages suffered by the Contract by reason of suspension shall be assessed by the Superintendent who shall certify them as moneys due and payable to the Contractor.

33.16 If the Contract is terminated pursuant to clause 33, the parties remedies, right and liability shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the contract as at an end and recover damages.

Insolvency Event

33.17 If an insolvency event occurs, there is no requirement by either party to issue a show cause notice under clause 33.

33.18 The Principal may exercise the rights at clause 33.4.

33.19 The Contract may exercise the rights at clause 33.12 or 33.14.

Termination by Frustration

33.20 If the Contract is frustrated:

- (a) The Superintendent shall issue a progress certificate for WUC carried out to the date of frustration, evidencing the amount which would have been payable had the Contract not been frustrated and had the Contractor been entitled to and made a progress claim on the date of frustration.
- (b) The Principal shall pay the Contractor:
 - (i) The amount due to the Contactor evidenced by all unpaid certificates;
 - (ii) The cost of materials and equipment reasonably ordered by the Contractor for WUC and which the Contractor is liable to accept, but only if they will become the Principal's property upon payment; and
 - (iii) The costs reasonably incurred:
 - (A) Removing temporary works and construction plant;

- (B) Returning to their place of engagement the Contractor, subcontractors and their respective employees engaged in the WUC at the date of frustration.

34 SUSTAINABLE PROCUREMENT

- 34.1 The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by this clause **(Sustainability Objectives)** and acknowledges that its support of the Sustainability Objectives assists the Member in meeting its own Sustainability Objectives.
- 34.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply the Works in a manner which seeks to support the Sustainability Objectives, which endeavours may include:
- (a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;
 - (b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:
 - (i) using recycled materials and products;
 - (ii) reducing emissions;
 - (iii) adopting greener energy solutions;
 - (iv) adopting environmentally sustainable design; and
 - (v) reducing wastage;
 - (c) providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);
 - (d) sponsoring and supporting local community groups and local community development initiatives;
 - (e) promoting fair workplace practices;
 - (f) promoting workplace health;
 - (g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and
 - (h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.
- 34.3 The Contractor agrees to provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.
- 34.4 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the WUC to the Principal are supplied from sustainable sources.

35 ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS

- 35.1 The Principal agrees to provide the Contractor with access to the Principal's Premises and Principal's Documents as reasonably required to provide the WUC.
- 35.2 The Contractor must only use the Principal's Documents for the sole purpose of providing the WUC and must take reasonable security measures to protect the Principal's Documents from unauthorised disclosure or use.
- 35.3 The Contractor acknowledges and agrees that:

- (a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;
- (b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Principal's Premises or Principal's Documents at any time; and
- (c) where the Principal has suspended or denied the Contractor's access to the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

36 CONFIDENTIALITY

36.1 The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as Confidential Information.

36.2 If required by a party the other party shall enter into a separate confidentiality agreement not to disclosure to anyone the confidential matter even after final certificate or earlier termination of the contract.

36.3 In this clause the following terms have the following meanings:

- (a) 'Disclosing Party' means the Party which has disclosed Confidential Information that is confidential to that Party; and
- (b) 'Receiving Party' means the Party to whom Confidential Information is disclosed by the Disclosing Party.

36.4 The Parties must not:

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract

except

- (c) with the prior consent of the Disclosing Party;
- (d) to the extent required by any Law or applicable securities regulation or rule;
- (e) in connection with any dispute or litigation concerning the Contract or its subject matter;
- (f) to the extent required by any Authority having jurisdiction over the Receiving Party; or
- (g) who is an employee, officer, financier, joint venture partner, related body corporate, Contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.

36.5 Before making a disclosure to a person, the Receiving Party must:

- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under the Contract, except where required at law;
- (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) where (g) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

37 DATA SECURITY

37.1 The Contractor must:

- (a) do all things that a reasonable and prudent person or entity 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 of the Contract.

37.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident.

38 INTELLECTUAL PROPERTY RIGHTS

38.1 The Contractor warrants that any supply by it of the WUC and any designs, materials, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.

38.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the supply of the WUC or from any designs, materials, documents or methods of working provided by it to the Principal.

38.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.

38.4 The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of the Contract.

38.5 The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal's Background Intellectual Property Rights to the extent necessary for the Contractor to supply the WUC.

38.6 All Intellectual Property Rights (other than the Contractor's Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor's cost or as otherwise agreed by the Parties.

