**GENERAL CONDITIONS OF CONTRACT FOR CAPITAL WORKS CONTRACT CONDITIONS UNDER A PURCHASE ORDER**

**BACKGROUND**

* + 1. The Principal has engaged the Contractor to perform the Works.
    2. This Document sets out the terms and conditions upon which the Contractor shall perform the Works.

# Definitions and interpretation

* 1. In this Document, except where the context indicates otherwise:

**Affected Obligation** has the meaning given in clause 29.1(a)(i).

**Approval** means any approval, consent, permit or authorisation that is required for the Works and, where applicable:

* + 1. includes all conditions attaching to such approval, consent, permit or authorisation and;
    2. excludes any approval, consent, permit or authorisation of the Principal unless expressly issued under a Law.

**Authority** means any government or semi-government authority, provider of public utility services and any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities pursuant to Law over the Site, the Works or any part of them or anything in relation to them.

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

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

**Commencement Date** means the date on which the Contract commences in accordance with clause 2.1 or 2.2, as applicable.

**Completion** means that stage of the execution of the Works where, in the Principal's reasonable opinion:

* + 1. the Works are complete and meet the requirements of the Contract, except for Minor Defects;
    2. all certificates, documents, warranties, guarantees and other information required for the use, operation and maintenance of the Works have been provided to the Principal; and
    3. all rubbish, material, equipment and other property of the Contractor not forming part of the Works has been removed from the Site, all excavations (other than those forming part of the Works) have been filled, consolidated and leveled off and the Site is in a clean and tidy state to the Principal's reasonable satisfaction.

**Completion Certificate** means a certificate issued by the Principal to the Contractor confirming that Completion has occurred.

**Confidential Information** means:

* + 1. the Contract;
    2. information relating to the Principal’s past, existing or future business, strategic plans or operations, finances, or customers;
    3. any other information provided by a Party to the other Party which is identified by the disclosing Party as confidential;
    4. any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and
    5. any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed by a Party to the other Party or by any other person.

**Consequential Loss** means any loss of production, revenue, profit, business reputation, opportunities or anticipated savings, and loss arising from wasted overheads or business interruptions.

**Contract** means the agreement between the Parties regarding the performance of the Works containing the terms and conditions set out in this Document.

**Contractor** means the party who is engaged by the Principal to perform the Works under the Contract and whose details may be set out on the front page of this Document.

**Contractor Induction** means the induction program directed by the Principal.

**Contractor’s Vehicles and Equipment** has the meaning given in clause 25.4.

**Contract Price** means:

the prices or rates specified in an Order as the amount to be paid by the Principal to the Contractor for executing the Works the subject of that Order in accordance with the Contract; or

the amount to be paid by the Principal to the Contractor for executing the Works, in accordance with the Contract, as otherwise set out in the Contract.

**Date of Completion** means the date specified in a Completion Certificate as the date upon which Completion occurred.

**Date for Completion** means the date for the completion of the Works specified in an Order or agreed by the Parties in writing, but if any extension of the Date for Completion is granted by the Principal or allowed in any arbitration or litigation, it means the date resulting therefrom. To avoid doubt, the Date for Completion may be set out in the Capital Works Contract Specifics.

**Defect** means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works, or any aspect of the Works which is not in accordance with the requirements of the Contract.

**Defects Liability Period** means a period of 12 months from the Date of Completion, and if any rectification works are carried out during the Defects Liability Period, means a further period of 12 months from the date such rectification works are completed.

**Disbursement** means reasonable out-of-pocket costs and expenses incurred by a Contractor in executing the Works which are:

charged to the Principal at cost; and

incidental to the execution of the Works.

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

**Dispute Notice** has the meaning given in clause 23.1.

**Document** means this document called ‘Capital Works Contract Conditions’.

**Extension Request** has the meaning given in clause 8.3.

**Force Majeure Event** means an event or cause comprising any of the following:

act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;

strike, lockout or other industrial action;

act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion or terrorism; or

a change in any Law or any authority exercised by an Authority by Law,

provided such event or cause is beyond the reasonable control of the Party asserting the Force Majeure Event and that party could not have prevented, overcome or remedied the event or cause or its effects by the exercise of Good Industry Practice.

**Force Majeure Event Termination Period** means 120 consecutive calendar days.

**Good Industry Practice** means that degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor, engaged in the same type (including as to scope and complexity) of project as the Contractor, under the same or similar circumstances.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax.

**Insolvency Event** means:

* + 1. in relation to a corporation, where that corporation:
       1. goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days’ prior written notice of such reconstruction or amalgamation;
       2. is otherwise dissolved;
       3. has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
       4. enters into any composition or scheme of arrangement with its creditors;
       5. has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
       6. is otherwise unable to pay all its debts as and when they fall due; and
    2. in relation to a natural person, where that natural person:
       1. commits an act of bankruptcy;
       2. becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
       3. assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
       4. is otherwise unable to pay all its debts as and when they fall due.

**Insurances** means the insurances that the Contractor is required to effect and maintain under clause 25.

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

**Law** means Acts, ordinances, regulations, by-laws, orders, awards, proclamations and the requirements of Authorities legally enforceable in the jurisdiction where the Works or any part thereof are being carried out.

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

**Letter of Award** means an Order or other form of document provided by the Principal to the Contractor advising that the Contractor’s Request Response was accepted by the Principal.

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

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

**Capital Works Contract Specifics** means the contract information contained in Schedule 1 under the heading ‘Capital Works Contract Specifics’.

**Order** means a purchase order or other written direction from the Principal to the Contractor which requires the execution of specified Works, excluding any purchase order issued in relation to a Works Variation under clause 13.10.

**Parties** means the Principal and the Contractor.

**Payment Claim** means a written claim for payment made by the Contractor to the Principal in accordance with the Contract.

**Personnel** means the personnel engaged by the Principal, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, contractors and Sub-contractors and any director, officer, employee or agent of any contractor or Sub-contractor, but when used in the context of the Principal’s Personnel, does not include the Contractor or the Contractor’s Personnel.

**Principal** means the party engaging the Contractor to perform the Works under the Contract and whose details may be set out on the front page of this Document.

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

**Principal's Policies and Procedures** means the Principal's policies, guidelines, standards and rules of conduct applicable to the Works or the Site that are put in place or amended by the Principal and communicated to the Contractor.

**Principal Request** means the written request provided by the Principal to the Contractor to submit an offer and price to perform the Works.

**Principal Supplied Items** means any materials or products stated in the Capital Works Contract specifics which the Principal supplies for incorporation into the Works, as varied from time to time in writing to the Contractor.

**Provisional Sum** means any amount stated as a provisional sum in a Letter of Award or any Order, having the meaning given in clause 18.

**Reasonable Steps** means taking reasonable actions in accordance with Good Industry Practice.

**Representative** means a representative of a Party as described in clause 29.3.

**Request Response** means the offer submitted by the Contractor to execute the Works made in response to a Principal Request.

