



**General Conditions of Contract
For
Minor Works (Quotations)**

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	4
2.	NATURE OF CONTRACT	13
3.	TERM.....	14
4.	REPRESENTATIVES.....	14
5.	CONTRACTOR AS TRUSTEE	15
6.	QUALITY AND DESCRIPTION OF THE WORKS	15
7.	INSPECTION AND INFORMATION	16
8.	SITE.....	17
9.	LATENT CONDITIONS	18
10.	SETTING OUT THE WORKS	19
11.	CLEANING UP	19
12.	PLANT AND EQUIPMENT	20
13.	PAYMENT	20
14.	PAYMENT OF WORKERS AND SUBCONTRACTORS.....	22
15.	GST	23
16.	APPOINTMENT OF PRINCIPAL CONTRACTOR	23
17.	WORK HEALTH AND SAFETY.....	23
18.	SECURITY OF PAYMENT ACT	24
19.	PERFORMANCE OF THE WORKS	25
20.	CONSTRUCTION PROGRAM.....	26
21.	CONTRACTOR'S PERSONNEL	27
22.	COOPERATION	27
23.	EXAMINATION AND TESTING	27
24.	DAMAGE AND PROTECTION	28
25.	VARIATIONS.....	29
26.	TIME AND PROGRESS.....	30
27.	INDEPENDENT CONTRACTOR	33
28.	WARRANTIES	33
29.	DEFECTS LIABILITY PERIOD.....	34
30.	INSURANCE	35
31.	LIABILITY AND INDEMNITIES	38
32.	INTELLECTUAL PROPERTY.....	38
33.	CONFIDENTIAL INFORMATION	39
34.	TAXES.....	39
35.	FORCE MAJEURE.....	40
36.	DEFAULT OR INSOLVENCY	41
37.	TERMINATION BY PRINCIPAL FOR CONVENIENCE	43

38.	TERMINATION BY FRUSTRATION	44
39.	SUSPENSION	44
40.	NOTIFICATION OF CLAIMS	45
41.	DISPUTE RESOLUTION	45
42.	ASSIGNMENT AND SUB-CONTRACTING	46
43.	PERSONAL PROPERTY SECURITIES ACT 2009 (CTH).....	46
44.	PRIORITY.....	47
45.	RECORD KEEPING REQUIREMENTS.....	47
46.	NOTICES	48
47.	SECURITY.....	49
48.	ENTIRE AGREEMENT	50
49.	INDUSTRIAL ARRANGEMENTS	50
50.	OTHER MATTERS.....	51
51.	GOVERNING LAW.....	51
52.	COUNTERPARTS.....	51
53.	CONFLICT OF INTEREST.....	51
54.	PRIVACY AND PERSONAL INFORMATION HANDLING	52
55.	PRIVACY IMPACT ASSESSMENT	53
56.	INFORMATION BREACH	53

Minor Works Contract General Conditions

1. Definitions and Interpretation

1.1 In this Contract unless the contrary intention appears:

Annexure means an annexure to this Contract.

Approvals means all licences, permits, consents, determinations and approvals of any Statutory or legislative Authority relevant to complete the Works.

Authorised Representative means any person appointed by a party from time to time to act as an authorised representative for the purposes of this Contract and includes the Contractor's Representative in the case of the Contractor and the Principal's Representative in the case of the Principal.

Authority means:

- (a) any Government Agency;
- (b) any provider of public utility services to, near or past the Site whether statutory or not; and
- (c) any other person, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Site, the work on the Site or the granting of Approvals in respect of the Site or the Works;

Best Industry Practices means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by the best skilled and experienced contractors engaged in the same type of undertaking, under the same or similar circumstances and conditions.

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

Certificate of Practical Completion has the meaning in clause 26.16.

Civil Liability Act means the *Civil Liability Act 2002 (WA)*.

Commencement Date means the date on which this Contract is signed by the last party to do so unless otherwise specified in the Contract Specifics.

Compensable Cause means any act (other than an act authorised by the Contract) or omission (where the Contract imposes an obligation to act) of the Principal's Representative, the Principal or any of the Principal's Personnel.

Competent Contractor means an experienced and competent contractor with skill and experience in, and the expertise and resources necessary, to carry out and complete works of a similar nature to the Works, exercising Best Industry Practices.

Consequential Loss means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and

(h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this Contract,

including any of the above types of loss arising from an interruption to a business or activity, but does not include liquidated damages.

Contamination has the same meaning given to “*contaminated*” under the *Contaminated Sites Act 2003* (WA).

Construction Plant means appliances and things used in the carrying out of WUC but not forming part of the Works.

Construction Program means the program attached to the Contract, or where no program is attached to the Contract means the program prepared by the Contractor and approved by the Principal under clause 20 and, where updated and approved in writing by the Principal’s Representative in accordance with clause 20.5, includes the latest updated Construction Program.

Contract means this contract for the provision of the Works comprising the Contract Specifics, the Special Conditions (if any), the General Conditions, the Schedules and the Annexures.

Contract Date means the date upon which the Contract is executed by both Parties.

Contract Specifics means the section of this Contract headed “Contract Specifics”.

Contract Sum means:

- (a) where the Principal accepted a lump sum, the lump sum;
- (b) where the Principal accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Schedule of Rates; or
- (c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including Provisional Sums but excluding any additions or deductions which may be required to be made under this Contract.

Contractor means the Contractor specified in the Contract Specifics and includes the Contractor’s directors, officers, employees, agents, representatives and any Related Body Corporate together with the executors, administrators, substitutes, successors and permitted assigns of the Contractor.

Contractor Background IP means Intellectual Property Rights owned by or licensed to the Contractor (including know-how and technical information) which exist prior to the Contract Date or are developed or acquired by the Contractor independently of this Contract, which are used by the Contractor in the performance of the WUC or otherwise made available to the Principal under or in connection with this Contract, but does not include the Project IP.

Contractor’s Design Obligations means all tasks necessary to design and specify the WUC required by this Contract.

Contractor’s Personnel means the Contractor and its Workers including subcontractors and the directors, officers, employees, representatives, volunteers and agents of each of them.

Contractor’s Representative means the person identified as such in the Contract Specifics, as may be changed from time to time by the Contractor in accordance with clause 4.2.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Date for Practical Completion means:

- (a) where the Contract Specifics provides a date for Practical Completion, that date; or
- (b) where the Contract Specifics provides a period of time for practical completion, the last day of the period,

but if any EOT for Practical Completion is granted by the Principal's Representative or allowed in any arbitration or litigation, it means the date resulting therefrom.

Date of Practical Completion means:

- (a) the date evidenced in a Certificate of Practical Completion as the date upon which Practical Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date.

Defect means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in WUC; or
- (b) any aspect of the WUC which is not in accordance with the requirements of this Contract.

Defects Liability Period means, subject to clauses **Error! Reference source not found.** and 29, the period of time beginning on the Date of Practical Completion and ending on the expiry of the time period stated in the Contract Specifics.

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

Dispute means any dispute, difference of opinion or disagreement whatsoever between the parties arising under, out of or in connection with the performance of WUC and/or this Contract.

Environment has the same meaning as under the *Environmental Protection 1986* (WA).

Environmental Laws means all present and future Approvals and Laws concerning Environmental matters and any common law relating to the Environment.

EOT has the meaning in clause 26.3.

Event of Force Majeure means any of the following events provided such event is beyond the control and without the fault or negligence of the party affected by the event and which the affected party is unable to prevent:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent Authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) any act of God, flood, bush fire, drought, earthquake, landslide, cyclone or other natural disaster, but excluding weather conditions regardless of severity;
- (e) strikes at a national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, but excluding any industrial dispute which is specific to the performance of this Contract or a party to this Contract (or that party's subcontractors); and

- (f) maritime disasters.

Excluded Information means Principal's Confidential Information which:

- (a) is in or becomes part of the public domain (other than through breach of this Contract or breach of an obligation of confidence owed to the Principal or the Principal's Personnel);
- (b) the Contractor can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal or the Principal's Personnel (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Contractor acquires from a source other than the Principal or any of the Principal's Personnel where such source is entitled to disclose it.

Final Certificate has the meaning in clause 13.12.

Final Payment Claim means the final payment claim referred to in clause 13.11.

Freedom of Information Act means the *Freedom of Information Act 1992* (WA).

General Conditions means these general conditions.

General Conditions of Tendering means the general conditions of tendering issued by the Principal in relation to the performance of the Works the subject of this Contract.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any jurisdiction, whether federal, state, territorial or local.

GST has the meaning given to that term in the GST Act.

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

HSMP has the meaning given to it in clause 17.5.

A party is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the financier reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due;
- (h) in the case of a natural person, it commits an act of bankruptcy or an order is made for the sequestration in bankruptcy of the estate of the Contractor, or the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or

(i) something having a substantially similar effect to (a) to (h) happens in connection with that party under the law of any jurisdiction.

Information Breach means unauthorised access to, or unauthorised disclosure of, Personal Information under the possession or control of a party (or its Personnel) relating to this Contract.

Insurances means the insurances which the Contractor is required to obtain under clause 30 and the Contract Specifics.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Intended Purpose means the intended purpose of the Works as stated in this Contract or as could be reasonably inferred by a Competent Contractor.

IPP Entity has the same meaning as provided in the PRIS Act.

IPPs means the Principals as set out in the PRIS Act.

Key Personnel has the meaning in clause 21.1.

Law includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of any Government Agency within which WUC is being carried out;
- (b) standards, codes and guidelines applicable to the WUC;
- (c) certificates, licenses, consents, permits, approvals, directions and requirements of any organisation or Authority having jurisdiction in connection with the carrying out of the WUC which governs, controls or in any way affects the WUC; and
- (d) any fees and charges payable in connection with (a), (b) or (c).

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the performance of WUC under this Contract.

Minor Defects means Defects which do not prevent the Works from being reasonably capable of being used for their stated purpose and which can be rectified by the Contractor without prejudicing the convenient use of the Works by the Principal.

Notifiable Information Breach means an Information Breach of which a reasonable person would conclude is likely to result in serious harm to any individual to whom the information relates.

Notifiable WHS Incident means:

- (a) a “notifiable incident”, “serious injury or illness” or “dangerous incident” as defined in Part 3 of the *Work Health and Safety Act 2020* (WA) or any associated regulations; and/or
- (b) any other safety incident that must be reported to a WHS Regulator or other third-party.

Other Warranties means the other warranties in relation to the Works as specified in Schedule 4.

Party means the Contractor or the Principal as the context requires.

Parties means both the Contractor and the Principal.

Payment Certificate means the certificate issued by the Principal under clause 13.5.

Personal Information has the meaning given to it in the PRIS Act.

Pollution includes any solid, liquid gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by human beings or animals;
- (b) degraded in its capacity to support plant life;
- (c) Contaminated; or
- (d) otherwise environmentally degraded.

PPSA means the *Personal Property Securities Act 2009* (Cth).

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

- (a) the Works are complete except for Minor Defects (in number and nature):
 - (i) which, in the reasonable opinion of the Principal's Representative, alone or in the aggregate do not prevent the Works from being reasonably capable of being used for their stated purpose;
 - (ii) which the Principal's Representative determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which (individually or collectively) will not, in the opinion of the Principal's Representative, prejudice the convenient use of the Works;
 - (iv) which are not, in the opinion of the Principal's Representative, matters of safety, convenience, efficiency of use, general amenity or aesthetic acceptability for the occupants of, users of or visitors to the premises comprising the completed Works;
- (b) those Tests which are required by this Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed;
- (c) the Contractor has obtained and provided to the Principal any certificate, permit or other document necessary for the occupation and use of The Works under the *Building Act 2011* (WA) or other applicable law including an occupancy permit (including any interim occupancy permit that may be required in order to obtain a final occupancy permit from the relevant local Authority), certificate of construction compliance and certificate of design compliance in respect of the completed Works;
- (d) the Contractor has provided to the Principal all draft 'as-constructed' drawings, service, operation and maintenance manuals, warranties, and guarantees, the format and details of the drawings to be to the satisfaction of the Principal's Representative acting reasonably; and
- (e) all documents and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied to the Principal.

Principal Information means all information supplied to the Contractor by or on behalf of the Principal, regardless of its material form, for the purposes of this Contract.

Principal's Background IP means Intellectual Property Rights owned by or licensed to the Principal (including know-how and technical information) which exist prior to the Contract Date or are developed or acquired by the Principal independently of this Contract, which are made available to the Contractor under or in connection with this Contract, but does not include the Project IP.

Principal's Confidential Information means all information (in whatever form) or documentation disclosed to the Contractor or any of the Contractor's Personnel, under or in connection with this Contract, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal or any of the Principal's Personnel, or which the Contractor or the Contractor's Personnel ought reasonably to know to be confidential;
- (b) information which relates to the Contract or the business, affairs or activities of the Principal;
- (c) information derived or produced partly or wholly from the information referred to in (a) or (b) including any calculation, conclusion, summary or computer modelling; and
- (d) information which is capable of protection at law or equity as confidential information,
- (e) whether the information was disclosed:
- (f) orally, in writing or in electronic or machine readable form;
- (g) before, on or after the Contract Date; or
- (h) by the Principal or any of the Principal's Personnel or by any third person.

Principal's Personnel means the officers, employees, representatives, agents, consultants and contractors (other than the Contractor and the Contractor's Personnel) of the Principal.

Principal's Policies means the policies and guidelines set out and identified in the Contract Specifics and such others as notified to the Contractor from time to time.

Principal's Representative means, as at the Contract Date, the person identified as such in the Contract Specifics, as may be changed from time to time by the Principal in accordance with clause 4.4.

PRIS Act means the *Privacy and Responsible Information Sharing Act 2024* (WA).

Privacy Code of Practice refers to a code of practice, as defined in the PRIS Act, of a party which has been approved by the relevant Government Agency.

Progress Claim has the meaning given in clause 13.4 of this Contract.

Project IP means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of, or in connection with, the provision of WUC in accordance with this Contract, but does not include the Contractor Background IP or the Principal Background IP.

Provisional Sum has the meaning given in clause 2.5 and includes monetary sum, contingency sum and prime cost item.