38.7 The Contractor must ensure that:

- (a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Subcontractor of the Contractor or any other third party; and
- (b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the WUC or the Contract contrary to the interests of the Principal.

38.8 A Party must not:

- (a) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or
- (b) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.

38.9 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

39 RESTRUCTURE OF THE PRINCIPAL

39.1 If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure. To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

40 NOTIFICATION OF CLAIMS

40.1 As soon as practicable after a party becomes aware of any claim in connection with the subject matter of this Contract, that party shall give the other party and the Superintendent notice or a Dispute Notice under clause 41 or 42.

40.2 This clause does not apply to any claim for payment.

41 NOTICES

41.1 Any notice under the Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the receiving Party specified in the Tender Submission , Letter of Award, as applicable, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or
- (b) email to the email address of the receiving Party specified in the Tender Submission , Letter of Award, as applicable, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.

41.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:

- (a) if by delivery in person, when delivered to the address of the receiving Party;
- (b) if by post, 5 Business Days from and including the date of postage; and
- (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011 (WA)*,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving Party's time), it is regarded as received at 9.00am on the following Business Day.

42 SETTLEMENT OF DISPUTES

42.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).

42.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties may meet to seek to negotiate, in good faith, a resolution to the Dispute.

42.3 In the event that the Dispute remains unresolved after the time period referred to above either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with this clause. There is no requirement for a Party to agree to mediation.

42.4 A mediation under this clause shall:

- (a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice of intention under clause by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
 - (b) be conducted according to the rules proposed by the appointed mediator; and
 - (c) be conducted during a period of 30 Business Days (or such longer period as the Parties may agree in writing or as directed by the mediator) from the acceptance by the mediator of his or her appointment.
- 42.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.
- 42.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 42.4(c), or have elected not to mediate, either Party may take whatever other action is available to it under the Contract or the Law, including initiating proceedings in a court of competent jurisdiction.
- 42.7 Nothing in this clause 42 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

43 GENERAL

Severability

- 43.1 Should any part of the Contract be invalid or unenforceable, that part shall be:
- (a) read down, if possible, so as to be valid and enforceable; or
 - (b) if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,
- and the remainder of the Contract shall not be affected by such invalidity or unenforceability.
- 43.2 If pursuant to this Contract, clauses or parts in these clauses are deleted, the Contract shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from this Contract.

Waiver

- 43.3 A Party may only waive a right or power it has under the Contract by written notice to the other Party.
- 43.4 No forbearance, delay or indulgence by a Party in enforcing a provision of the Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

Entire Agreement

- 43.5 The Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, assurances, promises, statements, or negotiations, express or implied, in respect of the subject matter of the Contract.

Rights are cumulative

- 43.6 Subject to any express provision in the Contract to the contrary, the rights of a Party under the Contract are cumulative and are in addition to any other rights of that Party.

Governing Law

43.7 The Contract and any Dispute shall be governed by the Laws of the State of Western Australia and the Parties agree that the courts of that State will have exclusive jurisdiction to deal with any Dispute.

EXECUTION

Principal

*Signed by an authorised person(s) on behalf of the Town
of Claremont in accordance with Council Resolution .*

On / /

sign here ►

Chief Executive Officer

print name Liz Ledger

Contractor

EXECUTED by)

ACN)

in accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Director/Secretary/Sole Director-Secretary
(signature)
(Delete whichever is not applicable)

Director/Secretary (signature)
(Delete whichever is not applicable)

Director/Secretary/Sole Director-Secretary
(print full name)
(Delete whichever is not applicable)

Director/Secretary (print full name)
(Delete whichever is not applicable)

SCHEDULE 1

CONTRACT SPECIFICS

ITEM	DESCRIPTION	DETAILS
1	Contractor's Representative	Name Title Address Telephone Email
2	Principal's Representative	Kathleen Breuer Building Projects Manager 308 Stirling Highway, Claremont WA 6010 PO Box 54, Claremont WA 6910 kbreuer@claremont.wa.gov.au
3	Superintendent	Marty Symmons A/Director Infrastructure 308 Stirling Highway, Claremont WA 6010 P O Box 54, Claremont WA 6910 msymmons@claremont.wa.gov.au
4	Principals Address for Notices	308 Stirling Highway, Claremont WA 6010
5	Contractors Address for Notices	
6	Start Date	
7	Date for Practical Completion	
8	Insurance	As per clause 18
9	Contractors Security	
10	Liquidated Damages	\$ per day
11	Contractor possession of the site	If that failure continues for longer than days