**Retention Moneys** means moneys withheld by the Principal from amounts otherwise due to the Contractor as Security in accordance with the Contract.

**Retention Percentage** (if relevant) has the meaning given in clause 19.2.

**Retention Sum** means the amount (if any) specified as such in the Capital Works Contract Specifics.

**Security** means a bank guarantee or insurance bond in the form approved by the Principal and/or Retention Monies, as specified in the Capital Works Contract Particulars.

**Site** means the site or sites at which the Works shall be executed.

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

**SOP Act Business Day** has the meaning given in the SOP Act.

**Specification** means a specification or scope of works for the Works:

provided by the Principal to the Contractor before the Contractor provides its Request Response; or

developed after the Contractor provided its Request Response or after the Contract came into effect and agreed to by the Parties or issued as Works Variation; or

contained within Schedule 1.

**Start Date** means the date specified as such in the Principal Request, an Order, in any Capital Works Contract Specifics, the Works Program, or as otherwise agreed by the Parties in writing as the date upon which the Works shall commence.

**Sub-contractor** means any person or entity engaged by the Contractor in connection with the execution of the Works and includes consultants, subcontractors, suppliers and other contractors, but does not include the Contractor’s employees.

**WHS Contractor Guidelines** means the City of Nedlands guidelines developed to assist contractors and their workers to work safety while engaging work for, or on behalf of, the Principal.

**WHS Laws** means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor’s obligations under the Contract are being performed. This includes the *Work Health and Safety Act 2020* (WA) and the *Work Health and Safety (General) Regulations 2022* (WA), in addition to any other relevant Law.

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

**Works** means the works to be executed by the Contractor as set out in an Order, any Specification or any Capital Works Contract Specifics and includes the provision of materials and temporary works, Works Variations and rectification of any Defects.

**Works Program** means a written document setting out the Contractor’s proposed activities and timeline for executing the Works.

**Works Variation** means any change to, including any increase, decrease, addition to, or omission from, the Works (including omission for the purpose of or with the intention of having another person perform that part of the Works) or any change in the character, quantity or quality of the Works.

**Works Variation Form** means a notice substantially in the form set out in Schedule 2.

* 1. In this Document, unless the context suggests otherwise:

### a reference to the Contract means the Contract as varied from time to time;

### a reference to 'including' must be read as if it is followed by '(without limitation)';

### where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;

### words in the singular include the plural and vice-versa;

### a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

### a reference to any Party includes that Party’s executors, administrators, substitutes, successors and permitted assigns;

### a reference to a clause is a reference to a clause of this Document;

### a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;

### headings are for convenience only and do not affect interpretation of this Document; and

### no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it.

# Formation of contract and term

* 1. Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document. To avoid doubt, any failure by the Parties to complete the Capital Works Contract Specifics does not affect the formation of the Contract.
  2. Where this Document is not executed by the Parties:

### the Contract shall be formed, and shall commence, on the date of the Letter of Award;

### the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract’s existence; and

### any failure by the Parties to complete the Capital Works Contract Specifics does not affect the formation of the Contract.

* 1. The Contract comprises:
     1. the Letter of Award;
     2. clauses 1 to 29 (inclusive) of this Document;
     3. Schedule 1 (Capital Works Contract Specifics); and
     4. Schedule 2 (Variation Form).
  2. To the extent of any inconsistency between the documents forming part of the Contract, a document higher in the list in clause 2.3 prevails over each lower document.
  3. The Contract shall terminate:
     1. by written agreement of the Parties;
     2. in accordance with clauses 20.6, 20.7 or 20.8(k); or
     3. upon the expiry of the Defects Liability Period.
  4. Termination of the Contract shall not affect the rights and liabilities of a Party accrued prior to termination.
  5. Clauses 1 (Definitions and interpretation), 2.6 (regarding accrued rights and liabilities), 2.7 (regarding survival), 7.3 (regarding re-possession of the Site and Works), 15 (Defects Liability Period), 19.5(b) (regarding return of Retention Sum or security), 21 (Termination), 22 (Liability), 23 (Settlement of Disputes), 27 (Confidentiality), 28 (Intellectual Property Rights), 29.4 (Notice) and 29.6 (Governing Law) shall survive termination of the Contract.

**Discrepancies**

* 1. The Contractor must, if it finds any error, omission, ambiguity, discrepancy or inconsistency (**Discrepancy**) between any document comprising the Contract, immediately give written notice to the Principal, who will direct the Contractor as to the interpretation which must be followed.
  2. If:
     1. the Principal's direction under clause 2.8 is inconsistent with the order of precedence set out in clause 2.4; and
     2. the Discrepancy could not have reasonably been identified and allowed for by the Contractor exercising Good Industry Practice at the time of tender,

then the Contract Price will be adjusted to allow for any increase or decrease in costs incurred by the Contractor in carrying out the Works which directly result from the Contractor's compliance with the Principal's direction under clause 2.8.

* 1. The Contractor must provide to the Principal all quotations, invoices, timesheets and other documents relevant to substantiate the change to the Contract Price under clause 2.9.
  2. The Contractor will not be entitled to any remedy for the Principal's direction as to the interpretation of a Discrepancy except as provided for in clauses 2.9 to 2.10 (inclusive).

# Execution of the works

* 1. The Contractor must execute the Works and any other obligations under the Contract in accordance with the Contract, including any Specification, the approved Works Program, the Principal's Policies and Procedures and Good Industry Practice and to the Principal’s reasonable satisfaction.
  2. The Contractor warrants that it has the skills, experience, expertise and resources necessary to carry out all of its obligations under the Contract, including planning and execution of the Works, in accordance with the Contract and Good Industry Practice.

# Compliance with legal requirements, industrial awards and agreements

* 1. The Contractor must comply with all Legal Requirements affecting or applicable to the execution of the Works and shall ensure that its Personnel and Sub-contractors also comply with the same.
  2. Without limiting clause 4.1, the Contractor shall:
     1. comply with all industrial awards or agreements affecting or applicable to the persons employed by the Contractor for the purposes of executing the Works;
     2. ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with such remuneration and terms reflecting the industry standard as expressed in industrial awards, agreements and any code of practice applicable to the Contractor’s industry;
     3. use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 4.2(a) and 4.2(b); and
     4. comply with the terms of any agreements with its Sub-contractors in relation to the Works.

# Safety obligations

* 1. The Contractor must:
     1. ensure that all Personnel undertake the Contractor Induction prior to entering the Site;
     2. do all things reasonably necessary to ensure that the Works are executed in a manner that is safe and not likely to cause injury or illness to any person;
     3. perform all relevant functions and fulfil all relevant duties applicable to the role of the Contractor under the Contract including notification of incidents as may be required under WHS Laws;
     4. unless otherwise directed by the Principal in writing, perform the functions and fulfil the relevant duties of 'principal contractor' (as that term is defined under WHS Laws); and
     5. agree, follow and sign (if required) the WHS Contractor Guidelines when performing its obligations under the Contract.
  2. Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:
     1. as soon as practicable, but in any event within 24 hours, notify the Principal in writing of that injury, property damage, accident or incident; and
     2. provide the Principal with any further information requested by the Principal.
  3. Without limiting clause 20, the Principal may suspend the whole or part of the performance of the Parties’ obligations under the Contract following any breach by the Contractor of this clause 5 which gives rise to circumstances which:
     1. present actual or potential risk of life or serious injury; or
     2. are otherwise required to be notified under WHS Laws.