Qualifying Cause of Delay means:

- (a) an Event of Force Majeure;
- (b) a direction for a Variation where a direction has been given by the Principal's Representative under clause 25.2 (but not a variation directed under clause 25.5);
- (c) an order of a court which restrains the Contractor from or disrupts the Contractor in carrying out the WUC (except where the order arises as a consequence of a breach of a duty owed at Law by the Contractor to any person);
- (d) any act (other than an act authorised by the Contract) or omission (where the Contract imposes an obligation to act) of the Principal's Representative, the Principal or any of the Principal's Personnel;
- (e) a suspension under clause 39; or
- (f) any other cause which is expressly stated in this Contract to be a cause for an EOT,

but only where:

- (g) the cause was beyond the reasonable control of the Contractor;
- (h) the Contractor did not contribute to the cause; and
- (i) the Contractor has taken all reasonable steps to mitigate the effect of the delay.

Regulations means the *Local Government (Functions and General) Regulations 1996* (WA).

Related Works means any works and any operation or maintenance service performed or undertaken or to be performed or undertaken by:

- (a) the Principal;
- (b) contractors, consultants or suppliers (other than the Contractor or the Contractor's Personnel) on behalf of the Principal; or
- (c) public or private utilities or a statutory or other relevant authorities,
either concurrently or sequentially with WUC:
- (d) at, on, over or adjacent to the Site; or
- (e) which may be connected to, associated with, ancillary to or otherwise related or relevant to WUC.

Schedule means each of the schedules to this Contract.

Schedule of Rates means the schedule of rates (if any) set out in Schedule 2.

Security means the security specified in the Contract Specifics.

Site means the site where WUC are to be performed as specified in the Contract Specifics.

Site Standards and Procedures means the documents listed in Schedule 3 and any other guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time.

SOP Act means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

SOP Act Business Day means a day other than a Saturday, Sunday or public holiday, or any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

Special Conditions means the special conditions set out in Schedule 6.

Specifications means the specifications in relation to the Works as set out in Schedule 1.

Standards means all industry standards and government regulations applicable to WUC.

Subcontractor means any person engaged by the Contractor in connection with WUC and includes consultants, subcontractors, suppliers and other contractors.

Taxes means all present and future sales, use, personal property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on the Principal's income) by any relevant Authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable, but does not include GST.

Temporary Works means work used in carrying out and completing WUC, but not forming part of the Works.

Tender means the offer submitted by the Contractor in accordance with the General Conditions of Tendering following an invitation of the Principal to perform the Works under this Contract and includes associated documentation.

Term has the meaning given in clause 3.

Test has the meaning in clause 23.

Trust means the trust established under the Trust Deed of which the Contractor is trustee.

Trust Deed means the deed of trust by which the Trust is established, a copy of which is set out in Annexure A.

Variation has the meaning given in clause 25.

Variation Direction means a written direction by the Principal to carry out a Variation in accordance with clause 25.2.

Variation Proposal has the meaning given in clause 25.4.

WHS means work health and safety.

WHS Legislation means all WHS legislation that applies to the Works and the WUC, including but not limited to the *Work Health and Safety Act 2020* (WA) and any associated regulations.

WHSMS means a workplace health and safety management system.

WHS Regulator means the Western Australian Department of Energy, Mines, Industry Regulation and Safety, WorkSafe Western Australia, or any other statutory Authority or department with power to investigate and/or regulate WHS matters under WHS Legislation.

WHS Requirements means the WHS Legislation and WHS guidance material that applies to the Works and the WUC from time to time, including but not limited to:

- (a) any relevant Australian Standards;
- (b) any relevant Codes of Practice or guidance material published by the Western Australian Department of Energy, Mines, Industry Regulation and Safety or other relevant WHS Regulator or Authority; and
- (c) any licences, terms or conditions imposed by any government or relevant WHS Regulator or Authority.

Work includes the provision of materials.

Workers has the same meaning as defined in the *Work Health and Safety Act 2020* (WA).

Works means the whole of the work to be carried out and completed in accordance with this Contract, including Variations provided for by this Contract, which by this Contract is to be handed over to the Principal and including any minor and incidental items of work to be inferred or which are usual and proper to be undertaken as part of the WUC, notwithstanding that any such items of work are not specifically or expressly mentioned or identified.

WUC means the work which the Contractor is or may be required to carry out and complete under this Contract and includes Variations.

1.2 In this Contract unless the contrary intention appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
- (b) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an Authority;

- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (g) a reference to a clause is a reference to a clause in this Contract;
- (h) a reference to a schedule is a reference to a schedule to this Contract;
- (i) a reference to a third person or a third party is a reference to a person who is not a party to this Contract and excludes the Contractor's Personnel;
- (j) a reference to "dollar" or "\$" is a reference to Australian dollars;
- (k) the words "including" and "include" are a reference to "including, but not limited to" and are not words of limitation; and
- (l) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or a part thereof.

1.3 Headings are inserted for convenience only and do not affect the interpretation of this Contract.

2. Nature of Contract

- 2.1 The Contractor must carry out and complete the WUC (including the Contractor's Design Obligations) in accordance with this Contract and Directions authorised by this Contract.
- 2.2 Subject to the performance by the Contractor of its obligations under this Contract and to the satisfaction of any conditions precedent to the Contractor's right to receive payment on account of the Contract Sum, the Principal must pay the Contractor the Contract Sum adjusted by any additions or deductions made pursuant to this Contract.
- 2.3 Quantities in a Schedule of Rates are estimated quantities only.
- 2.4 The Schedule of Rates (if applicable) is only relevant for the purposes of assessing a Progress Claim and assessing the value of Variations.
- 2.5 A Provisional Sum included in this Contract will not itself be payable by the Principal but where, pursuant to a Direction, the work or item to which the Provisional Sum relates is carried out or supplied by the Contractor, the work or item must be priced by the Principal's Representative, and the difference added to or deducted from the Contract Sum.
- 2.6 Where any part of such work or item referred to in clause 2.5 is carried out or supplied by a Subcontractor, the Principal's Representative will allow the amount payable by the Contractor to the Subcontractor for the work or item, disregarding:
- (a) any damages payable by the Contractor to the Subcontractor or vice versa; and
 - (b) any deduction of cash discount for prompt payment.
- 2.7 Except as otherwise expressly provided in this Contract, the Contract Sum is not subject to rise and fall and is inclusive of all direct and indirect costs incurred by the Contractor in complying with its obligations under this Contract, including:
- (a) all charges for packaging, packing and delivery;
 - (b) fees and levies;
 - (c) labour, machines and materials;
 - (d) mobilisation, demobilisation and establishment charges;
 - (e) office costs;

- (f) transportation, travel, vehicles and equipment;
- (g) costs of insurances and other securities; and
- (h) all Taxes.

2.8 The Contractor acknowledges and agrees that:

- (a) the Provisional Sum amounts included this Contract include an allowance for profit and attendance;
- (b) the Provisional Sum amounts are deemed to be included in the Contract Sum;
- (c) where expenditure of the Provisional Sum amount pursuant to this clause is less than the allowance in the Contract, the Principal shall be entitled to a deduction from the Contract Sum of that portion of profit and attendance on the unexpended amount of the Provisional Sum, calculated using the rate set out in the Contract Specifics.

2.9 The Contractor shall be deemed to have:

- (a) examined carefully this Contract and any other information made available by the Principal to the Contractor in connection with the Tender or this Contract;
- (b) examined the Site and its surroundings (if applicable);
- (c) satisfied itself as to the correctness and sufficiency of its Tender and that the Contract Sum covers the entire cost of complying with all of its obligations under this Contract and of all matters and things necessary for the due and punctual performance and completion of this Contract; and
- (d) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender and which was provided or obtainable by the making of reasonable enquiries.

2.10 Failure by the Contractor to do all or any of the things it is deemed to have done under clause 2.9 shall not relieve the Contractor of its obligation to perform and complete this Contract in accordance with its terms.

3. Term

3.1 The term of this Contract will commence on the Contract Date and will continue until each party has fulfilled its obligations under this Contract, unless it is terminated earlier in accordance with its terms.

4. Representatives

4.1 The person nominated by the Contractor as its representative for the purpose of this Contract is identified in the Contract Specifics and will be the Contractor's Representative. Subject to clause 4.5, the Contractor's Representative has authority to issue notices to the Principal and receive notices from the Principal and to perform any other functions specifically identified as being its responsibility or within its authority under this Contract.

4.2 The Contractor may change the Contractor's Representative at any time by notice in writing to the Principal. The Contractor is responsible for all acts and omissions of the Contractor's Representative.

4.3 The person nominated by the Principal as its representative for the purpose of this Contract is identified in the Contract Specifics and will be the Principal's Representative. Subject to clause 4.5, the Principal's Representative has authority to issue directions, notices and certificates to the Contractor and to receive notices from the Contractor and to perform any other functions specifically identified as being its responsibility or within its authority under this Contract.

4.4 The Principal may at any time change the Principal's Representative by notice to the Contractor.

4.5 Neither the Contractor's Representative or the Principal's Representative have authority to give notices under clauses 35, 36, 40 or 41.

5. Contractor as trustee

- 5.1 If the Contractor enters into this Contract in its capacity as the trustee of a trust, the following provisions of this clause 5 apply.
- 5.2 The Contractor represents and warrants to the Principal that:
- (a) the Contractor is the only trustee of the Trust;
 - (b) no action has been taken or proposed to remove it as trustee of the Trust;
 - (c) the copy of the Trust Deed delivered to the Principal prior to the execution of this Contract as set out in Annexure A discloses all the terms of the Trust and there has been no other amending deed, instrument of appointment, vesting deed or other instrument of any description whatsoever that affects the terms of the Trust;
 - (d) the Contractor has power under the Trust Deed to enter into and observe its obligations under this Contract and it has entered into this Contract in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
 - (e) the Contractor has the right to be fully indemnified out of the property or fund of the Trust in respect of obligations incurred by it under this Contract without any impairment and without any set off on account of any liability owed by it to the beneficiaries of the Trust in respect of any breach of trust or otherwise;
 - (f) the property and fund of the Trust is sufficient to satisfy the right of indemnity referred to in clause 5.2(e) and all other obligations in respect of which the Contractor has a right to be indemnified out of the property and fund of the Trust;
 - (g) the Contractor is not in default under the Trust Deed; and
 - (h) the Contractor has in full force and effect the authorisations necessary to make and enter into this Contract, perform obligations under it and allow it to be enforced (including, without limitation, under the Trust Deed and the Contractor's constituent documents).
- 5.3 The Contractor acknowledges that it enters into this Contract both in its own capacity and in its capacity as trustee of the Trust.
- 5.4 At the request of the Principal, the Contractor agrees to exercise its right of indemnity from the property and fund of the Trust and to the beneficiaries of the Trust in respect of obligations incurred by the Contractor under this Contract.
- 5.5 The Contractor agrees to observe its obligations as trustee of the Trust.
- 5.6 The Contractor must not, without the consent of the Principal, do anything that:
- (a) effects or facilitates the retirement, removal or replacement of the Contractor as trustee of the Trust;
 - (b) could restrict the Contractor's right of indemnity from the property and fund of the Trust in respect of obligations incurred by the Contractor under this Contract; or
 - (c) effects or facilitates the termination of the Trust, the variation of the Trust Deed or the resettlement of the property and fund of the Trust.

6. Quality and description of the Works

- 6.1 Unless otherwise provided the Contractor must use suitable new materials and proper and tradesmanlike workmanship in performing the WUC, with such materials to be of merchantable quality and all materials and workmanship to comply with all applicable Laws and Australian Standards.
- 6.2 If this Contract elsewhere requires further quality assurance, the Contractor must:
- (a) plan, establish and maintain a conforming quality system; and

- (b) ensure that the Principal's Representative has access to the quality system of the Contractor and subcontractors so as to enable monitoring and quality auditing.
- 6.3 Any quality system under clause 6.2 is to be used only as an aid to achieving compliance with this Contract and to document such compliance and does not discharge the Contractor's other obligations under this Contract.
- 6.4 If the Principal's Representative becomes aware of work done (including material provided) by the Contractor which does not comply with this Contract, the Principal's Representative must as soon as practicable give the Contractor written details of such non-compliance.
- 6.5 If the work referred to in clause 6.4 has not been rectified, the Principal's Representative may Direct the Contractor to do any one or more of the following (including times for commencement and completion):
 - (a) remove the material from the Site;
 - (b) demolish the work;
 - (c) reconstruct, replace or correct the work; and
 - (d) not deliver material to the Site.
- 6.6 If the Contractor fails to comply with a Direction under clause 6.5 and that failure has not been made good within 8 days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work rectified by others, the Principal may have that work so rectified and the Principal's Representative must certify the cost incurred as moneys due and payable from the Contractor to the Principal.
- 6.7 Instead of a Direction pursuant to clause 6.5, the Principal's Representative may Direct the Contractor that the Principal elects to accept the subject work. In the event of any resulting decrease in the value to the Principal of the Works and any other loss suffered by the Principal, such loss shall be valued under clause 25.3.
- 6.8 The Principal's Representative may give a Direction pursuant to this clause 6 at any time before the expiry of the last Defects Liability Period.

7. Inspection and information

- 7.1 The Contractor must provide to the Principal at its request:
 - (a) copies of all documents relating to the WUC which are to be provided under this Contract;
 - (b) a Construction Program for the WUC which are to be provided under this Contract;
 - (c) progress reports setting out in such detail as the Principal requires the status of the design, construction and performance of the WUC which are to be provided under this Contract; and
 - (d) any other information and assistance required to identify, evaluate, implement and report on any matter required by Law, in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Contract.
- 7.2 At all reasonable times, the Principal has the right to inspect, examine and test the WUC.
- 7.3 The Contractor must ensure that the Principal and the Principal's Personnel are provided with access to the Site to allow them to review, examine and witness performance of the WUC.
- 7.4 Any review, inspection, examination or testing that the Principal undertakes does not relieve the Contractor of its responsibilities under this Contract.
- 7.5 The Contractor must ensure that the Principal's rights set out in this clause 7 are included in any subcontract entered into by the Contractor in respect of the performance of the WUC.

8. Site

8.1 The Contractor represents and warrants that before the Contract Date, the Contractor has:

- (a) had access to the Site;
- (b) carried out its own visual inspections of the Site and the Environment;
- (c) carried out all necessary tests; and
- (d) conducted its own enquiries,

in order to establish, understand and satisfy itself as to the nature and status of:

- (e) the Site and the Environment; and
- (f) all risks and contingencies associated with the Site and the Environment, including but not limited to:
 - (i) the condition and position of, and possible affectation to, adjacent buildings and adjacent sites; and
 - (ii) the surface conditions and characteristics of both the Site and those adjacent buildings and sites.

