

GENERAL CONDITIONS OF CONTRACT

**FOR THE SUPPLY OF GOODS, THE
PROVISION OF GENERAL SERVICES AND MINOR WORKS**

Shire of Northam

and

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

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DATE

PARTIES

Shire of Northam of PO Box 613, NORTHAM WA 6401 ABN: 42 826 617 380 ('Principal');
and

[Insert Contractor name] of **[insert postal address]** **[insert ABN]** ('Contractor').

BACKGROUND

- (a) The Principal wishes to engage the Contractor for the provision of Work under the Contract.
- (b) The Contractor has agreed to supply the Work under the Contract on the terms of this Contract.

The Parties agree as set out in the Operative part of this Contract, in consideration of, among other things, the mutual promises contained in this Contract.

PART A – GENERAL

This Part A (Clause 1 to Clause 45 (inclusive)) applies regardless of whether the Contractor is required to provide Goods and/or Services and/or Works under this Contract.

OPERATIVE PART

1. DEFINITIONS

1.1 In this Contract, except where the context otherwise requires:

'**Acceptance**' has the meaning given in Clause 52.2.

'**Approval**' means any certificate, licence, consent, permit, approval, authority or requirement of any Legal Requirement or any organisation having jurisdiction in connection with the provision of the Work under the Contract.

'**Approximate Quantities**' has the meaning given in Clause 49.

'**Australian Statistician**' means the person appointed as the Australian Statistician under the *Australian Bureau of Statistics Act 1975* (Cth) (and acting in that capacity).

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

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

'**Clause**' means a clause of this document.

'**Completion**' means, in relation to:

- (a) Goods, delivery of Goods to the Delivery Point in accordance with this Contract;
- (b) Services, the completed performance of Services in accordance with this Contract; and
- (c) Works, that stage in the carrying out and completion of the Works when the Principal determines that:
 - (d) the Works are complete and meet the requirements of this Contract except for Minor Defects; and
 - (e) all certificates, documents, warranties, guarantees 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,

and "**Completed**" shall have a corresponding meaning.

'**Completion Certificate**' means in relation to Works, a certificate issued by the Principal under Clause 64.1 evidencing the Date of Completion.

‘Confidential Information’ means all of the Principal’s information which:

- (a) is disclosed or otherwise made available to, or acquired directly or indirectly by, the Contractor at any time;
- (b) relates to the Principal’s or any Local Government’s past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information); and
- (c) is in oral or visual form, or is recorded or stored in a Document,

and includes this Contract, but does not include information which:

- (d) is or becomes generally and publically available other than as a result of a breach of this Contract;
- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

‘Consequential Loss’ means any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

‘Construction Contracts Act’ means the *Construction Contracts Act 2004* (WA).

‘Construction Program’ means the Works program prepared by the Contractor and approved (or otherwise) by the Principal under Clause 55 and, where updated and approved in writing by the Principal’s Representative in accordance with Clause 62.5, the latest updated Construction Program.

‘Consumer Price Index’ means the index published by the Australian Bureau of Statistics known as the table 2 index - 6401.0 (weighted average of eight cities for all groups) or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

‘Contract’ means this document (including all schedules, attachments, annexures and clarifications) and any Order. For the avoidance of doubt, if this Contract is a Framework Agreement then each Order issued under this Contract constitutes an individual Contract (comprising this document and that Order). [

‘Contract Price’ means the prices or rates specified as such in the Contract Specifics but excluding any additions or deductions, which may be required to be made pursuant to this Contract.

‘Contract Specifics’ means the contract information attached at Schedule 1.

‘Contractor Maximum Liability Amount’ means the amount specified as such set out in the Contract Specifics.

‘Contractor’s Personnel’ means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor.

‘Contractor’s Representative’ is the person named as such in the Contract Specifics or any replacement person notified to the Principal.

‘Contractor’s Technical Material’ means all Technical Material which is:

- (a) prepared, or required to be prepared, by or on behalf of the Contractor under this Contract;
- (b) delivered, or required to be delivered, by or on behalf of the Contractor to the Principal under this Contract; or
- (c) incorporated into Technical Material described in paragraph (a) or (b).

‘Date for Completion’ means the relevant date for Completion specified in the Contract Specifics.

‘Date of Completion’ means the date determined by the Principal’s Representative (acting reasonably) as the date upon which Completion was reached as may be evidenced in the Completion Certificate.

‘Defect’ means:

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

and “**Defective**” shall have a corresponding meaning.