# Works program

* 1. Within 10 Business Days of the Commencement Date, the Contractor must prepare and submit to the Principal a draft Works Program for approval by the Principal.
  2. Unless otherwise advised in writing by the Principal, the Works Program must:
     1. be consistent with the Contract;
     2. show key dates and constraints;
     3. arrange activities and tasks on a week-by-week basis with each week starting on a Monday;
     4. arrange activities and tasks in an efficient and sequential logical order and on a timeline accurately representing the Contractor’s proposed timeline and method for executing the Works, showing the critical path of the Works; and
     5. take into account any requirements and constraints set out in the Specification (if any).
  3. If the Principal approves the Works Program without proposing any amendments, the Principal must give the Contractor written notice of such approval as soon as practicable.
  4. If the Principal suggests amendments or provides other written comments on the draft Works Program, the Contractor must take such amendments or comments into account and, where applicable, provide a revised draft Works Program to the Principal for approval.
  5. Following approval of the draft Works Program by the Principal, the Contractor must provide to the Principal:
     1. a final version of the Works Program in both natural format and Adobe PDF; and
     2. a weekly written report regarding compliance with the Works Program.

# Site Access

* 1. On and from the Start Date, subject to clause 5.1(a), the Principal shall give the Contractor sufficient access to the Site for the commencement and execution of the Works. To avoid doubt, access to the Site shall confer on the Contractor a right to use and control the Site only as necessary to enable the Contractor to carry out the Works and does not constitute a right of exclusive possession of the Site.
  2. While the Contractor has access to the Site, the Contractor:
     1. is liable for the care of the Works, any temporary works, materials, plant and equipment on the Site until the Principal issues a Completion Certificate; and
     2. must promptly rectify any loss or damage to the Works, unless caused by the Wilful Misconduct or gross negligence of the Principal or the Principal’s Personnel.
  3. The Contractor acknowledges and agrees that:
     1. the Contractor accesses and uses the Site at its own risk in all things and to the fullest extent permitted at Law releases the Principal from all claims arising as a result of or in connection with any death or injury sustained, or loss and damage suffered, in connection with such access and use, except to the extent caused by the Wilful Misconduct or gross negligence of the Principal or the Principal's Personnel;
     2. the Principal, the Principal's Personnel, occupiers, tenants or third parties may be occupying or using the Site or adjacent areas and premises (including for the purposes of performing works) and this may affect the Contractor’s access to Site or parts thereof from time to time;
     3. the Contractor shall carry out the Works in such a manner so as to minimise any disruption and inconvenience to the Principal, the Principal's Personnel, occupiers, tenants and third parties in their occupation or use of the Site or any adjacent areas or premises;
     4. the Principal may access the Site from time to time in its discretion for the purpose of auditing the Contractor's compliance with its obligations under the Contract.
  4. Upon issue of the Completion Certificate or termination of the Contract, whichever comes first, the Contractor shall vacate the Site.

# Commencement and completion of the works

* 1. Unless otherwise agreed in writing by the Parties, the Contractor must commence the Works on the Start Date and complete the Works by the Date for Completion.
  2. The Contractor is entitled to request an extension to the Start Date or Date for Completion if a delay in the commencement or execution of the Works is due to:
     1. a breach by the Principal of the Contract;
     2. delay or disruption caused by the Principal, except where such delay or disruption is caused by the Principal acting in accordance with the Contract;
     3. a Force Majeure Event occurring before the Start Date or Date for Completion, as applicable;
     4. suspension of the Contract under clause 20 where the suspension is the result of a breach by the Principal;
     5. a latent condition in accordance with clause 9; or
     6. a Works Variation,

(each being a **Delay Event**).

* 1. The Contractor must make a written request to the Principal as soon as practicable, but in any event within 10 Business Days, after the Delay Event has arisen, or within any other period agreed in writing by the Parties, setting out the facts on which the request is based, including the cause of the delay and the mitigation actions taken (**Extension Request**).
  2. The Principal, acting reasonably, must notify the Contractor in writing within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether the Extension Request is granted and any relevant period of extension.
  3. Despite any other provision in the Contract, the Contractor acknowledges that in order to be granted an extension to the Start Date or Date for Completion under this clause 8:
     1. the Delay Event must, or will, cause a delay in respect of the critical path for the Works;
     2. the Contractor must implement Reasonable Steps to prevent and mitigate the delay; and
     3. the Contractor must have strictly complied with clause 8.3.
  4. An extension of time under this clause 8 will be the Contractor's sole remedy for a Delay Event and the Contractor shall have no entitlement to claim costs incurred in connection with a Delay Event.
  5. The Contractor must give the Principal at least 10 Business Days’ notice in writing of the date on which the Contractor anticipates that Completion shall occur.
  6. When the Principal is satisfied that Completion has occurred, the Principal must issue a Completion Certificate to the Contractor.
  7. As soon as possible after the Date of Completion, the Contractor must:
     1. issue a final Payment Claim in accordance with clause 16.1; and
     2. clear away and remove from the Site all plant and temporary works of any kind.
  8. The Contractor acknowledges and agrees that:
     1. any act or omission by the Principal or the Principal's Personnel (including any delay or failure to grant an Extension Request) will not cause the Date for Completion to be set at large; and
     2. no principle of law or equity (including the 'Prevention Principle' will apply which might otherwise set time at large or render liquidated damages unenforceable.

# Latent conditions

* 1. The Contractor warrants that, before entering into the Contract, the Contractor had access to, and inspected, the Site, and has carried out its own enquiries to establish, understand and satisfy itself as to the state of the Site and all risks and contingencies associated with the Site existing as at the earlier of:
     1. the date the Contractor submits its tender for the Works; and
     2. the Commencement Date.
  2. If the Contractor discovers physical conditions on the Site or its surroundings, excluding weather conditions, which could not reasonably have been anticipated at the time of entering the Contract despite the Contractor having:
     1. examined all information made available in writing by the Principal to the Contractor for the purpose of preparing a Request Response in respect of the Works;
     2. examined all information relevant to the risks, contingencies and other circumstances having an effect on the Request Response and obtainable by the making of reasonable enquiries; and
     3. inspected the Site and its surroundings,

the Contractor shall immediately notify the Principal in writing and may request that a Works Variation be directed and/or may make an Extension Request in accordance with the provisions of clause 8, and the Principal must not unreasonably withhold its agreement to a Works Variation and/or Extension Request.