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

8.3 The Contractor accepts sole responsibility for, and assumes the risk of, all loss, delay and disruption arising out of the physical conditions and characteristics of the Site and the Environment.

8.4 Without limiting clauses 8.1, 8.2 and 8.3, the Contractor accepts sole responsibility for, and assumes the risk of, all loss, delay and disruption arising out of or in connection with all Contamination in, under or around the Site and the Environment which came into existence after the Contract Date.

8.5 From the Commencement Date until the Date of Practical Completion, the Principal must provide the Contractor with non-exclusive access to or possession of the Site, which shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out the WUC.

8.6 The Contractor must, in performing the WUC, comply with the Principal's rules, procedures and practices, including the:

- (a) Site Standards and Procedures;
- (b) Specifications;
- (c) safety requirements set out in this Contract;
- (d) Environmental requirements set out in this Contract and the Environmental Laws; and
- (e) any other policies set out in the Contract Specifics.

8.7 Except and only to the extent permitted by the relevant Authority, the Contractor must not cause Pollution to occur or obstruct or damage the Environment.

8.8 The Contractor must immediately remove and make good any Pollution to the Environment caused by the Contractor or the Contractor's Personnel or as a consequence of, or incidental to, the performance of the WUC.

8.9 If the Contractor fails to comply with its obligations under clause 8.8:

- (a) the Principal may have the remedial work carried out by third parties and the cost of doing so shall be a debt due and payable on demand by the Contractor to the Principal; and

- (b) the Contractor indemnifies the Principal against any loss, cost, damage or expense (including any fine or penalty imposed by any Authority) which the Principal may incur as a consequence of that failure, with the amount of such loss, cost, damage or expense to be a debt due and payable on demand by the Contractor to the Principal.

8.10 In addition to any other provision in this Contract, the Contractor acknowledges that it is fully responsible for and must bear all costs associated with the removal and disposal of any Pollution including any hazardous material encountered in the execution of the WUC.

9. Latent conditions

9.1 The following words have the following meanings in this clause 9:

“Latent conditions” means 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 Contract Date 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 Tender and reasonably obtainable by the making of reasonable enquiries;
- (c) the Site Information; and
- (d) the Site and its near surrounds.

“Site Information” means any information relevant to the physical conditions of the Site and its near surrounds which is supplied or made available to the Contractor by or on behalf of the Principal whether or not the information comprises part of this Contract.

9.2 For the purposes of this clause 9:

- (a) the Contractor is deemed to have (prior to entering into this Contract):
 - (i) examined the Site and its surroundings and to have taken all necessary tests and made all necessary inquiries to satisfy itself as to the nature of the physical conditions and characteristics of the Site, including but not limited to the condition and position of, and possible affectation to, adjacent buildings and adjacent sites and the surface conditions and characteristics of both the Site and those adjacent buildings and adjacent sites; and
 - (ii) reviewed the Site Information; and
- (b) the Contractor acknowledges and agrees that:
 - (i) the Principal makes no warranties and gives no guarantee as to the sufficiency or accuracy of the Site Information; and
 - (ii) it has formed its own view on the issues covered in the Site Information.

9.3 The Contractor, upon becoming aware of a Latent Condition while carrying out WUC, must promptly (and in any event within 2 Business Days), and where possible before the Latent Condition is disturbed, give the Principal's Representative written notice of the general nature of the Latent Condition.

9.4 If required by the Principal's Representative, promptly after receiving the notice referred to in clause 9.3, the Contractor must, as soon as practicable (and in any event within 5 Business Days), give the Principal's Representative a written statement of:

- (a) the Latent Condition encountered and the respects in which it differs materially from the physical conditions which should reasonably have been anticipated by a Competent Contractor at the Contract Date;

- (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 Principal's Representative.

9.5 Where the Contractor is unable to comply with the timeframe to provide the notice in clause 9.4 due to the nature or complexity of the Latent Condition, then the Contractor must provide the notice as soon as reasonably practical taking into account the nature or complexity of the Latent Condition.

9.6 Subject to the Contractor having given the notice required by clause 9.3 and any statement required by the Principal's Representative under clause 9.4 (if applicable), the effect of the Latent Condition shall be a deemed Variation, priced having no regard to additional cost incurred more than 14 days before the date on which the Contractor gave the notice required by clause 9.3 but so as to include the Contractor's other costs for each compliance with clause 9.3 and 9.4.

10. Setting out the Works

10.1 The Contractor shall obtain the data, survey marks and like information necessary for the Contractor to set out the Works, together with any survey marks specified in this Contract. The Contractor shall then set out the Works in accordance with this Contract.

10.2 The Contractor shall be responsible for the accuracy of all information relating to the Site, including any survey or other information which may be necessary to enable the Contractor to properly and adequately locate and define the Site and its legal limits and to observe any applicable title restrictions.

10.3 The Contractor must rectify every error in the position, level, dimensions or alignment of any WUC after promptly notifying the Principal's Representative and unless the Principal's Representative within 3 days Directs otherwise.

10.4 The Contractor shall keep in their true positions all survey marks supplied by the Principal's Representative.

10.5 The Contractor must reinstate any survey mark disturbed, after promptly notifying the Principal's Representative and unless the Principal's Representative within 3 days directs otherwise.

10.6 If the disturbance referred to in clause 10.5 was caused by the Principal's Representative or a person referred to in clause 22.5 other than the Contractor or the Contractor's Personnel, the cost incurred by the Contractor in reinstating the survey mark shall be assessed by the Principal's Representative and added to the Contract Sum.

11. Cleaning up

11.1 The Contractor must keep the Site and WUC clean and tidy and regularly remove rubbish and surplus material.

11.2 Within 14 days after the Date of Practical Completion (or such longer period as the Principal's Representative allow), the Contractor must remove Temporary Works and Construction Plant.

11.3 If:

- (a) the Contractor fails to comply with its obligations under this clause 11; and
- (b) that failure has not been made good within 5 days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Principal's Representative must certify the cost incurred as moneys immediately due and payable from the Contractor to the Principal.

11.4 The rights given by clause 11.3 are additional to any other rights and remedies.

12. Plant and equipment

- 12.1 Unless otherwise provided in this Contract, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or any other property and items the Contractor requires to comply with its obligations under this Contract.
- 12.2 Any plant, equipment, tools, appliances or any other property and items listed in the Contract Specifics which the Principal provides to the Contractor to enable the Contractor to perform its obligations under this Contract will remain the Principal's property and must only be used by the Contractor for the purpose of complying with its obligations under this Contract.
- 12.3 The Contractor must keep the Principal's property in good order and condition.
- 12.4 All plant, machinery and equipment used in connection with the performance of the WUC must be maintained in a fully serviced and safe condition in accordance with all relevant Laws and the Principal's requirements..

13. Payment

- 13.1 The Principal agrees to pay the Contractor the Contract Sum in accordance with this clause.
- 13.2 The Contractor must claim payment progressively in accordance with the Contract Specifics and this clause 13.
- 13.3 An early claim for payment will be deemed to have been made on the date for making that claim. Early lodgement of a claim for payment shall not require the Principal's Representative to respond any earlier than would have been the case if the claim for payment had been made in accordance with the Contract.
- 13.4 Each claim for payment under this clause 13 ("**Progress Claim**") must be given in writing to the Principal's Representative and must include details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to provisions of this Contract.
- 13.5 Within 15 SOP Act Business Days of receipt of a Progress Claim under clause 13.1, the Principal's Representative must assess the claim and issue to the Contractor a payment certificate ("**Payment Certificate**") stating the amount of the payment which, in the Principal's Representative's opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal (as applicable). The Principal's Representative must set out in the Payment Certificate the calculations employed to arrive at the amount and:
- (a) if the Principal is not required to make any payment, indicate that the Principal is not required to make any payment;
 - (b) if the Principal is required to make a payment that is less than the amount claimed in the Progress Claim, then the Payment Certificate must indicate:
 - (i) why the amount is less or why no payment is required (**Reasons**); and
 - (ii) if the reason is the Principal is withholding payment, the reason why the Principal is withholding payment.

Where any Reason included in the Payment Certificate is that the Principal is asserting a right to withhold payment (or part of the payment), the Reason must identify why the Principal is withholding payment, which may include any rights to withhold retention money, liquidated damages, set-off or deduction.

The Principal's Representative must also set out, as applicable, in any Payment Certificate issued pursuant to this clause 13.5, the allowances made for:

- (c) the value of work carried out by the Contractor in the performance of this Contract to the date of the Progress Claim;
- (d) amounts otherwise due from:
 - (i) the Principal to the Contractor; and

- (ii) the Contractor to the Principal;

arising from any circumstances prior to the date of the Payment Certificate; and

 - (e) amounts paid previously under this Contract,

arising out of the Contract, resulting in there being an amount due to the Contractor or the Principal, as the case may be.
- 13.6 If the Contractor fails to make a Progress Claim under clause 13.1, the Principal's Representative may nevertheless issue a Payment Certificate and the Principal or the Contractor, as the case may be, must pay the amount so certified within 5 Business Days of the issue of that Payment Certificate.
- 13.7 The Principal's Representative may at any time issue a Payment Certificate (including for the purposes of correcting any error in a previous Payment Certificate) and the Principal or the Contractor, as the case may be, must pay the amount so certified within 5 Business Days of the issue of that Payment Certificate.
- 13.8 Subject to the provisions of this Contract, within 20 SOP Act Business Days of receipt of a progress claim under clause 13.1, the Principal must pay to the Contractor or the Contractor must pay to the Principal, as the case may be, an amount not less than the amount shown in such Payment Certificate. A payment made pursuant to this clause 13.8 will not prejudice the right of either party to dispute under clause 41 whether the amount so paid is the amount properly due and payable and on determination (whether under clause 41 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.
- 13.9 Neither a Payment Certificate nor a payment of moneys will be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under clause 13.12.
- 13.10 Any Payment Certificate issued by the Principal's Representative under this clause 13 will be deemed to be a payment schedule issued by the Principal for the purpose of section 25 of the SOP Act where issued in response to a Progress Claim which is a claim for payment under the SOP Act.
- 13.11 Within 28 days after the expiry of the last Defects Liability Period and the completion of all Defects notified to the Contractor during the Defect Liability Period, whichever is the later, the Contractor must give the Principal's Representative 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 this Contract.
- 13.12 Within 15 SOP Act Business Days after receipt of the Final Payment Claim, the Principal's Representative must 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 this Contract. If the Contractor fails to lodge a Final Payment Claim within the 28 day period referred to in clause 13.11 the Principal's Representative may, in his or her discretion, issue a Final Certificate in accordance with this clause 13.12.
- 13.13 In the Final Certificate, the Principal's Representative shall:
 - (a) identify the claim for payment to which it relates;
 - (b) state that, if the Principal will:
 - (i) be making payment, the amount of the payment (if any) that the Principal proposed to make (the **Final Certificate Scheduled Amount**);
 - (ii) not be making any payment, the Principal does not propose to make any payment; and
 - (c) state the reasons if the Final Certificate Scheduled Amount is more or less than the amount claimed by the Contractor (**Final Certificate Reasons**) and if any Final Certificate Reason is that the Principal is withholding payment (or part of the payment), the reason why the Principal is

withholding payment, which may include any rights to retention, liquidated damages, set-off or deduction.

- 13.14 Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 20 SOP Act Business Days of receipt of the Final Payment Claim.
- 13.15 Interest as specified in the Contract Specifics will be due and payable after the date of default in payment.
- 13.16 The Principal may deduct from any moneys otherwise due to the Contractor:
- (a) any debt or other moneys due and payable from the Contractor to the Principal; and
 - (b) any claim to money which the Principal may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,
- under this Contract, and if the moneys due to the Contractor are insufficient to discharge the debt or claim, the Principal may have recourse to any Security provided by the Contractor. The Principal is not obliged to exercise rights of deduction or set-off before recourse to Security.
- 13.17 The rights given to the Principal under clause 13.16 are in addition to and do not limit or affect any other rights of the Principal under this Contract or at law and nothing in this clause 13.17 affects the right of the Principal to recover from the Contractor the whole of the debt or claim in question or any balance that remains owing.
- 13.18 Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under clause 13.16 will not prejudice the Principal's right to subsequently exercise its right of deduction under clause 13.16.
- 13.19 Clauses 13.16 to 13.18 will survive any termination of this Contract.
- 13.20 No payment by the Principal nor the issue of any certificate constitutes acceptance by the Principal of the Works or any part thereof or releases the Contractor from any of its obligations or liabilities under the Contract.

14. Payment of workers and subcontractors

- 14.1 Not earlier than 10 SOP Act Business Days after the Contractor has made claim for payment under clause 13, but not later than 14 SOP Act Business Days, the Contractor must give in respect of a Progress Claim, a statutory declaration in the form attached at Schedule 7, sworn by the Contractor (or a representative of the Contractor who is in a position to know), that all payment of moneys due and payable to the Contractor's Personnel as at the date of the declaration have been made.
- 14.2 Subject to clause 14.3, the Principal may withhold moneys certified due and payable in respect of a Progress Claim until the Contractor complies with clause 14.1.
- 14.3 The Principal must not withhold payment of moneys referred to in clause 14.2 in excess of the moneys evidenced pursuant to subclause 14.1 as due and payable to workers and subcontractors.
- 14.4 Before final payment in accordance with clause 13.12, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Act) may pay unpaid moneys the subject of subclause 14.1 directly to a worker or a subcontractor where:
- (a) permitted by Law;
 - (b) given a court order in favour of the worker or subcontractor; or
 - (c) requested in writing by the Contractor,
 - (d) and such payment and a payment made to a worker or subcontractor in compliance with a Law will be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to clause 13.8 or 13.14, as the case may be.

15. GST

- 15.1 Unless expressly stated otherwise, the consideration specified in this Contract does not include any amount for GST.
- 15.2 If a supply under this Contract is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.
- 15.3 The additional amount referred to in clause 15.2 is payable at the same time as the consideration for the supply is payable or to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice for the supply.
- 15.4 If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.
- 15.5 If a party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- 15.6 In this clause 15 the following words have the following meanings:

“Amount of the Consideration” means:

- (a) the amount of any payment in connection with a supply: and
- (b) in relation to non-monetary consideration in connection with a Supply, the GST Exclusive Market Value of that consideration as reasonably determined by the supplier.