‘**Defects Liability Period**’ means, subject to Clause 53.3 (if applicable) and Clause 65.4 (if applicable), the period of time beginning on the relevant Date of Completion and ending on the expiry of the time stated in the Contract Specifics.

‘**Delivery Point**’ means the Site or such other place as is specified in the Contract Specifics as the place for the delivery of the Goods.

‘**Design Documents**’ means the drawings, specifications and other design documents required by this Contract and created (or, where the context requires, to be created) by the Contractor for the performance of the Works.

‘**Dispute**’ means any dispute or difference between the Parties arising in connection with the subject matter of this Contract.

‘**Document**’ includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

‘**End Date**’ has the meaning given in the Contract Specifics.

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

‘**Environmental Laws**’ means all present and future Legal Requirements and Approvals concerning Environmental matters and any common law relating to the Environment.

‘**Fixed Quantities**’ has the meaning given in Clause 49.

‘**Force Majeure Event**’ means any one of the following events which is beyond the control of either Party, could not have been reasonably foreseen by a Party and which prevents that Party from discharging an obligation under this Contract, which, in the case of the Contractor, is critical to the Contractor delivering the Work under the Contract by the relevant Date for Completion, or in respect of Reoccurring Services, is critical to the Contractor delivering the Reoccurring Services in accordance with the applicable timing requirements set out in the Contract Specifics:

- (a) a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;
- (b) a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor’s premises and has not been caused by the Contractor; or
- (c) the enactment of any statute or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of this Contract,

but is not an event which arises from any of the following:

- (d) a breach of a contract, including this Contract, or Law by the Contractor;
- (e) negligence by the Contractor relating to the performance of its obligations under this Contract;
- (f) an occurrence that is a risk assumed by the Contractor under this Contract;
- (g) a shortage or delay in the supply of Work under the Contract required under this Contract; or
- (h) wet or inclement weather.

‘**Framework Agreement**’ means a Contract designated as such in the Contract Specifics.

‘**Good Industry Practice**’ means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a Professional Contractor;
- (b) compliance with applicable standards and codes being the standards and codes specified in the Contract or if not specified, the standards and codes as would be applied by a Principal in the circumstances; and
- (c) compliance with applicable Legal Requirements.

‘**Goods**’ means the goods (if any) specified as such in the Contract Specifics (including any part of the goods so identified and particularised).

‘**Goods and/or Services**’ means all of the Goods (if any) and all of the Services (if any) specified in the Contract Specifics.

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

'GST Law' means *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

'Insurance' means the insurances which the Contractor is required to obtain under Clause 37 and the Contract Specifics.

'Insurance End Date' means the date set out in the Contract Specifics as an Insurance End Date for a specific Insurance.

'Intellectual Property Right' means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, semi conductor, circuit and other eligible layouts, copyright 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.

'Intended Purpose' means the intended purpose of the Work under the Contract as stated in this Contract or as could be reasonably inferred from this Contract by a Professional Contractor.

'Invoice' means an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law.

'Law' means:

- (a) any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and
- (b) any common or customary law and equity.

'Legal Requirement' means:

- (a) Laws;
- (b) Approvals; and
- (c) fees and charges payable in connection with the foregoing.

'Liquidated Damages' means the liquidated damages described as such in the Contract Specifics.

'Local Government' means any local government established under the *Local Government Act 1995* other than the Principal.

'Loss' means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.

'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.

'Order' means a purchase order from the Principal to the Contractor which requires the supply of specific Work under the Contract under this Contract where this Contract is a Framework Agreement.

'Party' means the Principal and/or the Contractor (as the context requires).

'Payment Certificate' means the certificate issued by the Principal under Clause 24.3.

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

'PPS Law' means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

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

'Principal Maximum Liability Amount' means the amount specified as such in the Contract Specifics.

'Principal's Personnel' means directors, employees, agents, contractors or subcontractors of the Principal.

‘Principal’s Representative’ is the person named as such in the Contract Specifics or any replacement person notified to the Contractor.

‘Principal’s Technical Material’ means any Technical Material provided by the Principal to the Contractor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

‘Professional Contractor’ means a contractor with skill and experience in, and the expertise and resources necessary to carry out and complete work of a similar nature to the Work under the Contract.

‘Progress Claim’ means a document in a form approved by the Principal evidencing:

- (a) the delivery of Goods;
- (b) performance of Services; and
- (c) performance of the Works since the previous Progress Claim (or, if the Progress Claim is the first Progress Claim, since the Start Date),
- (d) (as may be applicable) and which includes the information set out in the Contract Specifics.