# Liquidated damages

* 1. This clause 10 applies if the Parties have executed this Document and the Capital Works Contract Specifics state that this clause 10 applies.
  2. If the Contractor fails to achieve Completion by the Date for Completion, the Contractor must pay the Principal liquidated damages calculated in accordance with the Capital Works Contract Specifics for such default for every day beyond the Date for Completion up to and including the earliest of the date of Completion, termination of the Contract, or any earlier date directed by the Principal. To avoid doubt, the Principal may recover liquidated damages from the Contractor either on demand from the Contractor, by deducting such amount from any amount owed by the Principal to the Contractor or by having recourse to Security in accordance with clause 19.
  3. To claim liquidated damages, the Principal must provide written notice to the Contractor stating the date on which the Contractor’s liability to pay liquidated damages commenced as soon as practicable after the Contractor’s liability to pay liquidated damages arose.
  4. The Contractor acknowledges and agrees that all sums payable by the Contractor to the Principal as liquidated damages represent the Principal’s genuine pre-estimate of the damages likely to be suffered if Completion is not achieved by the Date for Completion and such sums shall not be construed as a penalty.
  5. If an Extension Request in relation to the Date for Completion is granted after the Contractor has paid, or the Principal has set-off or deducted, the liquidated damages payable under clause 10.2, the Principal must repay to the Contractor the amount of such liquidated damages as represents the length of the extension to the Date for Completion.
  6. To avoid doubt, the payment of liquidated damages under this clause 10 does not relieve the Contractor from any of its obligations or liabilities under the Contract.
  7. Nothing in the Contract shall prejudice or disentitle the Principal from claiming damages for delay at law against the Contractor instead of liquidated damages if it is determined that the provisions in this clause 10 are void, voidable or otherwise unenforceable or if the Capital Works Contract Specifics state that this clause 10 does not apply or that the amount of liquidated damages is blank, '$0', 'Nil' or 'Not applicable' or the like.

# Plant and equipment

The Contractor must:

* + 1. provide all materials, labour, plant, equipment, tools and other resources necessary for executing the Works, unless otherwise agreed in writing by the Parties or set out in any Capital Works Contract Specifics;
    2. ensure that any plant and equipment is removed from the Site as soon as reasonably practicable upon conclusion of its use in executing the Works; and
    3. ensure that all such items used or supplied in connection with the Works comply with Legal Requirements and are fit for their usual and intended purpose.

# Materials

* 1. The Principal may supply the Principal Supplied Items which must be used by the Contractor for their intended purpose in performing the Works.
  2. In relation to all materials which are not Principal Supplied Items:
     1. all materials used in the execution of the Works must be consistent with the nature and character of the Works, be of a kind that is suitable for their purpose, and be in compliance with the Contract and any relevant Australian Standards, unless otherwise agreed by the Principal;
     2. the Contractor must give the Principal full particulars in writing of the mode, place of manufacture, source of supply and the performance capacities of materials, or other information, about the materials used in executing the Works, where the Principal makes a request in writing (acting reasonably) for such particulars or information; and
     3. at any time prior to the issue of the Completion Certificate, the Principal may reject any material that is not in compliance with this clause 12.2 and may direct its replacement, correction or removal at the Contractor’s cost.

# Works variation

* 1. The Contractor must not vary the Works except as directed by the Principal in a Works Variation Form issued to the Contractor and signed by or on behalf of the Principal.
  2. The Principal may (whether or not it has given the Contractor notice of a Proposed Works Variation) at any time prior to the Date of Completion, direct the Contractor to perform a Works Variation and the Contractor must comply with the direction.
  3. No Works Variation directed under this clause 13 invalidates or repudiates this Contract.

**Works Variation Proposal**

* 1. The Principal may provide a notice of a proposed Works Variation to the Contractor, detailing relevant aspects of the proposed Works Variation (**Proposed Works Variation**).
  2. On receipt of a Proposed Works Variation, the Contractor must provide a response within 5 Business Days:
     1. detailing all the additional Works which the Contractor will need to undertake to execute the Proposed Works Variation;
     2. pricing all aspects of the Proposed Works Variation and setting out the adjusted Contract Price;
     3. setting out the impact (if any) on the Date for Completion; and
     4. expressly noting any excluded Works not priced by the Contractor,

(**Proposed Works Variation Response**).

* 1. The Contractor must bear the cost of preparing a Proposed Works Variation Response.
  2. Any additional Works which could be reasonably inferred to form part of the requirements of a Proposed Works Variation is deemed to have been priced within a Proposed Works Variation Response, unless such works are expressly noted as an exclusion.
  3. The Principal may at any time in its absolute discretion direct a Works Variation the subject of a Proposed Works Variation Response by issuing the Contractor a Works Variation Form, and such Works Variation Form may specify that the Principal:
     1. subject to clause 13.9, accepts the Proposed Works Variation Response that the Contractor provided; or
     2. rejects the Proposed Works Variation Response that the Consultant provided, in which case the Works Variation will be valued in accordance with clauses 13.11 to 13.13.
  4. Unless otherwise stated in the Variation Form, acceptance of the Proposed Works Variation Response under clause 13.8(a) will not be deemed to accept the impact on the Completion Date, and any adjustment to the Completion Date will be in accordance with clause 8.
  5. The adjustment to the Contract Price resulting from a Works Variation will be confirmed by the Principal in a purchase order issued by the Principal to the Contractor in relation to the relevant Works Variation.

**Valuation**

* 1. If the Principal has issued a Works Variation Form to the Contractor in accordance with clause 13.2, 13.8(b) or 13.15(a) in respect of the Works, the Contractor is entitled to claim an adjustment to the Contract Price in accordance with these clauses 13.11 to 13.13.
  2. The Contract Price must be adjusted to reflect the value of the varied Works which must be agreed between the parties. Where there is no agreement, the value will be calculated by the Principal as follows:
     1. where applicable rates and costs are included in this Contract, by applying those rates and costs; or
     2. where applicable rates and costs are not included in this Contract, the Principal’s assessment of the fair and reasonable price for the varied Works.
  3. In order that the Principal may make the assessment under clause 13.12, the Consultant must provide to the Principal all quotations, invoices, timesheets and other documents relevant to the actual cost to the Contractor of carrying out the varied Works (although the Contractor acknowledges that the actual cost of carrying out the varied Works will be used as an indication only of the reasonable price of the varied Works).

**If a direction constitutes a Works Variation**

* 1. If the Contractor considers that a direction given by the Principal other than a direction in a Works Variation Form, constitutes a Works Variation that will affect the Contract Price (where the Contractor is entitled to an adjustment to the Contract Price) or the Date for Completion (where the Contractor is entitled to an adjustment to the Date for Completion), it must within 5 Business Days and in any event before complying with the direction, notify the Principal, identifying the relevant direction and the estimated impact on the Contract Price and the Date for Completion.
  2. As soon as reasonably practicable after receiving a notice under clause 13.14, the Principal must either:
     1. direct the Contractor to comply with the direction by issuing a Works Variation Form to that effect, in which case the Contract Price will be adjusted in accordance with clauses 13.11 to 13.13 and the Date for Completion will be adjusted in accordance with clause 8;
     2. direct the Consultant to comply with the direction on the basis that the Client does not consider it to constitute a Works Variation, after which the Consultant must comply with the direction but may issue a notice of dispute under clause 23; or
     3. withdraw the direction.