“GST Exclusive Value”, “Input Tax Credit”, “recipient”, “supply”, and “Tax Invoice” have the meanings given to them in the GST Act.

“Supplier” means the person making a supply.

16. Appointment of Principal Contractor (where 5 or more persons are on site)

- 16.1 The Contractor acknowledges that:
- (a) it is authorised to be and is appointed as the Principal Contractor for the purposes of the WHS Legislation; and
 - (b) it is authorised by the Principal to have management and control of the Site and discharge the duties of a Principal Contractor under WHS Legislation.

17. Work Health and Safety

- 17.1 The Contractor acknowledges that the Principal is relying on the Contractor’s skill and experience in the Works and the WUC to perform the Contract safely and in accordance with the WHS Requirements.
- 17.2 The Contractor must ensure that the Contractor’s Personnel:
- (a) are competent and have the necessary skills, qualifications, licences and experience to perform their work safely;
 - (b) understand and will comply with the WHS Requirements.
- 17.3 The Contractor must ensure that it has adequate oversight of the Contractor’s Personnel to monitor if they are working safely and in accordance with the WHS Requirements when providing the WUC and the Works.
- 17.4 Not Used
- 17.5 The Contractor warrants that it:
- (a) has before commencing the Works developed a health and safety management plan specific to the provision of the WUC and the Works that complies with the WHS Requirements (**HSMP**);

- (b) will maintain, and where necessary update, the HSMP to ensure it remains fit for purpose over the life of the Contract; and
- (c) will ensure that the Works can be carried out without risk to the health and safety of either those doing the Works, or anyone else who may be at or near the construction Site and the WUC is managed in accordance with the HSMP and all applicable WHS Requirements.

17.6 The Contractor must immediately notify the Principal of:

- (a) each Notifiable WHS Incident; and/or
- (b) any investigation or enforcement action taken by a WHS Regulator or other third-party, including:
 - (i) the issue of any improvement, prohibition or any other statutory notice related to WHS; and/or
 - (ii) proceedings under WHS Legislation.

17.7 The Contractor must give the Principal a copy of any notification sent to a WHS Regulator or other third-party because of a Notifiable WHS Incident within 24 hours of sending the notification to the WHS Regulator.

17.8 If requested by the Principal, the Contractor must give the Principal a copy of:

- (a) all documents the Contractor is required to provide to a WHS Regulator or other third-party in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party;
- (b) all documents a WHS Regulator or other third party sends to the Contractor in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party; and
- (c) any other document in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third-party.

17.9 The Principal may, but is not required to:

- (a) investigate any Notifiable WHS Incident; and/or
- (b) participate in an investigation of a Notifiable WHS Incident conducted by the Contractor.

17.10 The Contractor must cooperate with the Principal and help facilitate the Principal's investigation, if the Principal chooses to independently investigate any Notifiable WHS Incident. This includes but is not limited to, providing the Principal with full access to conduct the investigation, including access to any premises, plant, equipment or records.

17.11 The Principal may, but is not required to, request the Contractor to provide evidence that the Contractor is complying with its WHS obligations, or to assist the Principal to comply with its WHS obligations, including:

- (a) providing the Principal with a copy of the HSMP, or any WHS plan, procedure, incident report, Safe Work Method Statement, investigation or other document, data or report; and
- (b) allowing the Principal to audit the WUC, the Site, the project or the Contractor's activities; and
- (c) providing, at the Contractor's expense, an independent audit or review of WHS management in relation to the WUC, the project or the Contractor's activities.

18. Security of Payment Act

18.1 This clause 18 applies where this Contract is subject to the SOP Act.

18.2 The Contractor must promptly give the Principal's Representative a copy of any written document of whatsoever nature in relation to SOP Act that the Contractor gives or receives in relation to the WUC.

- 18.3 The Contractor must give any document under SOP Act in respect of this Contract by hand delivery to the Principal at the Principal's address set out in the Contract Specifics.
- 18.4 If the Contractor becomes aware that a Subcontractor is entitled to suspend work (which forms part of the WUC) under section 62 of the SOP Act, the Principal may (at its absolute discretion) pay the Subcontractor such money that is, or may be, owing to the Subcontractor in respect of work forming part of the performance of the WUC, and any amount paid by the Principal is recoverable from the Contractor as a debt due and payable by the Contractor to the Principal on demand. The Principal:
- (a) must notify the Contractor prior to making payment pursuant to this clause 18.4; and
 - (b) will not make a payment pursuant to this clause 18.4 where the Contractor demonstrates to the Principal that it has reasonable grounds to have withheld payment to the subcontractor.

19. Performance of the Works

- 19.1 The Contractor must perform WUC:
- (a) exercising due care, skill and judgment expected of a Competent Contractor;
 - (b) in accordance with Best Industry Practices;
 - (c) in an efficient, professional and cost effective manner in accordance with all applicable Laws and Standards (including the Site Standards and Particulars); and
 - (d) in accordance with this Contract and all guidelines, procedures and directions made by the Principal under this Contract.
- 19.2 The Contractor must and must procure that the Contractor's Personnel, comply with the Approvals, all applicable Laws and the requirements of any applicable Authority and must ensure that the Contractor's Personnel possess all relevant authorisations, permits and Licences to perform the obligations under this Contract.
- 19.3 Without limiting clauses 17 and 19.2, the Contractor must comply with:
- (a) all applicable WHS and environmental Laws, guidelines and codes of practice including, without limitation, the WHS Legislation;
 - (b) all WHS and environmental guidelines, rules and procedures provided to the Contractor by the Principal, including under clause 17; and
 - (c) the Specifications including all WHS and environmental guidelines, rules and procedures set out in the Specifications.
- 19.4 If a Law is at variance with a term of this Contract, the Contractor must notify the Principal in writing. If such Law necessitates a change to the Works and/or the way in which they must be provided, the Principal may Direct the Contractor as to how the inconsistency must be addressed. If such Direction causes the Contractor to incur more or less cost than otherwise would have been incurred the difference shall be assessed by the Principal's Representative and added to or deducted from the Contract Sum.
- 19.5 The Contractor must promptly comply with any Directions given by the Principal's Representative, including Directions with respect to the Site, security and Environment.
- 19.6 Where, acting reasonably, the Principal considers that the Contractor may not be complying with its obligations under clause 19.2 or 19.3, the Principal may request the Contractor to provide the Principal with evidence of compliance and the Contractor must comply with such request as soon as reasonably practical after receipt.
- 19.7 If the Contractor is unable or fails (for whatever reason) to perform the WUC in accordance with this Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Contract Sum which relates to the relevant WUC), procure the performance of such works from a third party ("Alternative Performance").

- 19.8 If the Principal exercises its rights under clause 19.7 to procure Alternative Performance, the Contractor is responsible for any incremental costs to the Principal associated with sourcing the Alternative Performance, except where the reason for the inability to perform the WUC was:
- (a) due to an Event of Force Majeure; or
 - (b) as a direct result of any default of the Principal.
- 19.9 Where the Contractor is required to comply with a Principal Policy which is not expressly identified or provided to the Contractor on or before the Contract Date then:
- (a) the Contractor must as soon as practicable notify the Principal if it considers it is not reasonably able to comply with such policies and the reasons why;
 - (b) where the Contractor can reasonably comply, and the Principal directs compliance with Principal's Policies and compliance with such direction causes the Contractor to incur additional costs, the direction shall be assessed as a variation under clause 25.

20. Construction Program

- 20.1 Where there is no Construction Program attached to the Contract, the Contractor must prepare and submit to the Principal's Representative its proposed Construction Program in a form acceptable to the Principal for approval by the Principal within 10 Business Days following the Contract Date.
- 20.2 The Construction Program must be drawn as a critical path network in the form of a time scaled bar chart:
- (a) showing key dates; and
 - (b) on a weekly basis with each week ending on the Sunday evening.
- 20.3 The critical path network must consist of appropriate activities or tasks numbered in a sequential logical order and of sufficiently small duration to represent accurately the Contractor's proposed method of completing the WUC, and must clearly mark the critical path.
- 20.4 The Construction Program must take into account the requirements and any program constraints set out in the Specifications.
- 20.5 Once approved by the Principal's Representative, the Contractor must comply with the Construction Program. If the Contractor considers an amendment to the Construction Program is required, the Contractor must submit an updated Construction Program to the Principal's Representative and, once approved, the updated Construction Program is the Construction Program for the purposes of this Contract.
- 20.6 The Contractor must submit an amended or updated version of the Construction Program within five Business Days of a request by Principal's Representative or any grant of an Extension of Time.
- 20.7 Unless and until an amended version of the Construction Program is approved by Principal's Representative in writing, the Construction Program previously approved by Principal's Representative shall remain as the Construction Program.
- 20.8 No review, approval or recommendation in relation to the Construction Program will relieve the Contractor of, nor alter or affect its responsibility for, carrying out the WUC and the Works.
- 20.9 The Principal's Representative may Direct in what order and at what time the various stages or portions of the WUC shall be carried out. If the Contractor can reasonably comply with the Direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must give the Principal's Representative written notice of the reasons within 5 days of the Direction. If compliance with any such Direction under this clause 20.9, except those pursuant to the Contractor's default, causes the Contractor to incur more or less cost than would otherwise have been incurred had the Contractor not been given the Direction, then the difference must be assessed by the Principal's Representative and added to or deducted from the Contract Sum.

- 20.10 Each week, or as otherwise Directed by the Principal's Representative, the Principal's Representative and the Contractor must meet at the Site (at a time and date advised by the Principal's Representative) to review the progress of the WUC.
- 20.11 At each meeting referred to in clause 20.10, the Contractor must provide to the Principal's Representative a report in the form advised by the Principal from time to time.

21. Contractor's Personnel

- 21.1 The Contractor must provide the Key Personnel (if any) stated in the Contract Specifics to perform the WUC specified in the Contract Specifics. If any Key Personnel is not available due to circumstances beyond the reasonable control of the Contractor, the Contractor must promptly notify the Principal and arrange a replacement.
- 21.2 The Principal may Direct the Contractor to replace any of the Contractor's Personnel on the Site, if that person, is, in the opinion of the Principal's Representative acting reasonably:
- (a) is guilty of misconduct or lack of care or diligence;
 - (b) is incompetent to carry out its duties or is negligent;
 - (c) has failed to conform with any of the provisions of this Contract. .

22. Cooperation

- 22.1 The Contractor acknowledges that all contractual communications between the Contractor and those third parties responsible for carrying out any Related Works must be directed through the Principal.
- 22.2 In performing the WUC, the Contractor must:
- (a) take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the WUC (including the work of the Contractor's Personnel) with the Related Works; and
 - (b) not carry out the WUC in a manner which may cause damage to, or inconvenience the execution of, the Related Works, and at all times take all necessary steps to protect the WUC from accidental damage caused by the Related Works.
- 22.3 The Contractor accepts that it has an obligation to ensure the accuracy of information provided by the Contractor to those responsible for carrying out the Related Works and to act in accordance with information provided by the Principal in relation to the Related Works.
- 22.4 If the Contractor fails to comply with this clause 22 and additional work or any alterations or remedial work to either the WUC or the Related Works becomes necessary as a result, the additional costs, if any, will be a debt immediately due and payable on demand from the Contractor to the Principal.
- 22.5 The Contractor must permit the Principal, the Principal's Representative and the Principal's Personnel to carry out any work on the Site (other than the WUC) and must cooperate with them.

23. Examination and testing

- 23.1 At any time before the expiry of the last Defects Liability Period, the Principal's Representative may direct that any WUC be tested and the Contractor must give such assistance and samples and make accessible such parts of the WUC as may be Directed by the Principal's Representative.
- 23.2 The Principal's Representative may Direct that any part of the WUC must not be covered up or made inaccessible without the Principal's Representative's prior written direction.
- 23.3 Tests must be conducted as provided elsewhere in this Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

- 23.4 The Principal's Representative or the Contractor (whichever is to conduct the Test) must give reasonable written notice to the other of the date, time and place of the Test. If the other does not attend, the Test may nevertheless proceed.
- 23.5 Without prejudice to any other right, if the Contractor or the Principal's Representative delays in conducting a Test, the other, after giving reasonable written notice of intention to do so, may conduct the Test.
- 23.6 On completion of the Tests, the Contractor must make good WUC so that the WUC fully comply with this Contract.
- 23.7 Results of Tests must be promptly made available by each party to the other and to the Principal's Representative.
- 23.8 Costs in connection with testing pursuant to this clause will be borne by the Principal except where this Contract otherwise provides or the Test is consequent upon, or reveals a failure of the Contractor to comply with this Contract (including this clause).

24. Damage and protection

- 24.1 Insofar as compliance with this Contract permits, the Contractor must in performance of the WUC:
- (a) take 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.
- 24.2 If the Contractor or the Contractor's Personnel damage any property, including but not limited to existing property of the Principal, public utilities and services and property on or adjacent to the Site in performance of the WUC, the Contractor shall be strictly liable for and promptly:
- (a) make good the damage; and
 - (b) pay any costs or damages which the Principal may incur.
- 24.3 If the Contractor fails to comply with clause 24.2, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt immediately due and payable by the Contractor.
- 24.4 If urgent action is necessary to protect the WUC, other property or people and the Contractor fails to take such action, then in addition to any other remedies the Principal may have, the Principal or the Principal's Representative may take the necessary action and the reasonable costs incurred by the Principal or the Principal's Representative will be a debt immediately due and payable from the Contractor to the Principal.
- 24.5 Except as provided in clause 24.7, the Contractor will be responsible for care and custody of:
- (a) the whole of the WUC (including without limitation unfixed items accounted for in Progress Claims and things entrusted to the Contractor by the Principal or brought onto the Site by Subcontractors) from and including the Commencement Date to 4.00 pm on the Date of Practical Completion, at which time responsibility will pass to the Principal; and
 - (b) outstanding WUC and items to be removed from the Site by the Contractor after 4.00 pm on the Date of Practical Completion until completion of any outstanding WUC.
- 24.6 If loss or damage, other than that specified under clause 24.7, occurs to WUC during the period of the Contractor's care, the Contractor shall rectify such loss or damage at its cost. If loss or damage is caused under clause 24.7, at the direction of the Principal's Representative the Contractor must rectify the loss or damage and such rectification will be deemed a Variation.
- 24.7 The risks causing loss or damage for which the Principal is liable are:
- (a) any negligent act or omission of the Principal, the Principal's Representative or the Principal's Personnel;

- (b) any risk specifically excepted elsewhere in this Contract;
- (c) Events of Force Majeure not caused by the Contractor or the Contractor's Personnel; and
- (d) use or occupation of any part of the Works by the Principal or the Principal's Personnel.