‘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 the Works:
- (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 the Works.

‘Reoccurring Services’ means Services that are designated as Reoccurring Services in the Contract Specifics.

‘Representative’ means the Principal’s Representative or the Contractor’s Representative.

‘Review Date’ means each 12 month anniversary of the execution of this Contract.

‘Schedule of Rates’ means the schedule of rates attached in Schedule 7.

‘Scope of Services’ means the scope of the Services set out in Schedule 3.

‘Services’ means the services (if any) identified as such in the Contract Specifics including:

- (a) any part of the services so identified and particularised;
- (b) any ancillary services; and
- (c) services required to be performed to deliver the Goods (if any).

‘Site’ has the meaning given in the Contract Specifics.

‘Specification’ means the technical specification for the Goods attached in Schedule 2.

‘Standards and Procedures’ means the documents listed in Schedule 5 and any other guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time.

‘Start Date’ has the meaning given in the Contract Specifics.

‘State of Emergency’ has the meaning given in Clause 46.

‘Subcontractor’ means any person engaged by the Contractor in connection with the Work under the Contract and includes consultants, subcontractors, suppliers and other contractors.

‘Tax’ means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty.

‘Technical Material’ includes plans, designs, drawings, engineering information, data, specifications, reports, processes, concepts, manuals, specifications, accounts and any other material specified in this Contract.

‘Tender’ means the offer submitted by the Contractor to supply the Work under the Contract under this Contract and includes associated documentation.

‘Term’ means the period of time between (and including) the Start Date and the End Date.

‘Third Party’ means a person not being the Principal, the Principal’s Representative, the Contractor, the Contractor’s Representative or the Contractor’s Personnel.

‘Variable Quantities’ has the meaning given in Clause 49.

‘Variation’ means any change to the Work under the Contract, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Work under the Contract.

‘Variation Form’ means a notice substantially in the form set out in Schedule 6 under which the Principal has directed a Variation in accordance with Clause 19.

‘Wilful Misconduct’ means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Contract.

‘Work under the Contract’ means all of the Goods (if any) and all of the Services (if any) and all of the Works (if any) the Contractor is required to provide, as specified in the Contract Specifics, in accordance with this Contract

‘Works’ means the physical works to be carried out, completed and handed over by the Contractor in accordance with the Works Specification and this Contract, including Variations provided for by this Contract.

‘Works Specification’ means the technical specification for the Works attached in Schedule 3.

2. INTERPRETATION

In this Contract (unless the context otherwise requires):

- (a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
- (d) 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;
- (e) words in the singular include the plural and vice-versa;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to any Party includes that Party’s executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- (i) headings are for convenience only and do not affect interpretation of this Contract;
- (j) a promise on the part of 2 or more persons binds them jointly and severally; and
- (k) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

3. ORDER OF PRECEDENCE

To the extent of any inconsistency between the several parts of this Contract, the following parts are listed in order of precedence:

- (a) this document;
- (b) in the case of the Goods, the Specification and, in the case of the Services, the Scope of Services, and in the case of the Works, the Works Specification;
- (c) any other schedules, attachments or annexures to this document; and
- (d) any Order.

4. SEVERABILITY

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

- (a) read down, if possible, so as to be valid and enforceable; and
 - (b) severed from this Contract to the extent of the invalidity or unenforceability,
- and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

5. NOTICES

5.1 Any notice or other communication under this Contract shall be in legible writing, in English and signed and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
- (b) facsimile transmission to the facsimile number of the recipient specified in this Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
- (c) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.

5.2 Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:

- (a) if by delivery in person, when delivered to the address of the recipient;
- (b) if by post, 3 Business Days from and including the date of postage;
- (c) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
- (d) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

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.

5.3 In this Clause 5, reference to a recipient includes a reference to a recipient's officers, agents or employees.

5.4 A notice or other communication must not be given by electronic means of communication (other than facsimile and email as permitted in Clause 5.1).

5.5 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

6. CONTRACTOR TO HAVE INFORMED ITSELF

6.1 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 Price covers the cost of complying with all its obligations under this Contract and of all matters and things necessary for the due and proper 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.

6.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this Clause will not relieve the Contractor of its obligation to perform and complete this Contract in accordance with this Contract.

7. COMPLYING WITH LEGAL REQUIREMENTS

7.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Work under the Contract and/or the performance of this Contract.

7.2 The Contractor must (at its own cost) obtain any Approvals necessary for the supply of the Work under the Contract to the Principal.