# Testing

* 1. Prior to the Date of Completion, the materials and Works shall be subject to such tests as:
     1. set out in any Capital Works Contract Specifics; or
     2. may be reasonably directed in writing by the Principal,

to establish the compliance of materials, workmanship and the Works with the Contract.

* 1. Tests conducted under clause 14.1 shall be conducted at the Contractor’s cost unless otherwise agreed in writing by the Parties.

# Defects liability period

* 1. The Contractor must rectify any Defects notified to the Contractor by the Principal in writing during the Defects Liability Period within the time directed by the Principal (or if no time is directed, within a reasonable time having regard to the urgency of the Defect), at the Contractor’s expense.
  2. If the Contractor fails to rectify a Defect in accordance with clause 15.1, the Principal may rectify the Defect and the costs of it doing so shall be a debt due from the Contractor to the Principal. To avoid doubt, the Principal may recover such amounts from the Contractor either on demand from the Contractor, by deducting such amount from any amount owed by the Principal to the Contractor or by having recourse to Security in accordance with clause 19.

# Payment

* 1. At the time or frequency set out in the Capital Works Contract Specifics or agreed in writing by the Parties (or if neither are applicable, as soon as reasonably practicable following the end of each month in which Works are performed), the Contractor must give the Principal a detailed, itemised Payment Claim specifying:
     1. the amount claimed to be due to the Contractor for any part of the Works carried out up to the date of the Payment Claim, including a breakdown of such amounts and description of the items and quantities of the Works carried out;
     2. any other amounts claimed to be owed by the Principal to the Contractor at the date of the Payment Claim; and
     3. any other information required for Payment Claims set out in the Capital Works Contract Specifics or directed in writing by the Principal.
  2. The Principal shall assess a valid Payment Claim and, subject to the deduction of:
     1. any Retention Moneys; or
     2. any other amount which the Principal may be entitled to deduct or set off or which is otherwise due and payable by the Contractor to the Principal,

the Principal must pay the amount assessed as due from the Principal to the Contractor within the time set out in the Capital Works Contract Specifics. To avoid doubt, nothing in the Contract obliges the Principal to pay for Works that are not in accordance with the Contract or for plant or materials not incorporated in the Works on Site.

* 1. If the Principal assess the amount due by the Principal to the Contractor in respect to a Payment Claim as less than the amount of the Payment Claim, or intends to deduct or set off from or against a Payment Claim under clause 16.2(b), it must issue the Contractor with a notice within 10 SOP Act Business Days explaining its reasons for the assessment, deduction or set off.
  2. If the moneys deducted or set off by the Principal under clause 16.2(b) are insufficient to discharge the payment liability of the Contractor to the Principal, the Principal may recover the remaining payment liability from the Contractor on demand or have recourse to Security in accordance with clause 19.
  3. The payment of moneys to the Contractor by the Principal shall not be evidence of the value of work done or an admission of liability or evidence that any Works have been executed satisfactorily but shall be a payment on account only. To avoid doubt, the Principal may correct an error in a previous payment in a later payment.
  4. Unless otherwise agreed in writing by the Parties, the Contract Price shall not be subject to adjustment for rise and fall in costs.
  5. The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing. To avoid doubt, the Principal must not unreasonably withhold its consent to any reasonable Disbursements.

# Interest on overdue payments

* 1. This clause 17 applies if the Parties have executed this Document and the Capital Works Contact Specifics state that this clause 17 applies.
  2. Interest at the rate set out in the Capital Works Contract Specifics is payable on so much of an amount that is payable under the Contract by a Party to the other Party on or before a certain date but which is unpaid 20 Business Days after that date.
  3. The interest is to be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.
  4. To avoid doubt, if the Party who owes the other Party an amount under the Contract pays to the other Party that amount before the expiry of 20 Business Days from the date on which the amount fell due, no interest is payable.

# Provisional Sums

* 1. A Provisional Sum included in the Contract shall not itself be payable by the Principal but where, pursuant to a direction by the Principal, the Work to which the Provisional Sum relates is carried out or supplied by the Contractor, the Work shall be priced (subject to clause 18.3) in the same manner as a Variation in accordance with clauses 13.12 and 13.13, and the difference shall be added to or deducted from the Contract Price.
  2. Notwithstanding clause 18.1 but subject to clause 18.3, where any part of such Work is carried out or supplied by a Sub-contractor, the adjustment to the Contract Price shall be:
     1. the amount payable by the Contractor to the Sub-contractor for the Work; plus
     2. a reasonable amount on account of profit and overheads.
  3. Despite the valuation methods stated in clauses 18.1 and 18.2, the Principal is not required to pay any amount in respect of a Provisional Sum which exceeds the Provisional Sum by more than 10%.

# Retention moneys and security

* 1. This clause 19 applies if the Capital Works Contract Specifics state that this clause 19 applies.
  2. If the Capital Works Contract Specifics state that the form of Security provided will be Retention Moneys:
     1. subject to clause 19.2(b), the Principal may deduct as Retention Moneys a percentage set out in any Capital Works Contract Specifics of the balance of each Payment Claim (**Retention Percentage**) as security for the performance of the Contractor’s obligations under the Contract; and
     2. the Principal may deduct Retention Moneys under clause 19.2(a) until the Principal has retained an amount equalling the Retention Sum.
  3. If the Capital Works Contract Specifics state that the form of Security to be provided is a 'bank guarantee' or 'insurance bond', the Security must be:
     1. for the amount or amounts stated in the Capital Works Contract Specifics;
     2. unconditional and irrevocable; and
     3. in a form and from an issuer approved by the Principal.
  4. The Principal may have recourse to any Security in the circumstances set out in this Document and at any time it may be entitled to recover from, or be paid by, the Contractor an amount under the Contract or otherwise, provided at least 5 SOPA Act Business Days have elapsed since the Principal notified the Contractor of its intention to have recourse.
  5. The Principal must return to the Contractor the Security provided under this clause 19 after deduction of any amounts the Principal is owed under the Contract or otherwise:
     1. within the period of time specified in the Capital Works Contract Specifics following the earlier of the Date of Completion or termination of the Contract; or
     2. where the Capital Works Contract Specifics does not state a period of time for the return of Security, within 20 Business Days after the expiration of the Defects Liability Period,

provided that the Principal may continue to hold any Security until the resolution of any claim the Principal may have against the Contractor (whether liquidated or otherwise) or any Dispute between the Parties.

* 1. If the Principal has recourse to any Security and it is subsequently determined that the Principal was not entitled to do so, the Principal's sole liability to the Contractor shall be to return or reinstate the Security.