25. Variations

- 25.1 The Contractor must not vary the WUC except as Directed by the Principal's Representative in accordance with this clause 25.
- 25.2 Subject always to Regulation 21A of the Regulations, at any time before the Date of Practical Completion in its absolute discretion the Principal's Representative may:
- (a) by written notice titled "**Variation Order**" Direct the Contractor to alter, amend, omit, add to or otherwise vary the WUC and the Contractor must, subject to the terms of this clause 25 carry out and be bound by any such Variation as set out in the Variation Order;
 - (b) by written notice titled "**Variation Request**", Direct the Contractor to provide a Variation Proposal pursuant to this clause 25,
- 25.3 Where the Principal's Representative has Directed a Variation Order pursuant to clause 25.2(a), the Contractor must proceed with the Direction. The price of the varied WUC shall be as agreed by the parties (including by reason of an agreed Variation Proposal) or, if not already agreed by the parties, based on reasonable rates and prices having regard to all circumstances that the Principal's Representative considers relevant. .
- 25.4 Where the Principal's Representative has directed a Variation Proposal be provided pursuant to clause 25.2(b), then within 5 Business Days of receipt of the Variation Request (or such longer period as the parties reasonably agree), and before the Contractor carries out the Variation, the Contractor must provide to the Principal a variation proposal "**Variation Proposal**", which Variation Proposal must specify:
- (a) the effect (if any) the proposed Variation will have on the Construction Program, the Date for Practical Completion and the Contract Sum); and
 - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 25.5 If the Contractor requests the Principal's Representative to Direct a Variation for the convenience of the Contractor, the Principal's Representative may do so and may impose any conditions at its discretion. Unless the Direction provides otherwise, the Contractor will be entitled to neither an extension of time nor extra money.
- 25.6 The Principal's Representative is not obliged to Direct a Variation after receiving a Variation Proposal from the Contractor.
- 25.7 If the parties agree on the terms of the Variation Proposal, the Principal's Representative may Direct a Variation by notice in writing titled "Variation Order" pursuant to clause 25.2(a), specifying the details of such Variation, the agreed adjustment to the Contract Sum and the Construction Program (if any) and this Contract will be varied accordingly.
- 25.8 The Contractor must not proceed with any Variation unless instructed pursuant to a Variation Order, and shall not be entitled to any payment for varied WUC where a Variation Order issued pursuant to clause 25.2(a) has not been issued by the Principal's Representative.
- 25.9 If the Contractor considers that any Direction from the Principal or the Principal's Representative has the effect of being a direction to vary the WUC, but the Direction is not specified to be either a Variation Order or a Variation Request pursuant to clause 25.2, then the Contractor must promptly, and in any event within 5 Business Days of receipt of the Direction, notify the Principal in writing setting out why the Contractor considers the Direction is a Variation and the Contractor must not comply with the Direction unless the Contractor receives:

- (a) a Variation Order issued pursuant to clause 25.2(a);
- (b) a Variation Request issued pursuant to clause 25.2(b); or
- (c) notice that the Principal disagrees that the Direction is a Variation, stating its reasons.

The giving of the notice under this subclause 25.9 is a condition precedent to any entitlement to claim additional payment or an extension of time.

- 25.10 If a notice is issued under subclause 27.9(c), the Contractor must comply with the Direction but may, within 20 Business Days, dispute the Principal's notice by notice given under clause 41.
- 25.11 No Variation issued in accordance with this clause 25 vitiates or invalidates this Contract.
- 25.12 Where a Variation under this clause 25 involves the omission of any part or parts of the WUC the Principal may engage others to supply or perform that part or parts so omitted, and no one or more omissions constitute a basis to allege that the Principal has repudiated this Contract notwithstanding the extent or timing of the omission.

26. Time and progress

Progress

- 26.1 The Contractor must commence WUC on the Works Start Date and ensure that WUC is progressed with due expedition and without delay and reaches Practical Completion by the Date for Practical Completion.

Early Notice of delay

- 26.2 Where the Contractor becomes aware of anything, including an act or omission of the Principal, the Principal's Representative or the employees, consultants, other contractors or agents, which will probably cause delay to WUC, the Contractor shall promptly and in any event within [5 Business Days] of becoming aware, give the Principal's Representative written notice of the cause and the estimated delay (**Notice of Likely Delay**).

Claim

- 26.3 The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching Practical Completion) as the Principal's Representative assesses (**EOT**), if:
- (a) the Contractor is delayed in reaching Practical Completion by a Qualifying Cause of Delay; and
 - (b) the Contractor gives the Principal's Representative the Notice of Likely Delay under clause 26.2 and;
 - (c) the Contractor makes a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent) and the extent of the EOT Claimed, as required under this clause 26.3 (**Claim for an Extension of Time**).
- 26.4 Strict compliance with the notice requires relating to the Notice of Likely Delay and the Claim for an Extension of Time are a condition precedent to any entitlement to an extension of time.
- 26.5 Where the Contractor is delayed by a Qualifying Cause of Delay for a period of 10 days or more then the Contractor must:
- (a) every 14 days from the commencement of the delay, provide notice in writing to the Principal's Representative setting out details of all the facts and matters on which the claim is based, including the date the delay commenced, the cause of the delay, the period of the delay already suffered, the effect on the critical path noted on the Construction Program and the estimated period of the delay; and
 - (b) within 7 days of the date that the delay ceases, provide notice in writing to the Principal's Representative setting out details of the prior notices issued under subclause 26.5(a) and details

of all the facts and matters on which the claim is based, including the cause of the delay, the date that the delay commenced, the date that the delay ceased, the effect on the critical path noted on the Construction Program and the claimed period of the EOT.

- 26.6 Where the Contractor is delayed by a Qualifying Cause of Delay for a period of less than 10 days, then within 7 days of the delay ceasing the Contractor must give the Principal's Representative a written notice setting out details of all the facts and matters on which the claim is based including details of the cause of the delay, the date the delay commenced, the date that the delay ceased, the effect on the critical path noted on the Construction Program and the claimed period of the EOT.
- 26.7 Any claim for an EOT must show how the delay involves an activity or activities which are on the Construction Program, critical to the progress of The Works. The Contractor shall not be entitled to an EOT for any activities that cannot be demonstrated to affect the critical path or activities on the Construction Program.

Assessment

- 26.8 Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is a Qualifying Cause of Delay, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an EOT.
- 26.9 In assessing each EOT the Principal's Representative must disregard questions of whether:
- (a) the WUC can nevertheless reach Practical Completion without an EOT; or
 - (b) the Contractor can accelerate,
- but must have regard to what prevention and mitigation of the delay has not been effected by the Contractor and which could have been effected by the Contractor without incurring any additional cost.

Extension of time

- 26.10 Within 28 days after receiving the Contractor's claim for an EOT in respect of which the Contractor has an entitlement under clause 26.5(b) or 26.6, the Principal's Representative must give to the Contractor and the Principal a written Direction evidencing the EOT so assessed. If the Principal's Representative does not do so, there shall be a deemed rejection of the EOT as claimed.
- 26.11 Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Principal's Representative may at any time and from time to time before issuing the Final Certificate, Direct an EOT.
- 26.12 Notwithstanding that the Contractor is not entitled to or has not claimed or applied for, an EOT the Principal's Representative may, at its discretion, at any time and from time to time before the issue of the Certificate of Practical Completion by notice in writing to the Contractor extend the Date for Practical Completion for any reason. The Superintendent is only obliged to exercise its discretion regarding an EOT for the benefit of the Principal and not for the benefit of the Contractor.
- 26.13 A delay or failure of the Superintendent to grant a reasonable EOT or to grant an EOT within 28 days shall not cause the Date for Practical Completion to be set at large and the prevention principle has no application to this Contract in connection with delay to the WUC.
- 26.14 An EOT granted under clause 26 is, subject to clause 26.24, the Contractor's sole entitlement to compensation for delay or disruption, including delay or disruption caused by the Principal, whether in breach of contract or otherwise.

Practical Completion

- 26.15 The Contractor must give the Principal's Representative at least 14 days written notice of the date upon which the Contractor anticipates that Practical Completion will be reached.
- 26.16 When the Contractor is of the opinion that Practical Completion has been reached, the Contractor must in writing request the Principal's Representative to issue a Certificate of Practical Completion. Within 14 days

after receiving the request, the Principal's Representative must 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.

- 26.17 If the Principal's Representative is of the opinion that Practical Completion has been reached, the Principal's Representative may issue a Certificate of Practical Completion even though no request has been made.
- 26.18 The Principal may, at its complete discretion, waive any specific requirement for achieving Practical Completion. Waiver of the requirement for the purposes of achieving Practical Completion does not relieve the Contractor of compliance with the requirements, which requirements will then be treated as a defect or omission in existence at the Date of Practical Completion.

Liquidated damages

- 26.19 If WUC does not reach Practical Completion by the Date for Practical Completion, the Principal's Representative must certify, as due and payable to the Principal, liquidated damages specified in the Contract Specifics for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of this Contract or the Principal taking the WUC out of the hands of the Contractor up to the limit (if any) set out in the Contract Specifics.
- 26.20 The Principal may have recourse to Security where the Contractor is indebted to the Principal for any liquidated damages.
- 26.21 If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal must forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.
- 26.22 The parties agree that:
- (a) the liquidated damages provided for in clause 26.19 are a fair and reasonable pre-estimate of the losses and damage likely to be sustained by the Principal as a result of the WUC not reaching Practical Completion by the Date for Practical Completion. and such sums shall not be construed as a penalty; and
 - (b) if this clause is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from claiming liquidated damages, the Principal is entitled to claim against the Contractor damages at law for the Contractor's failure to complete the Works by the Date for Practical Completion.
- 26.23 Where the Item for liquidated damages in the Contract Specifics is not completed:
- (a) the Principal is entitled to claim against the Contractor damages at law for the Contractor's failure to complete the Works by the Date for Practical Completion; and
 - (b) this does not relieve the Contractor from its obligations under the Contract.

Delay damages

- 26.24 Subject to the Contractor making a written claim for delay and disruption damages to the Principal's Representative within 14 days of an EOT being granted for a Compensable Cause, the Contractor shall be entitled to payment of such additional costs as the Contractor reasonably and directly incurs by reason of the delay or disruption for each day the subject of an EOT, up to the maximum daily delay amount (cap) and maximum total amount (cap) set out in the Contract Specifics. Strict compliance with the timeframes for notice in this clause is a condition precedent to any entitlement.
- 26.25 The sums payable under clause 26.24 are the Contractor's sole entitlement to compensation for delay or disruption, including, delay or disruption caused by the Principal, whether in breach of contract or otherwise and is in substitution for and excludes the Contractor's rights and remedies at common law (including the right to recover damages for breach of contract or otherwise).

27. Independent contractor

Nothing in this Contract constitutes a joint venture, agency or partnership or other fiduciary relationship between the Principal and the Contractor. The Contractor acknowledges that it has no authority to bind the Principal. At all times during the performance of this Contract, the Contractor is an independent contractor and not an employee or agent of the Principal.

28. Warranties

28.1 Without limiting the generality of clause 2, the Contractor agrees, warrants and represents that:

- (a) the Contractor can and shall carry out and complete WUC in accordance with Best Industry Practice so that the Works, when completed, will:
 - (i) comply with all the requirements of the Contract;
 - (ii) be fit for their stated purpose;
 - (iii) meet the Site Standards and the Specifications;
 - (iv) comply with all applicable Laws, Australian standards and codes; and
 - (v) be operable and maintainable in accordance with all applicable Laws, Australian standards and codes;
- (b) the Contractor and the Contractor's Personnel at all times shall be suitably qualified and experienced in works of a similar nature to the Works, and shall exercise due skill, care and diligence to be expected of a Competent Contractor in the carrying out and completion of WUC (including any design);
- (c) the Contractor has examined and properly and carefully checked the Contract and satisfied itself that:
 - (i) the Contract adequately and appropriately describes the Works in sufficient detail to enable the Contractor to fulfil its obligations; and
 - (ii) the Works can be undertaken in compliance with the Contract, for the Contract Sum and by the Date for Practical Completion;
- (d) the Contractor and the Contractor's Personnel hold and will continue to hold all necessary licenses which are required for the Contractor and the Contractor's Personnel to perform the Works;
- (e) it has satisfied itself as to the correctness and sufficiency of the Contract Sum and that the Contract Sum covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract;
- (f) visited and examined the Site and its surroundings and informed itself fully as to the Site conditions and obtained all necessary information as to risks, contingencies and other circumstances which could have an effect on the performance and cost of executing the Works; and
- (g) identified and brought to the Principal's attention prior to the Contract Date, any discrepancies, omissions or ambiguities in the documents issued for the purpose of tendering and pricing, that would be reasonably apparent to a Competent Contractor reviewing the documents in similar circumstances and exercising Best Industry Practice.

28.2 The Contractor represents and warrants that it is not aware of any claim for infringement of Intellectual Property Rights, or for the breach of any obligations of confidence, arising out of the performance of the WUC.

- 28.3 The Contractor further gives each of the Other Warranties in respect of WUC performed by the Contractor under this Contract.
- 28.4 The Contractor represents and warrants that all of the statements, representations, facts and information contained in its Tender were true and accurate and not misleading (including by way of omission) as at the Contract Date.
- 28.5 The Principal and Contractor acknowledge and agree that:
- (a) the warranties in clause 28 are in addition to the Other Warranties contained in the Contract or otherwise implied by law;
 - (b) all warranties contained in the Contract are separate and independent; and
 - (c) the Principal has relied on the warranties contained in the Contract when entering into this Contract.