7.3 Without limiting in any way the generality of the foregoing or Clause 8, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

7.4 If a Legal Requirement is at variance with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Work under the Contract and/or the way in which the Work under the Contract must be provided, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

8. SAFETY OBLIGATIONS

8.1 The Contractor must perform all relevant functions and fulfill all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety.

8.2 The Contractor must co-operate with any other contractors or other persons engaged in or associated with the business of the Principal in order to maintain uniform safety and industry practices.

8.3 The Contractor must co-operate with the Principal to enable the Principal to comply with any Legal Requirements for workplace health and safety.

8.4 The Contractor must supply or arrange to be supplied all things necessary to ensure that the Work under the Contract is provided in a manner that is safe and without risks to health. The Contractor must ensure that all Plant and Equipment supplied by it is, and is maintained, in a condition that is safe and without risk to any person.

8.5 The Contractor must ensure that the Work under the Contract is provided in a manner that is safe and without risks to any person, including by ensuring that the Contractor's Personnel entering the Delivery Point and/or the Site perform in a safe manner.

8.6 The Contractor must:

- (a) immediately advise the Principal in writing of any act, fact or circumstance associated with the activities of the Contractor or any other person relevant to the ability of the Contractor to perform the Work under the Contract in a manner that is safe and without risk to health;

- (b) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident which is notifiable under any Legal Requirement, injury or property damage which:
 - (i) occurs during the provision of the Work under the Contract; or
 - (ii) is associated with the Work under the Contract; and
 - (c) provide the Principal with any further information when requested by the Principal.
- 8.7 In performing its obligations under this Contract, the Contractor must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Principal's premises over which it has control:
- (a) the Principal and the Principal's Personnel;
 - (b) the Contractor's Personnel; and
 - (c) the public.
- 8.8 The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the Work under the Contract.
- 8.9 The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 8.
- 8.10 If the Principal observes or becomes aware of a condition that breaches this Clause 8, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.
- 8.11 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 8.9 or 8.10 does not relieve the Contractor from complying with its obligations under this Clause 8.

9. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not:

- (a) assign this Contract, or any part thereof or any payment thereunder; or
- (b) subcontract the whole or any part of this Contract,

without the Principal's prior written approval (not to be unreasonably withheld or delayed). The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

10. CONTRACTOR'S PERSONNEL

The Contractor must, and must ensure the Contractor's Personnel, comply with:

- (a) all directions given by the Principal's Representative or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to this Contract or the Work under the Contract; and
- (b) the Standards and Procedures that are applicable to this Contract.

11. INDEMNITY

- 11.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
- (a) any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel;
 - (b) any Contamination;
 - (c) any breach of a Legislative Requirement;

- (d) any breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty;
 - (e) any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel; and
 - (f) any claim made by a third party against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel,
- except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

11.2 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 10.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Contractor warrants that the Work under the Contract and any Design, Documents or methods of working provided by the Contractor do not infringe any Intellectual Property Right.
- 12.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
- 12.3 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this 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.
- 12.4 Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Work under the Contract and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.
- 12.5 Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.
- 12.6 The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Work under the Contract and any documentation provided pursuant to this Contract.

13. ORDERS

- 13.1 If this Contract is a Framework Agreement, the following sub-Clauses apply:
- (a) The Principal:
 - (i) may require the Contractor to provide Work under the Contract from time to time by giving the Contractor an Order; and
 - (ii) may order requirements of any one type or item of the Work under the Contract either in one single lot or instalments or in such quantities as may be required.
 - (b) Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:
 - (i) disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
 - (ii) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.
 - (c) If the Contractor:
 - (i) gives notice under Clause 13.1(b), the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or

- (ii) does not give notice pursuant to Clause 13.1(b) the Contractor must perform its obligations under the Order in accordance with this Contract.
- (d) If, pursuant to a notice issued under Clause 13.1(b), the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
 - (i) the contract price applicable to that Order and such contract price will be deemed to be the Contract Price for that Order; and
 - (ii) the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.
- (e) The Principal is not obliged to issue Orders or otherwise purchase Work under the Contract.
- (f) The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Goods delivered to the Delivery Point and any Services provided and Works performed (as is applicable) prior to the date the cancellation is notified to the Contractor.

14. PLANT AND EQUIPMENT

- 14.1 The Contractor must provide (at its cost, unless expressly agreed otherwise by the Parties in writing) all Plant and Equipment, labour and haulage necessary for the performance of the Contractor's obligations under this Contract.
- 14.2 The Contractor must ensure that all Plant and Equipment and any other items which the Contractor uses or supplies in conjunction with the Work under the Contract are of merchantable quality, comply with this Contract and all Legislative Requirements, and are fit for their usual and Intended Purpose.