# Default, suspension and termination for breach

**Default**

* 1. Without limiting the Principal’s rights under clause 20.8, if a Party breaches a provision of the Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
     1. identifying the nature of the alleged breach;
     2. requiring the Party to comply with the relevant provision of the Contract; and
     3. requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice;
  2. If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages or exercise any other right under the Contract or under any applicable Legal Requirement.

**Suspension**

* 1. Without limiting the Principal’s rights under clauses 20.8, if a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 20.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party’s obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party’s reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of the Contract is no longer suspended (in each case the non-defaulting Party shall give written notice to the defaulting Party of the cessation of the suspension) at which point the Parties must promptly recommence the performance of their obligations.
  2. The Contractor must bear any cost it incurs as a result of a suspension under clauses 20.3 or 5.3 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor to the Principal under this clause become a debt due to the Principal by the Contractor.
  3. To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clauses 20.3 or 5.3, the Date for Completion shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

**Termination for breach**

* 1. Subject to clause 20.7, without limiting the other circumstances in which the Contract may be terminated, if a Party breaches a provision of the Contract and fails to comply with a notice issued under clause 20.1, then the other Party may terminate the Contract by written notice to the defaulting Party.
  2. If a Party breaches a material provision of the Contract and that default is incapable of remedy or rectification, the non-defaulting Party may immediately terminate the Contract by written notice to the defaulting Party.

**‘Show cause’ procedure**

* 1. At any time, irrespective of whether the Principal has followed the steps in clauses 20.1 to 20.7 (inclusive), the Principal may by written notice to the Contractor require the Contractor to show cause, by a date specified in the notice, why the Principal should not terminate the Contract or suspend payment and take the Works remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at law (including equity) if the Contractor:
     1. fails to commence the Works by the Start Date;
     2. fails to proceed with the Works at a reasonable rate of progress;
     3. commits a material breach of the Contract;
     4. fails to comply with a Legal Requirement relating to the execution of the Works;
     5. fails to maintain the Insurances;
     6. assigns or sub-contracts the Contract or the Works or any part thereof without any prior written consent of the Principal required by the Contract; or
     7. commits an Insolvency Event,

and if the Principal does so take all or part of the Works out of the hands of the Contractor because the Contractor has failed to show sufficient cause:

* + 1. the Principal may complete the whole or any part of those Works itself or by means of other persons;
    2. the Principal may take possession of the Site, the Works and, except where the Contract is terminated, the plant and other things on or in the vicinity of the Site as are owned by the Contractor;
    3. if the costs incurred by the Principal in completing the Works is greater than the amount which would have been paid to the Contractor if the Contractor had completed the Works, the difference shall be a debt due from the Contractor to the Principal, otherwise any difference shall be a debt due from the Principal to the Contractor; and
    4. the Principal may terminate the Contract by written notice to the Contractor.

**Termination for convenience**

* 1. The Principal may terminate the Contract at any time for any reason by giving the Contractor 20 Business Days' written notice. Subject to any rights of deduction or set off the Principal may have, following termination pursuant to this clause 20.9, the Principal's only obligation (and sole liability resulting from such termination) is to pay the Contractor for:
     1. the Works performed in accordance with the Contract prior to the date of termination (and not included in any other payment to the Contractor); and
     2. the reasonable costs to the Contractor of complying with the Principal's directions on or after termination.
  2. If any termination of the Contract by the Principal, other than a termination under clause 20.9, is found to be ineffective, invalid or otherwise unlawful, such termination shall be deemed instead to constitute a termination by the Principal under clause 20.9.

# Termination

* 1. If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to execute all or part of the Works.
  2. Where the Principal terminates the Contract under clauses 20.6, 20.7 or 20.8(k), the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.
  3. When the Contract is terminated, the Contractor must:
     1. promptly return to the Principal any of the Principal’s property or Principal’s Documents; and
     2. if requested by the Principal, co-operate with and assist the Principal to transition the execution of the Works to the Principal or to another person engaged by the Principal.

# Liability

* 1. Subject to clause 22.2, the Contractor shall indemnify the Principal and the Principal’s Personnel against any Loss suffered or incurred in connection with any act or omission of the Contractor or the Contractor’s Personnel in connection with the execution of the Works and the performance of the Contract, except to the extent that the Loss is caused by the Wilful Misconduct or gross negligence of the Principal or the Principal’s Personnel.
  2. Notwithstanding any other clause of the Contract, neither Party will be liable to the other Party for any Consequential Loss unless:
     1. the Law provides otherwise;
     2. the Parties agree in writing that a Party will be liable for that Consequential Loss; or
     3. the Consequential Loss is specified in or otherwise covered by an Insurance (or would have been covered by an Insurance but for the wrongful act or omission of the insured Party).
  3. Each Party agrees that Part 1F of the *Civil Liability Act 2002* (WA), to the extent that the same may be excluded at Law, is excluded from operation in relation to any Dispute, claim, action, right, obligation or liability arising out of or in connection with the Contract, including in respect to any of the Contractor’s Sub-contractors or such Sub-contractors’ personnel.

# Settlement of disputes

* 1. In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).
  2. Within 15 Business Days of receipt of the Dispute Notice, or as otherwise agreed in writing, the Parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.
  3. In the event that the Dispute remains unresolved after the time period referred to in clause 23.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for arbitration in accordance with clause 23.4.
  4. An arbitration under this clause 23 shall:
     1. be conducted by an arbitrator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice under clause 23.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
     2. be conducted according to the rules proposed by the appointed arbitrator; and
     3. be conducted during a period of 10 Business Days (or such longer period as the Parties may agree in writing) from the acceptance by the arbitrator of his or her appointment.
  5. The Parties shall each pay their own costs of the arbitration and will each pay half of the arbitrator’s fees and costs.
  6. If the Parties are unable to resolve the Dispute within the arbitration period stipulated in, or agreed under, clause 23.4(c), either Party may take whatever other action is available to it under the Contract or at law, including initiating proceedings in a court of competent jurisdiction.
  7. Nothing in this clause 23 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.
  8. To avoid doubt, nothing in this clause 23 affects or limits a Party’s right to apply for an adjudication under the SOP Act.

# SOP act

* 1. Nothing in the Contract shall be construed to make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act) a breach of the Contract unless the Principal would have been in breach of the Contract had the SOP Act had no application.
  2. If any of the Contractor's Sub-contractors at any time suspends the provision by it of work, services, materials or other things (which form part of the Works) or takes any other action under the SOP Act, despite any other provision of the Contract:
     1. the Contractor shall not be relieved of any of its obligations under the Contract and the suspension or other action by the Sub-contractor shall not entitle the Contractor to any claim against the Principal (including for an extension of time); and
     2. the Contractor shall immediately provide to the Principal full details of the circumstances giving rise to the Sub-contractor's right or alleged right to suspend or take other action.
  3. If, pursuant to the SOP Act, the time within which the Contractor must issue a notice pursuant to any provision of this Contract is deemed to be unfair and therefore of no effect, that time is in each case adjusted to 28 days.