29. Defects Liability Period

- 29.1 The Defects Liability Period will commence on the Date of Practical Completion at 4:00 pm and continue for the period stated in the Contract Specifics.
- 29.2 As soon as possible after the Date of Practical Completion, the Contractor must rectify all Defects existing at the Date of Practical Completion.
- 29.3 During the Defects Liability Period, the Principal's Representative may give the Contractor a Direction to rectify a Defect which:
- (a) must 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 will be a separate Defects Liability Period for the rectified Defect (not exceeding the period of the Defects Liability Period specified in the Contract Specifics, commencing at 4:00 pm on the date the rectification is completed and governed by this clause 29).

Where the Defect is a Material Defect, a separate Defects Liability Period (not exceeding that set out in the Contract Specifics) will commence at 4:00 pm on the date the rectification is complete.

- 29.4 The Contractor must 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. The Contractor shall, when performing the rectification work, comply with the reasonable access requirements of the Principal, including in relation to security, safety, times of work, coordination and steps to minimise interference.
- 29.5 If the rectification is not commenced or completed by the dates stated in the Direction referred to in clause 29.3, 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 will be certified by the Principal's Representative as moneys due and payable to the Principal.
- 29.6 Where, acting reasonably, the Principal incurs other costs arising out of or in connection with the rectification of Defects, whether such rectification is carried out by the Contractor or others, the costs so incurred shall be a debt due and payable by the Contractor to the Principal. Without limiting the generality of the foregoing, such costs may include the costs of additional consultants (including project managers) to manage the co-ordination of the rectification process.
- 29.7 Nothing in this clause 29 prejudices any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to perform the Works in accordance with the Contract.

30. Insurance

- 30.1 The Contractor must at its own cost and expense, as a minimum, effect and thereafter maintain the Insurances during the Term (and any additional period specified in this clause 30):
- (a) on the terms and conditions set out in this clause 30 and otherwise on terms acceptable to the Principal, acting reasonably; and
 - (b) from an insurer having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, which carries on business in Australia and is authorised by the Australian Prudential Regulation Authority.
- 30.2 The Principal must not unreasonably withhold or delay its approval of the terms and conditions of the Insurance under clause 30.1.
- 30.3 Without limiting clause 30.1, the Contractor must:
- (a) pay all premiums and all deductibles applicable to the Insurance when due;
 - (b) promptly reinstate any Insurance required under this clause 30 if it lapses or if cover is exhausted;
 - (c) ensure that any party to whom work is subcontracted under this Contract obtains and maintains equivalent insurance to that required by this clause 30, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by that party, as if they were the Contractor; and
 - (d) not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.
- 30.4 To the extent available, at the times of placement and each renewal, each Insurance must:
- (a) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
 - (b) provide, where the Principal is an insured under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance;
 - (c) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under or relating to the Insurance; and
 - (d) come into effect on or before the Contract Date and be maintained throughout the Term, with the exception of the professional indemnity insurance required by clause 30.12 which shall extend for a period of seven (7) years after the issue by the Principal's Representative of the Final Certificate.
- 30.5 If a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence.
- 30.6 The effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.
- 30.7 The Contractor must effect and thereafter maintain insurance of the Works, which must:
- (a) cover against all loss and/or damage to the Works including any existing structures which are under the care, custody or control of the Contractor or the Contractor's Personnel;
 - (b) be for an amount not less than the amount set out in the Contract Specifics;
 - (c) be extended to include the Principal, the Principal's Representative, the Principal's Personnel, the Contractor and the Contractor's Personnel employed from time to time in relation to the Works as joint insured; and
 - (d) be maintained for the duration of this Contract, including the Defects Liability Period.

- 30.8 The Contractor must effect and thereafter maintain comprehensive public and products liability insurance, which policy must:
- (a) be endorsed to note the Principal as joint insured in relation to this Contract;
 - (b) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and unlimited in the number of occurrences and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in relation to products liability during any one 12 month period of insurance;
 - (c) include a cross liability endorsement;
 - (d) cover the liability of the Contractor, the Contractor's Personnel, the Principal and the Principal's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by Law to be insured under a workers compensation policy),arising out of or in connection with the performance of this Contract by the Contractor; and
 - (e) be endorsed:
 - (i) to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
 - (ii) to cover sudden and accidental Pollution; and
 - (iii) to provide a waiver of subrogation in favour of the Principal in relation to this Contract where the Principal is not a named insured.
- 30.9 In addition to any compulsory third party motor vehicle insurance required to be taken out by the Contractor under any Law, the Contractor must also effect and thereafter maintain vehicle and equipment insurance for the Contractor's vehicles, plant and equipment used in connection with this Contract whether owned, hired or leased ("Contractor's Vehicles"), which policy must:
- (a) cover against all loss and/or damage to the Contractor's Vehicles, registered plant and equipment;
 - (b) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles, registered plant and equipment;
 - (c) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the number of occurrences;
 - (d) other than compulsory third party motor vehicle insurance required by virtue of any Law, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal;
 - (e) include a cross liability endorsement; and
 - (f) be endorsed to note the Principal for its respective rights and interest in relation to this Contract.
- 30.10 The Contractor must effect and thereafter maintain plant and equipment insurance, which insurance must cover against all loss and/or damage to the Contractor's owned and leased plant and equipment used in connection with the Contract for the replacement value.
- 30.11 The Contractor must effect and thereafter maintain insurance against liability for death of or injury to persons employed by or deemed by a Law to be employed by, the Contractor, including liability by statute and at common law, which insurance cover must:

- (a) be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor, including a waiver of subrogation; and
- (b) be for not less than the amount set out in the Contract Specifics in respect of any one event.

In the event the Contractor is a sole trader and no workers compensation policy is in place, the Contractor must insure against loss of income for accident and illness by the purchase of an income protection or a salary continuance policy.

30.12 Unless the Principal agrees otherwise in writing, the Contractor must effect and thereafter maintain professional indemnity insurance, which policy must:

- (a) be for not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in any one 12 month period of insurance;
- (b) include one full automatic reinstatement of the limit of liability;
- (c) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Contract; and
- (d) cover claims in respect of this Contract under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in Western Australia insofar as they relate to the provision of professional advice under this Contract.

30.13 Without limiting the insurances required under this clause, the Contractor shall, at its own expense, effect and maintain any other insurance which is required by any Laws for the time being in force in Western Australia.

30.14 The Contractor must, on or prior to the Contract Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to effect and maintain under this Contract is current by providing to the Principal certificates of insurance, and copies of policy wording to demonstrate compliance with this Contract. Nothing in this clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.

30.15 If the Contractor fails to effect and maintain any of the Insurances in accordance with this Contract, the Principal may, but is not obliged to, procure and maintain any such Insurance and the cost of doing so will be a debt due and payable on demand from the Contractor to the Principal.

30.16 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of an Insurance.

30.17 The Contractor must:

- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
- (b) where relevant, provide all such assistance to the Principal as may be required by the Principal for the preparation and negotiation of insurance claims.

30.18 The Insurances are primary, and not secondary, to the indemnities referred to in this Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under any Insurance before enforcing any of its rights or remedies under the indemnities in this Contract. In addition, the parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.

31. Liability and indemnities

- 31.1 To the extent permitted by law, the Contractor is liable for and indemnifies the Principal and its employees, agents and subcontractors against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty given by the Contractor in this Contract or any of the other terms and conditions of this Contract by the Contractor;
 - (b) the illness, injury or death of any of the Contractor's Personnel arising under, out of, or in connection with, this Contract;
 - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property, or any other loss or damage of any kind whatsoever, caused or contributed to by the carrying out of the WUC; or
 - (d) any negligent act or omission by the Contractor and/or any of the Contractor's Personnel in connection with this Contract.
- 31.2 The Contractor's obligation to indemnify under clause 31.1 is reduced to the extent that any loss or damage was caused by an act or omission of the Principal or the Principal's Personnel (not being an act or omission authorised under the Contract).
- 31.3 Each indemnity in this Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of this Contract.
- 31.4 It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.
- 31.5 Subject to clause 31.7, neither party is liable to the other party for any Consequential Loss, whether based on contract, tort (including negligence) or otherwise, arising under, out of, or in connection with, this Contract.
- 31.6 Subject to clause 31.7, the Contractor's total liability under this Contract will not exceed the amount set out in the Contract Specifics (if applicable) as the Aggregate Limit of Liability, which amount will exclude the proceeds of any insurances required to be taken out by the Contractor under this Contract.
- 31.7 Clauses 31.5 and 31.6 do not limit the Contractor's liability:
- (a) under clause 26.19;
 - (b) in cases of fraud, wilful misconduct or illegal or unlawful acts; or
 - (c) or apply to any liability to the extent that a policy of insurance required to be effected by the Contractor under this Contract responds to the liability, or would respond but for an act or omission of the Contractor which prevents or limits the relevant policy of insurance from responding.
- 31.8 To the extent permissible at law, Part 1F of the Civil Liability Act is excluded from operation with respect to any dispute, claim, action or any matter whatsoever arising out of or in connection with this Contract.

32. Intellectual property

- 32.1 The Contractor warrants that any design, materials, documents and methods of working provided by the Contractor under or in connection with this Contract, do not infringe any Intellectual Property Right.
- 32.2 The Contractor:
- (a) retains the Intellectual Property Rights in the Contractor Background IP; and
 - (b) grants to the Principal a non-exclusive, royalty free licence to use the Contractor Background IP for the sole purpose of exercising its rights with respect to and having the benefit of the Works, the subject matter of the Works and this Contract.
- 32.3 The Principal:

- (a) retains the Intellectual Property Rights in the Principal Background IP; and
 - (b) grants to the Contractor a non-exclusive, royalty free licence to use, reproduce, modify and adapt the Principal Background IP for the sole purpose of performing the Works and its other obligations under this Contract.
- 32.4 The Principal acknowledges and agrees that all Project IP vests in and is owned by the Contractor on creation.
- 32.5 On creation the Principal grants to the Contractor an irrevocable, royalty-free licence to use the Project IP for any purpose for which the Works are provided under this Contract.
- 32.6 The Contractor must not infringe any Intellectual Property Rights in performing the WUC.
- 32.7 The Principal must not infringe any Intellectual Property Rights in providing the Principal Information.
- 32.8 The Contractor must notify the Principal as soon as the Contractor becomes aware of any suspected, threatened or actual infringement of the:
 - (a) Principal Background IP; or
 - (b) Project IP.
- 32.9 The Contractor agrees to provide all reasonable assistance the Principal may require regarding investigating, preventing and prosecuting any infringement or alleged infringement of the:
 - (a) Principal Background IP; or
 - (b) Project IP.
- 32.10 The Contractor shall make all payments and royalties to the appropriate party in respect of any Contractor Background IP and Project IP required to perform its obligations under this Contract and such payments and royalties shall be included in the Price.
- 32.11 The obligations in this clause 32 continue after the termination of this Contract.

33. Confidential information

- 33.1 Subject to clause 33.4, no Principal's Confidential Information may be disclosed by the Contractor to any person except:
 - (a) to the Contractor's Personnel requiring the information for the purposes of this Contract;
 - (b) with the written consent of the Principal;
 - (c) if the Contractor is required to do so by Law, a stock exchange or any regulatory Authority; or
 - (d) if the Contractor is required to do so in connection with legal proceedings relating to this Contract.
- 33.2 If the Contractor discloses Principal's Confidential Information under clause 33.1(a) or 33.1(b), the Contractor must ensure that recipients of the Principal's Confidential Information do not disclose the Principal's Confidential Information except in the circumstances permitted in clause 33.1.
- 33.3 The Contractor must not use any Principal's Confidential Information, except for the purpose of performing its obligations under this Contract or as otherwise required by operation of Law.
- 33.4 Clauses 33.1, 33.2 and 33.3 do not apply to the Excluded Information.
- 33.5 The obligations under this clause 33 survive termination or expiry of this Contract.

34. Taxes

- 34.1 The Contractor is responsible for any Taxes which are levied on, in respect of, or in connection with the performance of the WUC.

- 34.2 The Contractor must promptly on request provide the Principal with documentary evidence of the Contractor's payment of the Taxes referred to in clause 34.1.

35. Force Majeure

- 35.1 The parties acknowledge and agree that:
- (a) neither party is in breach of this Contract as a result of being prevented or delayed in the performance of its obligations under the Contract due to an Event of Force Majeure; and
 - (b) the Contract Sum is not subject to any cost adjustment or rise and fall as a result of an Event of Force Majeure.
- 35.2 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Contract or is delayed in performing those obligations:
- (a) the affected party must promptly give notice to the other party setting out (to the extent practicable):
 - (i) full details of the Event of Force Majeure;
 - (ii) the obligations affected or anticipated to be affected by the Event of Force Majeure;
 - (iii) the manner in which the relevant obligations have been affected by the Event of Force Majeure;
 - (iv) details of the steps that the affected party intends to take to overcome or reduce the Event of Force Majeure and its effects; and
 - (v) in addition to paragraph (iv), a mitigation plan, which plan must identify the nature of the impact and outline any strategies for mitigating the delay and estimated costs for those strategies.
 - (b) the affected obligations identified in the notice referred to in clause 35.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations are affected by the Event of Force Majeure; and
 - (c) the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 35.3 The Principal is not obliged to accept any proposal outlined in the mitigation plan.
- 35.4 Where the Principal wishes to proceed with the mitigation plan, or part thereof, the Principal's Representative may Direct a variation under clause 25.
- 35.5 During the period for which an obligation of the Contractor is suspended pursuant to clause 35.2(b), the Principal may (at the Principal's cost) make alternative arrangements for the performance of the suspended obligations (whether by another person or otherwise), without liability to the Contractor.
- 35.6 When the Event of Force Majeure no longer affects the performance of the obligations referred to in clause 35.2, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 35.7 If the Contractor is interrupted in or prevented from carrying out the WUC by reason of an Event of Force Majeure then the Contractor may, subject to clause 26, be entitled to an Extension of Time to perform those of its obligations which are affected by the Event of Force Majeure.
- 35.8 Notwithstanding any other provision of the Contract, neither party is liable to the other for:
- (a) any costs, losses, expenses, damages, or the payment of any fees incurred, due to an Event of Force Majeure; and
 - (b) any delay costs in any way incurred due to an Event of Force Majeure.

- 35.9 If an Event of Force Majeure which is the subject of a notice under clause 35.2(a) continues uninterrupted for more than 60 days, then either party may terminate this Contract on written notice to the other party, in which case clauses 37.1 to 37.3 will apply.