15. TIME FOR PERFORMANCE AND EXTENSIONS OF TIME

- 15.1 This Contract commences on the Start Date and continues for the Term, unless terminated earlier.
- 15.2 The Contractor must achieve Completion of the Work under the Contract by the relevant Date for Completion. In this respect time shall be of the essence of this Contract.
- 15.3 Subject to Clauses 15.4, 15.5 and 15.6, if any Work under the Contract will not be supplied and/or completed by the relevant Date for Completion, the Contractor is entitled to an extension to the Date for Completion if the delay is due to:
 - (a) breach by the Principal of its obligations under this Contract;
 - (b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
 - (c) a Force Majeure Event occurring before the Date for Completion;
 - (d) suspension of this Contract under Clause 20, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
 - (e) a Variation being granted under Clause 19.
- 15.4 The Contractor may only claim an extension to the Date for Delivery under Clause 15.5 if the Contractor:
 - (a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;
 - (b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
 - (c) or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.
- 15.5 The Contractor's claim for an extension to the Date for Completion must:
 - (a) be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and

(b) include the facts on which the claim to the extension to the Date for Completion is based.

15.6 If the Principal's Representative reasonably considers that:

(a) the claim for an extension of time under Clause 15.5 relates to an event listed in Clause 15.3; and

(b) Clauses 15.4 and 15.5 have been satisfied,

the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time under Clause 15.5 (or such other time agreed by the Parties) that an extension of time to the Date for Completion is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in Clause 15.3 (as determined by the Principal, acting reasonably).

15.7 The Principal may by written notice to the Contractor direct an extension of time to the Date for Completion at:

(a) any time that the Principal directs a Variation; or

(b) at any other time at the absolute discretion of the Principal,

notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Date for Completion. The Contractor acknowledges that the mechanism in this Clause 15.7 is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:

(c) impose any obligations on the Principal;

(d) to the maximum extent permitted by Law, give rise to any duty to act in good faith;

(e) in any way constitute a waiver or relaxation of any of the requirements under this Clause 15; or

(f) entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this Clause 15.7.

15.8 If the Principal, considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim under Clause 15.5 that the Date for Completion remains unchanged.

15.9 If the Contractor fails to comply with Clause 15.5 the Contractor will have no entitlement to an extension of time of the Date for Completion.

15.10 If an extension of time is granted in accordance with this Clause 15, provided that those costs are not also reimbursable pursuant to Clauses 19 or 20, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay, but without regard to overheads, profit or any other cost, loss, expense or damage.

16. LIQUIDATED DAMAGES

16.1 Subject to Clauses 15, 19 and 20, if the Contractor does not perform or provide the Work under the Contract by the relevant Date for Completion, the Contractor must pay to the Principal, Liquidated Damages for every day after the Date for Completion to and including the earliest of:

(a) the Date of Completion; or

(b) termination of this Contract.

16.2 If an extension of time is granted in accordance with Clause 15.6 after the Contractor has paid or the Principal has set off the Liquidated Damages payable under Clause 16.1, the Principal shall repay to the Contractor such of those Liquidated Damages as represent the days the subject of the extension of time.

16.3 The payment of Liquidated Damages will not relieve the Contractor from any of its obligations and liabilities under this Contract.

16.4 Liquidated Damages shall become due upon the issue of a notice by the Principal setting out the amount of Liquidated Damages payable by the Contractor to the Principal.

- 16.5 The Principal may recover the amount of Liquidated Damages:
- (a) on demand from the Contractor; or
 - (b) by deducting such amount from any amount owed to the Contractor by the Principal, after the elapse of the Date for Completion.
- 16.6 The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this Clause 16 represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if the Work under the Contract is not supplied and/or completed by the relevant Date for Completion and such sums shall not be construed as a penalty.

17. REOCCURRING SERVICES

- 17.1 If the Services are Reoccurring Services:
- (a) the Contractor must:
 - (i) perform the Reoccurring Services at the times stated in the Contract Specifics (in this respect time shall be of the essence); and
 - (ii) comply with any additional requirements set out in the Contract Specifics;
 - (b) Clauses 15.2 to 15.10 (inclusive) and Clause 16 do not apply to the Reoccurring Services; and
 - (c) all references to:
 - (i) "Services" will be deemed to read "Reoccurring Services"; and
 - (ii) "Date for Completion" will not apply to the Reoccurring Services.