# Insurance and risk management

* 1. The Contractor must:

### procure and maintain the Insurances with the minimum level of cover set out in this Document, or otherwise specified by the Principal in the Principal Request, from insurers having a financial performance rating of at least A- by Standard and Poor’s (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Principal, which either:

#### carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or

#### if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;

### ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the performance of the Works;

### upon the Principal’s written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;

### inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor;

### disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the performance of the Works by the Contractor or a claim in connection with the Contract;

### pay all premiums and deductibles applicable to any of the Insurances when due;

### promptly reinstate any Insurance required if it lapses or cover is exhausted;

### give the Principal at least 20 Business Days’ prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and

### not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

* 1. To the extent possible, at the times of placement or renewal of any Insurances, each Insurance must:

### state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and

### where the Principal is entitled to cover under the Insurance:

#### provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;

#### 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;

#### except for compulsory workers’ compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);

#### provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and

#### provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

* 1. The Contractor must procure and maintain public liability insurance and product liability insurance which:

### is for an amount not less than $20 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;

### covers the liability of the Contractor, its Personnel and the Principal in respect of:

#### loss of, damage to, or loss of use of, any real or personal property; and

#### the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers’ compensation policy),

## arising out of or in connection with the Contractor’s performance of the Contract; and

### covers the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the Contract and sudden and accidental pollution.

* 1. Where the Contractor shall be using its own vehicles, plant and equipment in performing the Works, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (**Contractor’s Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), which must:

### cover all loss and/or damage to the Contractor’s Vehicles and Equipment;

### cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor’s Vehicles and Equipment;

### be unlimited in the number of occurrences; and

### to the extent available from the insurance market from time to time, contain a principal’s indemnity extension in favour of the Principal.

* 1. Unless otherwise agreed in writing by the Principal, the Contractor must procure and maintain workers’ compensation insurance as follows:

### the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than $50 million or such amount as is specified in a Principal Request in respect of any one event; or

### where the Contractor is a sole trader and has no workers’ compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.

* 1. Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:

### be for not less than $5 million or such other amount as is specified in the Principal Request or otherwise reasonably requested by the Principal in respect of any one claim;

### be for an amount not less than the amount specified in the Principal Request in the aggregate for all claims arising in any one 12 month period of insurance (if any is so specified);

### include one full automatic reinstatement of the limit of liability;

### cover liability arising from any act or omission in connection with or arising out of the Contractor’s professional activities and duties under the Contract;

### cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice; and

### be effected and maintained by the Contractor for the duration specified in the Principal Request, or if not so specified, for the duration commencing on the Start Date and ending on the date that is 6 years after the expiration of the Defects Liability Period.

* 1. Notwithstanding any other provision of this clause 25, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:

### it is lawful for the Contractor to do so;

### the Contractor identifies in writing to the Principal which of the risks required to be insured are being self-insured; and

### if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor’s latest annual report and accounts and/or demonstrate to the Principal’s reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.

* 1. The Parties acknowledge and agree that:
     1. 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 the Contract;
     2. the Insurances are primary, and not secondary, to the indemnities referred to in this Document and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
     3. whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
     4. the Contractor must 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 Insurance;
     5. nothing in this clause 25 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and
     6. where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.
  2. The Contractor, at the discretion of the Principal, may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.

# Assignment and sub-contracting

* 1. The Contractor must not:
     1. assign or novate any of its rights and obligations under the Contract, or sub-contract any aspect of the Works, without the Principal’s prior written approval; or
     2. allow a Sub-contractor to assign or novate any of its rights or obligations under the relevant sub-contract or further sub-contract any aspect of sub-contracted Works without the Principal’s prior written approval.
  2. To avoid doubt, the Principal must not unreasonably withhold its approval under clause 26.1.

# Confidentiality

* 1. In this clause 27, the following terms have the following meanings:
     1. ‘**Disclosing Party**’ means the Party which has disclosed Confidential Information that is confidential to that Party; and
     2. ‘**Receiving Party**’ means the Party to whom Confidential Information is disclosed by the Disclosing Party.
  2. Subject to clause 27.3, the Parties must not:
     1. disclose Confidential Information to any other person; or
     2. use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.
  3. Subject to clause 27.4, a Party may disclose Confidential Information to a third party:
     1. with the prior consent of the Disclosing Party;
     2. to the extent required by any Law or applicable securities regulation or rule;
     3. in connection with any dispute or litigation concerning the Contract or its subject matter;
     4. to the extent required by any authority having jurisdiction over the Receiving Party; or
     5. who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.
  4. Before making a disclosure to a person under clause 27.3, the Receiving Party must:
     1. inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party’s obligations under the Contract, except where clause 27.3(b) applies;
     2. notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
     3. where clause 27.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

# Intellectual property rights

* 1. The Contractor warrants that its execution of the Works and any designs, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.
  2. The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the execution of the Works or from any designs, documents or methods of working provided by it to the Principal.
  3. Ownership of a Party’s Background Intellectual Property Rights vests in and shall remain vested in that Party.
  4. The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor’s Background Intellectual Property Rights only for the intended purpose of the Contract.
  5. The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal’s Background Intellectual Property Rights to the extent necessary for the Contractor to execute the Works.
  6. All Intellectual Property Rights (other than the Contractor’s Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor’s cost or as otherwise agreed by the Parties.
  7. The Contractor must ensure that:
     1. copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Sub-contractor of the Contractor or any other third party; and
     2. no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Works or the Contract contrary to the interests of the Principal.
  8. A Party must not:

### grant any third party access to the other Party’s Intellectual Property Rights without that other Party’s prior written consent, which may be given in that other Party’s discretion; or

* + 1. do or allow to be done, or fail to do, any act that may infringe the other Party’s Intellectual Property Rights.
  1. All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

# General

* 1. **Force Majeure Event**

### A Party must:

#### immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under the Contract, excluding any obligation to pay money owing to the other Party, (**Affected Obligations**); and

#### if it gives such a notice, either:

##### to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or

##### where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.

### The Party’s obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

### The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.

### If a Force Majeure Event continues to affect the performance of the Works for the duration of the Force Majeure Event Termination Period, the Principal may terminate the Contract by serving written notice on the Contractor.

* 1. **Relationship of the Parties**

The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise. Nothing in the Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly agreed otherwise.