36. Default or Insolvency

- 36.1 If a party breaches (including repudiates) this Contract, nothing in this clause 36 prejudices the right of the other party to recover damages or exercise any other right or remedy.
- 36.2 If the Contractor commits a substantial breach of this Contract, the Principal may, by hand or by certified post, give the Contractor a written notice to show cause.
- 36.3 For the purposes of clause 36.2, substantial breaches include, but are not limited to:
- (a) failing to:
 - (i) provide Security;
 - (ii) provide evidence of required insurances;
 - (iii) comply with a Direction of the Principal's Representative under clause 6; or
 - (iv) use the materials or standards of work required by this Contract;
 - (b) wrongful suspension of work;
 - (c) substantial departure from a Construction Program without reasonable cause or the Principal's Representative's approval;
 - (d) where there is no Construction Program, failing to proceed with due expedition and without delay;
 - (e) in respect of clause 41, knowingly providing documentary evidence containing an untrue statement;
 - (f) where any of the Contractor's Personnel are found guilty of any criminal act related to WUC;
 - (g) failure to comply with any of the Principal's health, safety or environmental protection requirements; and
 - (h) failure to rectify any defective work in accordance with clause 29.
- 36.4 A notice under clause 36.2 must state:
- (a) that it is a notice under clause 36 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 clause 36.5;
 - (d) the date and time by which the Contractor must show cause (which must not be less than 7 clear days after the notice is received by the Contractor); and
 - (e) the place at which cause must be shown.
- 36.5 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 Contractor's hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to clause 36.9; or
 - (b) terminate this Contract.
- 36.6 The Principal will complete work taken out of the Contractor's hands pursuant to clause 36.5(a) and may:
- (a) use materials, equipment and other things intended for WUC; and

- (b) without payment of compensation to the Contractor:
 - (i) take possession of, and use such of the construction plant and other things on or in the vicinity of the Site as were used by the Contractor; and
 - (ii) contract with such of the Contractor's subcontractors and consultants, as are reasonably required by the Principal to facilitate completion of WUC.
- 36.7 If the Principal takes possession of construction plant or other things under clause 36.6, the Principal must maintain them and, subject to clause 36.10, on completion of the work, shall return such of them as are surplus.
- 36.8 The Principal's Representative must keep records of the cost of completing the work under clause 36.6.
- 36.9 When work is taken out of the Contractor's hands under clause 36.6, the Principal's Representative must assess the cost thereby incurred and certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
- 36.10 If the Contractor is indebted to the Principal, the Principal may retain construction plant or other things taken under subclause 36.5(a) until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the construction plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess must be paid to the Contractor.
- 36.11 If the Principal commits a substantial breach of this Contract, the Contractor may, by hand or by certified post, give the Principal a written notice to show cause.
- 36.12 For the purposes of clause 36.11, substantial breaches include, but are not limited to:
 - (a) failing to:
 - (i) rectify inadequate Contractor's possession of the Site if that failure continues for longer than 30 Business Days and will materially adversely affect the Contractor's ability to ensure that WUC reach Practical Completion by the Date for Practical Completion (following any EOT under clause 26.10); or
 - (ii) make a payment due and payable pursuant to the Contract in accordance with the terms of the Contract where that payment is not the subject of a dispute; and
 - (b) the Principal's Representative not giving a Certificate of Practical Completion or reasons as referred to in subclause 26.17.
- 36.13 A notice given under clause 36.11 must state:
 - (a) that it is a notice under clause 36 of this Contract;
 - (b) the alleged substantial breach;
 - (c) that the Principal is required to show cause in writing why the Contractor should not exercise a right referred to in clause 36.14, 36.16 or 36.17;
 - (d) the date and time by which the Principal must show cause (which must not be less than 7 clear days after the notice is received by the Principal); and
 - (e) the place at which cause must be shown.
- 36.14 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 any part of WUC.
- 36.15 The Contractor must remove the suspension if the Principal remedies the breach.
- 36.16 The Contractor may, by written notice to the Principal, terminate this Contract, if within 28 days of the date of suspension under clause 36.14, the Principal fails:

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

- 36.17 Damages suffered by the Contractor by reason of the suspension under clause 36.14 must be assessed by the Principal's Representative, who must certify them as moneys due and payable to the Contractor.
- 36.18 If this Contract is terminated pursuant to subclause 36.5(b) or 36.16(b), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this Contract had the defaulting party repudiated this Contract and the other party elected to treat this Contract as at an end and recover damages.
- 36.19 If the Contractor becomes Insolvent the Principal may, without giving a notice to show cause, exercise the right under clause 36.5(b).

37. Termination by Principal for convenience

- 37.1 Without prejudice to any of the Principal's other rights and powers under this Contract, the Principal may at any time for any reason within its sole discretion upon 14 days written notice to the Contractor terminate this Contract. Upon receipt of such notice the Contractor must:
- (a) stop all further work, except that work that the Principal's Representative Directs as necessary for protecting lives, property or safety;
 - (b) hand over documents, equipment, materials and other work for which the Contractor has already been paid;
 - (c) carry away all other goods, equipment, materials and articles not referred to in clause 37.1(b) belonging to the Contractor from the site except those necessary to be retained for safety reasons; and
 - (d) seek to mitigate any expense or losses that it or any subcontractor may incur or has incurred in relation to its obligations under the Contract.
- 37.2 If the Principal terminates the Contract under clause 37.1 then, subject to any rights of recourse under the Contract, the Principal must release and return all Security provided by the Contractor and must pay the Contractor the total of:
- (a) for work executed prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor had made a Progress Claim on the date of termination;
 - (b) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of materials reasonably ordered by the Contractor for WUC, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment; and
 - (c) the reasonable cost of removal of Construction Plant,
- up to a maximum amount of the balance of the Contract Sum (as it is adjusted pursuant to this Contract) unpaid at the date of termination and other amounts due and payable pursuant to this Contract at the date of termination.
- 37.3 The amounts to which the Contractor is entitled under clause 37.2 will be in full satisfaction and compensation of the Contractor in relation to the termination of this Contract and the Contractor will have no other entitlement as a consequence of the termination or in relation to carrying out WUC to the date of termination.

38. Termination by frustration

38.1 If this Contract is frustrated:

- (a) the Contractor's Representative must issue a progress certificate for WUC carried out to the date of frustration, evidencing the amount which would have been payable had this Contract not been frustrated and had the Contractor been entitled to and made a Progress Claim on the date of frustration;
- (b) the Principal must pay the Contractor:
 - (i) the amount due to the Contractor 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's Personnel engaged in WUC at the date of frustration;
 - (C) by the Contractor in expectation of completing WUC and not included in any other payment; and
 - (D) each party shall promptly release and return all Security provided by the other.

39. Suspension

39.1 The Principal's Representative may, at any time and for any reason, by notice in writing to the Contractor, direct the Contractor to suspend performance of the whole or any part of the performance of the Works.

39.2 Upon receipt of a notice of suspension from the Principal's Representative pursuant to clause 39.1, the Contractor must suspend performance of the relevant WUC until such time as the Principal's Representative directs the Contractor in writing to resume performance of the relevant WUC, following which the Contractor must promptly recommence the performance of the relevant WUC in accordance with this Contract. The Contractor must do everything possible to minimise any cost or expense to it which is consequent on the suspension.

39.3 Unless otherwise agreed, the Principal must, subject to clause 39.4, pay to the Contractor any costs and expenses actually, directly and reasonably incurred by the Contractor as a direct consequence of the suspension under clause 39.1, or a suspension by the Contractor under clause 35.1(b).

39.4 Where the suspension is:

- (a) as result of an Event of Force Majeure; or
- (b) necessary because of an act, default or omission of the Contractor or any of the Contractor's Personnel,

the Contractor is not entitled to any payment or compensation for costs arising out of or in connection with the suspension, whether arising in contract, tort or otherwise.

39.5 As soon as the Principal's Representative determines that the reason for any suspension under clause 39.1 no longer applies, the Principal's Representative must instruct the Contractor to recommence performance of the relevant WUC suspended under clause 39.1 and the Contractor must promptly recommence performance in accordance with this Contract.

39.6 Where suspension of the WUC under the Contract is not due to any act, default or omission of the Contractor or any of the Contractor's Personnel, and the suspension continues for a consecutive period of more than 60 days, then:

- (a) the Contractor may issue a notice under this clause providing the Principal with written notice of the Contractor's intention to terminate by a specified date, such date to be not less than 14 days from the date of the Principal's receipt of the notice;
- (b) if by the date specified in the notice, the Principal has not lifted the suspension, the Contractor may by further notice in writing immediately terminate the Contract and the provisions of clause 38 will apply.

40. Notification of claims

- 40.1 The "Prescribed Notice" for the purposes of this clause 40 is a written notice of the general basis and quantum of the claim.
- 40.2 Within 10 Business Days after becoming aware of any claim in connection with the subject matter of this Contract or WUC, the Contractor must give to the Principal and to the Principal's Representative the Prescribed Notice.
- 40.3 Clause 40.2 and 40.6 does not apply to any claim, including a claim for payment (except for claims which would, other than for this clause 40, have been included in the Final Payment Claim), the communication of which is required by another provision of this Contract.
- 40.4 Notwithstanding any other provision of the Contract, the Contractor will not be entitled to any claim against the Principal if it has not complied strictly with this clause 40, including in particular, if it has not given the notices and the details required by this clause 40 strictly in the manner and within the times stipulated.
- 40.5 Notices shall be given in accordance with this clause 40 whether or not the event or circumstance upon which the claim is based is continuing and whether or not the loss, expense or damage has crystallised or can be fully particularised. The details omitted must be provided within 7 days of the day that they do crystallise or can be fully particularised.
- 40.6 If within 10 Business Days of giving the Prescribed Notice the party giving it does not notify the other party and the Principal's Representative of particulars of the claim, the Prescribed Notice will be deemed to be the claim.
- 40.7 Within 20 Business Days of receipt of the Prescribed Notice or, if subclause 40.6 applies, within 20 Business Days of receiving the further particulars under that clause, the Principal's Representative must assess the claim and notify the parties in writing of the decision. Unless a party within a further 20 Business Days of such notification gives a notice of dispute under clause 41 which includes such decision, the Principal's Representative must certify the amount of that assessment to be moneys then due and payable.

41. Dispute resolution

- 41.1 If a Dispute arises between the parties, then:
 - (a) a party affected by the Dispute must notify the other party in writing of the nature and extent of the Dispute (**Dispute Notice**);
 - (b) the parties must confer within 10 Business Days of receipt of the Dispute Notice and use their best endeavours to resolve the Dispute.
- 41.2 If the Dispute is not resolved within 10 Business Days of the Dispute Notice being received (or such later period as the parties may agree), either party may require a meeting of senior representatives of the parties who have the authority to settle the Dispute (**Senior Representative Meeting**) with the objective of settling the Dispute. Each party must attend such meeting and use their best endeavours to resolve the Dispute.
- 41.3 The party requesting a Senior Representative Meeting must give not less than 15 Business Days written notice to the other party of the time and place for the Senior Representative Meeting.
- 41.4 If the Senior Representative Meeting fails to resolve a Dispute within 15 Business Days of the Senior Representative Meeting or a Senior Representative Meeting has not taken place within the time required under clause 41.3, then either party may commence court proceedings in relation to the Dispute.

41.5 Compliance with this clause 41 is a condition precedent to commencing court or other proceedings except where that party is seeking urgent interlocutory relief or if a party has unreasonably failed to comply with its obligations under this clause 41.

41.6 Notwithstanding the existence of a Dispute, the parties must continue to perform their respective obligations under this Contract.

42. Assignment and sub-contracting

42.1 The Contractor must not assign or novate its rights and obligations under this Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.

42.2 The Principal has the right to assign or novate any or all of its rights and obligations under this Contract.

42.3 The Contractor must not subcontract any of its obligations under this Contract without the Principal's prior written consent, which consent shall not be unreasonably withheld, but may be imposed with reasonable conditions.

42.4 Any approval to subcontract given by the Principal will not relieve the Contractor of any of its liabilities or obligations under this Contract.

42.5 Notwithstanding any approval given to the Contractor to subcontract, the Contractor will remain liable to the Principal for:

- (a) the due and continued performance of the Works; and
- (b) all acts, defaults, neglects and omissions of any subcontractor as if they were those of the Contractor.

42.6 Without limiting subclause 42.3, where the Contractor is granted approval to subcontract, the Contractor must ensure that the terms of the subcontract incorporate the applicable terms from this Contract and otherwise allow the Contractor to comply with its obligations under this Contract.

43. Personal Property Securities Act 2009 (Cth)

43.1 For the purposes of this clause 43:

- (a) the **"Principal's Personal Property"** means all personal property the subject of a security interest granted under this Contract; and
- (b) words and phrases used that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.

43.2 If the Principal determines that this Contract (or a transaction in connection with it) or a provision within it contains a security interest for the purposes of the PPSA, the Contractor agrees it will do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- (c) enabling the Principal to exercise rights in connection with the security interest.

43.3 The Contractor agrees that the Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

43.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Principal's Personal Property or the WUC provided under this Contract becomes an accession to the Principal's Personal Property and is

subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or

- (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.

43.5 The Contractor must not:

- (a) create or grant any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the WUC; or
- (e) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving the Principal 15 Business Days' notice.

43.6 Everything the Contractor is required to do under this clause 43 will be at the Contractor's expense.

43.7 The Contractor and the Principal agree that this Contract and all related information and document(s) are confidential ("Designated Confidential Information") and will not be disclosed, except to the extent disclosure is permitted or required by this Contract or by Law. The Contractor and the Principal agree that the Contractor will not disclose Designated Confidential Information pursuant to a request under section 275(1) of the PPSA.

44. Priority

44.1 To the extent of any inconsistency between the Special Conditions and any other part of this Contract, the Special Conditions will prevail.

44.2 To the extent of any inconsistency between the Contract Specifics and the General Conditions or the Special Conditions, then the General Conditions or Special Conditions (as applicable) will prevail.

44.3 To the extent of any inconsistency between the General Conditions and any Schedules (including any documents referred to in the Schedules but excluding the Special Conditions), then the General Conditions will prevail.

44.4 If the Contractor considers that there is any ambiguity or discrepancy in the documents comprising the Contract, the Contractor must promptly advise the Principal's Representative in writing, who must give the Contractor a Direction as to the interpretation to be followed. If compliance with any such Direction under this clause 44.4 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 Principal's Representative and added to or deducted from the Contract Sum.