18. REPRESENTATIVES

- 18.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.
- 18.2 The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in Clause 31 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.
- 18.3 The Contractor's Representative is responsible for the quality, timeliness, cost and provision of the Work under the Contract in accordance with this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

19. VARIATION

- 19.1 A direction to the Contractor to perform a Variation may only be effected in accordance with this Clause 19.
- 19.2 If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation (**Variation Proposal**). The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within 5 Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.
- 19.3 If a Variation requires the omission of Work under the Contract, the Principal's Representative may have the omitted Work under the Contract provided by others or not as the Principal sees fit.
- 19.4 The Variation Proposal must specify:
- (a) the effect the Contractor anticipates the proposed Variation will have on the timing of the delivery of the Work under the Contract, including the Date for Completion (if applicable) and the Contract Price (if any); and

- (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 19.5 Following receipt of the Variation Proposal by the Principal, subject to Clause 19.2, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the timing of the delivery of the Work under the Contract, including the relevant Date for Completion (if applicable).
- 19.6 The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.
- 19.7 The Contractor acknowledges and agrees that, subject to Clause 19.10, the Principal or the Principal's Representative may direct the Contractor in accordance with Clause 19.13 to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the timing of the delivery of the Work under the Contract, including the relevant Date for Completion (if applicable).
- 19.8 The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with Clause 19.13.
- 19.9 If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
- 19.10 If the Parties are unable to agree on:
- (a) the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
 - (i) if this Contract prescribes rates or prices to be applied in respect of the Work under the Contract, those rates or prices must be used; or
 - (ii) if Clause 19.10(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
 - (b) the impact of the Variation on the timing of the delivery of the Work under the Contract, including the Date for Completion (if applicable) ,
 - (c) then the Principal's Representative must determine a reasonable impact on the timing of the delivery of the Work under the Contract, and amend (if applicable) the relevant Date for Completion by notice in writing to the Contractor.
- 19.11 A Variation does not invalidate this Contract.
- 19.12 The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under Clause 19 or elect not to direct a Variation.
- 19.13 A direction is not a Variation unless a Variation Form has been signed by the Principal.

20. SUSPENDING THIS CONTRACT

- 20.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- 20.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- 20.3 Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Losses.

- 20.4 If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with Clause 20.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Date for Completion (if applicable) and the End Date (if applicable) are extended by the period of that suspension.
- 20.5 The remedies set out in Clauses 20.3 and 20.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

21. WARRANTIES

Without limiting any other provision in this Contract, the Contractor shall obtain all warranties specified in this Contract including any warranties that are obtained by any Subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

22. VARIATION TO CONTRACT TERMS

None of the terms of this Contract shall be varied, waived, discharged or released either under any Legal Requirement, except by the express written agreement of the Principal.

23. PRICE BASIS

- 23.1 Unless otherwise stated in this Contract, the Contract Price shall be firm and not subject to rise and fall.
- 23.2 Unless otherwise provided in this Contract, the Contractor shall pay all packaging, freight, Taxes, insurances, and other charges whatsoever, in connection with this Contract and the Work under the Contract including (if applicable) delivery of Goods to the Delivery Point and the return of Goods wrongly supplied and all packaging.
- 23.3 On each Review Date, the Contractor shall be entitled to adjust the Contract Price for the Work under the Contract in accordance with this Clause 23.3. The Contract Price shall be reviewed and adjusted by the percentage movement as published in the Consumer Price Index since the last Review Date. The Contractor shall only be entitled to review the Contract Price for the Work under the Contract on the Review Date and following such review the Contract Price shall be deemed to be fixed until the next Review Date.

24. INVOICING AND PAYMENT

- 24.1 The Contractor must submit a Progress Claim, or if the Principal directs, an Invoice:
- (a) at the time or times in the Contract Specifics;
 - (b) specifying:
 - (i) the value of the Works carried out (if applicable);
 - (ii) a detailed description of the delivered Goods and/or performed Services (if applicable);
 - (iii) the Contract Price relating to the relevant delivered Goods and/or Services provided (if applicable);
 - (iv) any other amounts the Principal owes to the Contractor; and
 - (v) any other information that the Principal requests; and
 - (c) unless expressly waived in writing by the Principal, accompanied by a statutory declaration that it has paid all amounts due and owing to its employees and Subcontractors in connection with the Work under the Contract.
- 24.2 If Clause 24.1(c) applies and the Contractor does not provide the statutory declaration referred to under Clause 24.1(c), the Principal may pay directly to the Contractor's employees and Subcontractors any amounts they may be owed in connection with the Work under the Contract. Any amount paid by the Principal under this Clause will be a debt owed by the Contractor to the Principal.
- 24.3 Within 28 days after receiving a Progress Claim that complies with Clause 24.1, the Principal must, (except in circumstances where the Principal has directed the Contractor to issue an Invoice in

accordance with Clause 24.1), give the Contractor a certificate stating the Principal's opinion of the amounts:

- (a) the Principal owes the Contractor in connection with the Progress Claim (and reasons for any difference); and
- (b) the Contractor owes the Principal in connection with this Contract, ('Payment Certificate').

24.4 Within 28 days after the Principal gives the Payment Certificate to the Contractor, the Principal must pay the Contractor the balance of the amounts set out in the Payment Certificate after:

- (a) exercising any right of set-off in accordance with Clause 45; and
- (b) if applicable, deducting security in accordance with Clause 55.

24.5 The Principal must pay all Invoices issued by the Contractor in accordance with the Principal's direction under Clause 24.1 within 28 days, except where the Principal:

- (a) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
- (b) disputes the Invoice, in which case:
 - (i) to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
 - (ii) if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.

24.6 If the setting off referred to in Clause 24.4(a) or Clause 24.5 produces a negative balance, then the Contractor must pay that balance to the Principal within 28 days after receiving notice of it.

24.7 Neither a Payment Certificate, nor Invoice nor any payment is evidence that any work has been carried out satisfactorily. Payment is on account only.

24.8 Without limiting the Contractor's obligations under Clause 24.1 to submit Progress Claims, within 28 days after each of the following:

- (a) Completion of the Work under the Contract; and
- (b) the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case 28 days after the last notified Defect has been rectified),

the Contractor may submit a Progress Claim.

24.9 The Progress Claim lodged under Clause 24.8 must:

- (a) comply with Clauses 24.1(b) and 24.1(c);
- (b) subject to Clause 24.1(b)(v), include the details of all sums then claimed as being due to the Contractor arising out of, or in connection with, this Contract; and
- (c) include any documents and other information that, in the Principal's reasonable opinion, are necessary to ascertain the amounts the Contractor is owed.

24.10 The Principal must treat valid Progress Claims submitted under Clause 24.8 as though they were Progress Claims submitted under Clause 24.1.

24.11 Upon the expiration of the periods referred to in Clause 24.8, except as set out in valid Progress Claims submitted in accordance with Clause 24.8:

- (a) the Principal has no liability to the Contractor in connection with this Contract; and
- (b) the Contractor is absolutely barred from making any claim against the Principal (including by way of proceeding in any court) for any amount whatsoever in connection with this Contract.

24.12 Without limiting its other rights and remedies, the Principal may deduct any debts the Contractor owes it from:

- (a) if applicable, security held by the Principal under Clause 55; and

(b) any amounts the Principal must otherwise pay the Contractor in connection with this Contract.

24.13 No deduction in accordance with Clause 24.12 affects the Principal's rights to recover the balance of any debt that remains owing after the deduction.

25. CONFIDENTIAL INFORMATION AND PUBLICITY

25.1 The Contractor must not advertise, publish or release to the public:

- (a) the Confidential Information; or
- (b) other information concerning the Work under the Contract, or this Contract, without the prior written approval of the Principal.

25.2 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:

- (a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or
- (b) disclose the Confidential Information:
 - (i) other than (to the extent they require the information to enable the Contractor to fulfil its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
 - (ii) where disclosure is required by Law (including disclosure to any stock exchange).

25.3 The rights and obligations under this Clause 25 continue after the expiry or termination of this Contract.

26. GOODS AND SERVICES TAX

26.1 Any reference in this Clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

26.2 Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this Clause.

26.3 Any amount referred to in this Contract (other than an amount referred to in Clause 26.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.

26.4 To the extent that GST is payable in respect of any supply made by a Party (**Supplier**) under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.

26.5 The recipient must pay the additional amount payable under Clause 26.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.

26.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 26.4 or at such other time as the Parties agree.

26.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 26.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

26.8 If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being

reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 26.4.

27. DAMAGE TO PROPERTY

27.1 If the Contractor or the Contractor's Personnel damage property, including property on or adjacent to the Site or Delivery Point (if applicable), the Contractor must promptly:

- (a) make good the damage; and
- (b) pay any compensation which the Contractor is required to pay under the Contract or under any Legal Requirement.