* 1. **Representatives**
     1. Each Party may appoint a Representative, and give them authority, to act on its behalf for the purpose of the Contract within delegation limits advised in writing to the other Party.
     2. If the Parties specify the details of the Representatives in the Capital Works Contract Specifics, the Parties’ Representatives are those persons set out in the Capital Works Contract Specifics as at the Commencement Date, as may be replaced from time to time by written notice to the other Party.
  2. **Notice** 
     1. Any notice under the Contract shall be in English, in legible writing and signed by hand or by electronic signature, and shall be given or served by:
        1. hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or the Capital Works Contract Specifics, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified address; or
        2. email to the email address of the receiving Party specified in the Letter of Award, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified email address.
     2. Any notice is regarded as being given by the notifying Party and received by the receiving Party:
        1. if by delivery in person, when delivered to the address of the recipient;
        2. if by post, 5 Business Days from and including the date of postage; and
        3. if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

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

* 1. **GST**
     1. Words capitalised in this clause 29.5 and not otherwise defined have the meaning given in the GST Law.
     2. Where an amount of Consideration is payable for a Taxable Supply made under the Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.
     3. The Party making a Taxable Supply under the Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
     4. If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under the Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
  2. **Governing law**

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

* 1. **Waiver**

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

* 1. **Variation**

Without limiting clause 13, the terms of the Contract shall not be varied or amended except by the written agreement of the Parties.

* 1. **Entire agreement**

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

* 1. **Rights are cumulative**

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

* 1. **Severability**

Should any part of the Contract be invalid or unenforceable, that part shall be:

* + 1. read down, if possible, so as to be valid and enforceable; and
    2. if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,

and the remainder of the Contract shall not be affected by such invalidity of unenforceability.

# Schedule 1

**Capital Works Contract Specifics and Specification**

**Part A - Capital Works Contract Specifics**

| **ITEM** | **CONTRACT SPECIFIC** | **DESCRIPTION** |
| --- | --- | --- |
|  | **Works**  **(clause 1.1)** | *[insert description of the Works or ‘As set out in the Specification’ or ‘As set out in an Order’]*  *[Guidance note: note the definition of ‘Specification’ in clause 1.1 of the Document. If paragraph (c) of that definition applies, a Specification should be inserted within Part B below]* |
|  | **Start Date**  **(clauses 1.1 and 8.1)** | *[insert]* |
|  | **Date for Completion**  **(clauses 1.1 and 8.1)** | *[insert]* |
|  | **Application of clause 10 regarding liquidated damages**  **(clause 10)** | *[insert ‘Yes’ or ‘No’ to confirm whether clause 10 regarding liquidated damages applies]* [G*uidance note: liquidated damages are common in many construction and works contracts. Consider the loss or damage that may be suffered by you if the works are not completed by the date for completion. Liquidated damages should be a genuine pre-estimate of the loss or damage that will be suffered by the principal as a result of the failure to achieve completion before the date for completion*]. |
|  | **Liquidated damages formula or calculation**  **(clause 10)** | *[insert formula or appropriate amount of liquidated damages for failure to achieve Completion before the Date for Completion]*  *[Guidance note: if a liquidated damages figure is to be included then it should be a genuine pre-estimate of the loss or damage that will be suffered by the Principal as a result of the failure to achieve Completion before the Date for Completion]* |
|  | **Plant and equipment that the Contractor does not need to provide**  **(clause 11(a))** | *[insert details of plant and equipment etc. that the Principal may provide etc.]* |
|  | **Principal Supplied Items**  **(clause 12.1)** | *[insert any Principal Supplied Items]* |
|  | **Tests**  **(clause 14.1)** | *[insert details of tests to be completed]* |
|  | **Payment Claim – time or frequency**  **(clause 16.1)** | *[insert] [e.g. monthly, following achievement of a milestone etc.]* |
|  | **Payment Claim – other information required**  **(clause 16.1(c))** | *[insert]* |
|  | **Payment Claim – time for payment**  **(clause 16.2)** | *[insert] [e.g. number of Business Days]*  *if nothing stated, 20 SOP Act Business Days.* |
|  | **Application of clause 17 regarding interest**  **(clause 17.1)** | *[insert ‘Yes’ or ‘No’ to confirm whether clause 17 regarding interest on overdue payments applies]* |
|  | **Interest rate on overdue payments**  **(clause 17.2)** | *6% per annum*  *[Note: SOPA stipulated a minimum interest rate of 6% per annum]* |
|  | **Application of clause 18 regarding Security**  **(clause 19.1)** | *[insert ‘Yes’ or ‘No’ to confirm whether clause 18 regarding Security applies]* |
|  | **Form of Security to be provided**  **(clauses 1.1, 19.1 and 19.2)** | *[insert]* |
|  | **Retention Percentage**  **(clauses 1.1 and 19.2)** | *[insert if Retention Moneys are to be held – otherwise not applicable] [as a percentage % of the balance of a Payment Claim]* |
|  | **Retention Sum**  **(clauses 1.1 and 19.2(b))** | *[insert if Retention Moneys are to be held – otherwise not applicable] [as a percentage % of the Contract Price]* |
|  | **Security requirements**  **(clause 19.3)** | *[insert]* |
|  | **Time for return of Security following Date of Completion**  **(clause 19.5(a))** | *[insert]* |
|  | **Time for return of Security**  **(clause 19.5(b))** | *[insert]*  *[Guidance note: generally 50% Security returned after Completion, with remaining 50% returned after expiration of Defects Liability Period]* |
|  | **Representatives – Contractor’s Representative**  **(clause 29.3)** | Name: [*insert]*  Title: [*insert*]  Postal address: [*insert*]  Phone: [*insert*]  Email: [*insert*] |
|  | **Representatives – Principal’s Representative**  **(clause 29.3)** | Name: [*insert]*  Title: [*insert*]  Postal address: [*insert*]  Phone: [*insert*]  Email: [*insert*] |
|  | **Notice – Principal (clause 29.4)** | Postal address: [*insert*]  Email: [*insert*]  Contact person: [*insert*] |
|  | **Notice – Contractor (clause 29.4)** | Postal address: [*insert*]  Email: [*insert*]  Contact person: [*insert*] |

# Schedule 2

**Works Variation Form**

1. This Works Variation Form identified below is a Works Variation Form for the purposes of clause 13 of the Contract.
2. The Principal directs the Works Variation to the Works as set out below.

|  |  |  |
| --- | --- | --- |
| **Principal:** | **City of Nedlands (ABN 92 614 728 214)** of 71 Stirling Hwy, Nedlands, WA 6009 | |
| **Contractor:** | [Insert Contractor's name, ABN and address] | |
| **Capital Works Contract:** | [Insert description of Capital Works Contract by reference to the parties and the date of the Contract] | |
| **Contract Number:** | [Insert contract number for Capital Works Contract] | |
| **Date of Works Variation Form:** | [Insert date this Works Variation Form is issued to the Contractor] | |
| **Description of Works Variation** | | |
|  | | |
| **Proposed Works Variation Response:** | [Insert reference to, or attach, any Works Variation Response under clause 13 applicable to the Works Variation required by this Works Variation Form or state that the Contract Price is to be adjusted in accordance with clause 13.12(b)] | |
| **New Date for Completion (if applicable):** | [Insert new Date for Completion] | |
| **New Contract Price:** | [To be confirmed in a purchase order once assessed in accordance with clause 13] | |
| **Approved By:** | **Signature:** | …………………...………………………………. |
| **Name:** | …………………...………………………………. |
| **Position:** | …………………...………………………………. |
| **Date:** | …………………...………………………………. |