44.5 To the extent of any inconsistency in the standard to which the WUC are performed, the higher standard will prevail. Where the standards are not expressly specified, the standard will be consistent with the Intended Purpose of the WUC.

45. Record Keeping Requirements

45.1 The Contractor shall make and keep and shall use its best endeavours to ensure all subcontractors make and keep accurate records of its Tender and of WUC, whether in writing or stored on any other medium whatsoever, including:

- (a) all documents referred to in this Contract;
- (b) design calculations;

- (c) tender estimates, calculations and mark-ups;
- (d) records as to progress of WUC;
- (e) results of the examination and testing of any work or materials;
- (f) quality assurance records and reports;
- (g) cost to date records, cost to complete calculations, time records, all cost records relating in any way to delays, Variations and day works;
- (h) all consultant's reports and opinions obtained by the Contractor in relation to the matters referred to in this clause 45.1; and
- (i) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.

45.2 Subject to the Contractor's right to claim privilege in respect of any record, the Principal and the Principal's Representative will at any time (provided it has given not less than 5 days' notice to the Contractor) have the right to inspect and to copy the whole or part of any record referred to in clause 45.1.

45.3 Notwithstanding anything to the contrary contained in this Contract, the Principal's Representative may defer any Direction or certification required of him or her under any provision of this Contract until after such inspection. If any such record is stored on a medium other than in writing, the Contractor must make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the record to be produced to the Principal or the Principal's Representative (as applicable).

45.4 The Contractor is not entitled to refuse inspection of any record referred to in clause 45.1 on any basis other than on the basis that legal professional privilege attaches to the record.

45.5 The Contractor must co-operate with the Principal or the Principal's Representative (as applicable) when making an inspection, including explaining all filing and costing systems and the extraction of requested categories of documentation from files upon request.

45.6 The Contractor acknowledges that the records it holds in connection with this Contract may be subject to a request under the Freedom of Information Act and / or the PRIS Act received by the Principal, and such records are to be immediately returned to the Principal by the Contractor (at its own cost and expense) for review and disclosure (where application) in such circumstances. If the return of the records impacts on the Contractor's performance of its obligations under this Contract, the Principal will consider any concerns the Contractor may raise.

45.7 The Contractor must (at its own cost and expense), for the duration of this Contract and any further period the Contractor is required to retain such records in accordance with clause 45.8, provide the Principal with all assistance reasonably requested by the Principal to assist the Principal in complying with its obligations under the *State Records Act 2000* (WA) and with the Principal's records management plan, where such compliance is in respect of records created, or to be created, by the Contractor on behalf of the Principal in accordance with this Contract.

45.8 The Contractor must, in respect of records created during the term of this Contract, retain such records for the retention period set out for that class of record in the General Retention and Disposal Authority for Local Government Information DA 2023-005.

46. Notices

46.1 Any notice, approval, consent or other communication ("Notice") in relation to this Contract must be:

- (a) in legible writing in English;
- (b) signed by an Authorised Representative of the sender and otherwise in accordance with the requirements of this Contract;

- (c) marked for the attention of the Contractor's Representative if directed to the Contractor, or the Principal's Representative if directed to the Principal; and
- (d) either:
 - (i) hand delivered to the address for the party set out in the Contract Specifics;
 - (ii) sent by registered post with a required signature on receipt to the address for the party set out in the Contract Specifics; or
 - (iii) sent by email to the email address for the party set out in the Contract Specifics.

However, if the addressee has notified a change of postal address or email address, then the Notice must be to that changed postal address or email address, as the case may be.

- 46.2 Notices sent by email need not be marked for attention in the way stated in clause 46.1 and are taken to be signed by the named sender.
- 46.3 Despite clause 46.1(d)(iii) and 46.2, a Notice under clause 36 or 41 or a written communication of whatsoever nature in relation to the SOP Act must not be sent by email.
- 46.4 Notices take effect from the time they are received or taken to be received under clause 46.5 (whichever happens first) unless a later time is specified.
- 46.5 Notices are taken to be received:
 - (a) on actual receipt; or
 - (b) if sent by registered post, on signature of receipt of delivery; or
 - (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

- 46.6 Despite clauses 46.4 and 46.5, if Notices are received or taken to be received under clause 46.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

47. Security

- 47.1 The Contractor must provide the Security specified in the Contract Specifics within 7 days of the Contract Date. The Contractor is not entitled to commence WUC on Site unless and until it has provided the Security required under this clause and shall not be entitled to any extension of time arising out of or in connection with the delay in commencing WUC on Site by reason of its failure to provide the Security.
- 47.2 The Principal may have recourse to Security to secure the proper performance by the Contractor of its obligations under the Contract including:
 - (a) where the Principal has become entitled to exercise a right under the Contract in respect of the Security;
 - (b) where monies are due and payable to the Principal by the Contractor arising out of or in connection with the Contract or the subject matter of the Contract;
 - (c) where the Contractor has failed to comply with an obligation under or in connection with the Contract (including failing to perform the work in a proper and proficient manner or carrying out work that is faulty or unsatisfactory) and in remedying that non-performance, the Principal has suffered loss or damage; or

- (d) to satisfy any entitlement to damages, or for any loss or damage suffered by the Principal, [or which the Principal estimates it is likely to suffer (acting reasonably)], as a consequence of any act or omission of the Contractor amounting to a breach of its obligations under the Contract, and:
- (e) the Principal has given the Contractor notice in writing of its intention to have recourse to the Security identifying the Contract and the applicable provisions of the Contract that the Principal relies upon for recourse; and
- (f) at least 5 SOP Act Business Days has elapsed since the notice was given.

47.3 Upon the later of:

- (a) the provision of all final 'as-constructed' drawings, service, operation and maintenance manuals, warranties, and guarantees, by the Contractor to the Principal, the format and details of the drawings to be to the satisfaction of the Principal's Representative acting reasonably; and
- (b) where Option 1 is selected in the Contract Specifics, the issue of the Certificate of Practical Completion; and
- (c) where Option 2 is selected in the Contract Specifics, the completion of all Defects identified at Practical Completion,

the Principal's entitlement to Security shall be reduced by fifty percentage and the reduction shall be released and returned within 14 days to the Contractor.

47.4 Subject to any demand having been made on the Security, the Principal must release and return the then current balance of the Security to the Contractor:

- (a) if the Final Certificate certifies a nil balance or a balance owing by the Principal to the Contractor, within 14 days after issue of the Final Certificate; or
- (b) if the Final Certificate certifies a balance owing by the Contractor to the Principal, within 14 days of the payment by the Contractor to the Principal of all amounts owing by the Contractor to the Principal under this Contract.

47.5 The Contractor must not take any steps to hinder, obstruct, injunct or otherwise restrain:

- (a) any issuer of any security from paying the Principal pursuant to the Security;
- (b) the Principal from taking any steps for the purpose of obtaining payment pursuant to the Security; or
- (c) the Principal from applying the proceeds of any Security.

47.6 The Contractor's sole remedy arising from conversion of, or recourse to Security, which is later found to be wrongful conversion or recourse, is the repayment of such Security with interest and the Contractor shall have no entitlement to any other forms of damage or compensation.

48. Entire agreement

This Contract constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

49. Industrial arrangements

The Contractor agrees to observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the provision of WUC.

50. Other matters

- 50.1 If the whole or any part of a provision of this Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.
- 50.2 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Contract expressly states otherwise.
- 50.3 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 50.4 The rights and remedies provided in this Contract are in addition to other rights and remedies given by law independently of this Contract.
- 50.5 Except as, and to the extent, expressly stated otherwise in this Contract, a provision of this Contract or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- 50.6 The indemnities in this Contract are continuing obligations, independent from the other obligations of the parties under this Contract and continue after this Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Contract.
- 50.7 Each party agrees, at its own expense, to do anything reasonably requested by another party (such as negotiating in good faith, obtaining consents, signing and producing documents and getting documents completed and signed) to give effect to the provisions of this Contract and the transactions contemplated by it.
- 50.8 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it.
- 50.9 The Contractor must obtain at its own expense any necessary Licences or permits and comply with applicable Laws in performing WUC.
- 50.10 The Principal's rights, remedies and powers under this Contract are in addition to any rights, remedies and powers provided by law.
- 50.11 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the provision of works the same as, or similar to, the Works.

51. Governing law

This Contract is governed by the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

52. Counterparts

This Contract may consist of a number of counterparts each signed by one or more parties to this Contract. When taken together, the signed copies are treated as making up the one document.

53. Conflict of interest

- 53.1 The Contractor represents that, to the extent reasonably ascertainable at the commencement of this Contract, after making all reasonable enquiries, no conflict of interest exists or is likely to arise in relation to the Contractor's performance of the WUC.
- 53.2 The Contractor must notify the Principal immediately on becoming aware of a conflict of interest or a potential conflict of interest.
- 53.3 Where a conflict of interest arises or is likely to arise, the Principal may terminate this Contract immediately by giving written notice to the Contractor and the provisions of clause 37 will apply.

54. Privacy and Personal Information handling

- (a) The parties acknowledge and agree that Part 2 of the PRIS Act, the IPPs, and any applicable approved privacy code of practice, apply in the manner provided for in Division 11 of the PRIS Act in relation to the handling of information by the Contractor for the purposes of this Contract.
- (b) Both parties agree to comply with:
 - (i) the PRIS Act (including the IPPs and / or any applicable Privacy Code of Practice); and
 - (ii) any direction, request, notice, investigation, enforcement action, determination and / or order made by the relevant Authority to the party (in accordance with the relevant Authority's powers under the PRIS Act).
- (c) The Contractor agrees that, for the purpose of this Contract, it is an IPP Entity.
- (d) The Contractor must comply with:
 - (i) the Principal's Policies relating to privacy, information handling, information sharing and Information Breaches;
 - (ii) any other reasonable direction relating to privacy and / or information handling given to the Contractor by the Principal;
 - (iii) its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cth) to the extent relevant to this Contract.
- (e) The Contractor understands and agrees that the IPPs apply to any act done or practice engaged in by the Contractor for the purposes of the Contract in the same way and to the same extent as they would apply if the act were done or practice were engaged in by the Principal.
- (f) The Contractor must:
 - (i) not engage in any act or practice that would cause the Principal to be in breach of the PRIS Act or applicable Privacy Code of Practice;
 - (ii) ensure Personal Information held by the Contractor in connection with the WUC is:
 - (A) stored securely and within Australian borders;
 - (B) only used by the Contractor, and the Contractor's Personnel, in connection with this Contract for the purpose of providing the WUC;
 - (C) only made available to the Contractor's Personnel on a need-to-know basis as necessary for the Contractor's performance of its obligations under this Contract;
 - (iii) ensure that the Contractor's Personnel so required to handle Personal Information in connection with this Contract for the purpose of providing the WUC are made aware of the Contractor's obligations under this Contract;
 - (iv) ensure that any subcontract entered into with a subcontractor for the purpose of fulfilling the Contractor's obligations under this Contract contains the same or equivalent terms as those required under this clause 54 and under clauses 45.6, 45.7, 55 and 56.
- (g) If the Contractor receives:
 - (i) a complaint about an act or practice of the Contractor that may be an interference with the privacy of an individual; or
 - (ii) a request to access and / or correct Personal Information held by the Contractor in connection with the WUC,as soon as practicable, upon receiving a privacy-related complaint or, it must:

- (A) notify the Principal of the complaint or request;
- (B) consult with the Principal in relation to dealing with the complaint or request; and
- (C) comply with any privacy guidelines in relation to the complaint or request under the relevant IPP and all lawful directions from the Principal.

55. Privacy impact assessment

55.1 For the purpose of this clause, ***significant impact on the privacy of individuals*** has the meaning given to it in the PRIS Act (or other instruments made under the PRIS Act) and the Principal's Policies, and includes:

- (a) the collection, use or disclosure of sensitive information on a large scale;
- (b) ongoing or real-time tracking of an individual's geolocation; and
- (c) the use of biometric templates or biometric information for the purpose of verification or identification.

55.2 Where the Contractor proposes to carry out a function or activity for the purpose of this Contract, which involves the handling of Personal Information and is likely to have a significant impact on the privacy of individuals, the Contractor must:

- (a) conduct a privacy impact assessment of the function or activity; and
- (b) prepare a written report on the assessment, which complies with the requirements relating to privacy impact assessments set out in the PRIS Act, and sets out:
 - (i) an assessment of the likelihood that the performance of the function or activity will result in an interference with the privacy of any individual;
 - (ii) the impact that the performance of the function or activity might have on the privacy of individuals;
 - (iii) recommendations for managing, minimising or eliminating that impact; and
 - (iv) any other information the Contractor considers relevant.

56. Information Breach

56.1 If the Contractor becomes aware of, or reasonably suspects, an Information Breach has occurred, the Contractor must:

- (a) immediately notify and consult with the Principal;
- (b) immediately take all reasonable steps to contain the suspected Information Breach; and
- (c) take all reasonable steps to mitigate any harm caused by the suspected Information Breach.

56.2 As soon as reasonably practicable, but in any case within 30 days after the day on which the Contractor becomes aware of, or reasonably suspects, an Information Breach has occurred, the Contractor must:

- (a) conduct an assessment, in compliance with the requirements relating to information breaches set out in the PRIS Act, for the purposes of determining whether a Notifiable Information Breach has occurred or there are reasonable grounds to believe that a Notifiable Information Breach has occurred; and
- (b) prepare a written report on the assessment.

56.3 As soon as practical, the Contractor must:

- (a) provide a copy of the written report to the Principal;

- (b) consult with the Principal regarding which party will make the relevant notifications under clause 56.4 (**Notifying Party**); and
- (c) otherwise, as and when requested by the Principal, provide the Principal with all necessary information relating to the Information Breach as required by the Principal for its record keeping and reporting purposes.

56.4 Where the assessment conducted under clause 56.2 determines that a Notifiable Information Breach has occurred, or that there are reasonable grounds to believe that a Notifiable Information Breach has occurred, the Notifying Party must, as soon as practicable after such determination, give written notice of the Notifiable Information Breach to the relevant Authority and any affected individuals, in compliance with the requirements relating to Notifiable Information Breaches as set out in the PRIS Act (unless an exception set out under the PRIS Act so applies).