27.2 If the Contractor fails to comply with an obligation under Clause 27.1, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

28. CONSEQUENTIAL LOSS

In relation to Consequential Loss:

- (a) subject to Clauses 11 and 28(b) but notwithstanding any other Clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- (b) Clause 28(a) does not exclude liability of the Contractor for Consequential Loss, if, but for Clause 28(a) the Contractor would have insurance cover for that Consequential Loss under an Insurance.

29. LIMITS ON LIABILITY

29.1 The Contractor's liability to the Principal in respect of Loss under this Contract in the aggregate for all claims is limited to the Contractor Maximum Liability Amount.

29.2 To the extent that the Principal is liable to the Contractor under any Legal Requirement or under this Contract, the Principal's liability to the Contractor in respect of Loss under this Contract in the aggregate for all claims is limited to the Principal Maximum Liability Amount.

29.3 The limitation of liability in Clause 29.1 does not apply in respect of any fraud, deliberate default, gross negligence or Wilful Misconduct or any act or omission done or not done with a reckless disregard for the consequences by the Contractor, the Contractor's Personnel, or for any loss arising from any claim by a third party against the Principal arising out of any act or omission of the Contractor or the Contractor's Personnel.

30. FORCE MAJEURE EVENT

30.1 A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract ('**Affected Obligations**') and must either:

- (a) to the extent practicable, specify in the notice the length of delay in the performance of the the affected Party's obligations under this Contract, including the length of delay on the Date for Completion (if applicable) that will result from the Force Majeure Event; or
- (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplemental notices during the period over which the Force Majeure Event continues.

30.2 The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

30.3 The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.

30.4 If a Force Majeure Event continues to affect the supply of the Work under the Contract for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

31. SETTLEMENT OF DISPUTES

31.1 In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('**Notice of Dispute**').

31.2 The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:

- (a) alleged facts on which the claim is based
- (b) legal basis on which the claim is made; and
- (c) relief that is claimed.

31.3 Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:

- (a) its position in relation to the Dispute; and
- (b) the basis for its position.

31.4 Within 10 Business Days of receipt of the response referred to in Clause 31.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.

31.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 31.4, either Party may initiate proceedings in a court of competent jurisdiction.

31.6 Either Party may, with the agreement of the other Party, at any time, refer the Work under the Contract (or any part thereof) to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.

32. TERMINATION OF CONTRACT

32.1 If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.

32.2 The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 5 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:

- (a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
- (b) the cost of materials and equipment reasonably ordered by the Contractor for the Work under the Contract and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,

and shall have no further liability to the Contractor.

32.3 If the Contractor:

- (a) subject to Clause 30, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;

- (b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;
- (c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
- (d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;
- (e) or any Contractor's Personnel, are found guilty of any criminal act related to the Work under the Contract that may bring the Principal into disrepute;
- (f) includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (g) or the Contractor's Personnel:
 - (i) cause a safety issue, condition or any risk to health in breach of this Contract; and
 - (ii) the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

then the Principal may by notice in writing to the Contractor immediately terminate this Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.

- 32.4 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 32.3 above and all such amounts may be deducted from amounts then owing to the Contractor or otherwise shall be immediately payable by the Contractor and may be recovered in court by the Principal if unpaid.
- 32.5 When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.
- 32.6 The termination of this Contract does not affect:
 - (a) any rights of the Parties accrued before the date of termination; and
 - (b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after the date of termination.

33. WAIVERS AND AMENDMENTS

- 33.1 This Contract may only be amended, or its provisions waived, in writing by the Parties.
- 33.2 No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

34. ENTIRE AGREEMENT

- 34.1 To the extent permitted by Law, this Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this Contract.

34.2 To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Principal in respect of the Work under the Contract, those terms and conditions will be of no legal effect and will not constitute part of this Contract.

35. RIGHTS AND REMEDIES

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether under a Legal Requirement or this Contract.

36. INFORMATION

36.1 The Contractor must keep the Principal fully informed on all aspects of the Work under the Contract, and must supply on request:

- (a) progress reports on the performance of the Work under the Contract and in such detail as will allow the Principal to ascertain whether such are in conformity with this Contract; and
- (b) the Contractor's Technical Material, reports, data and a detailed supply program, relating to the Work under the Contract.

37. INSURANCE

37.1 The Contractor must, at its own cost and expense, as a minimum procure and maintain the Insurances:

- (a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and
- (b) from insurers approved by the Principal which either:
 - (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
 - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.

37.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.

37.3 Without limiting Clause 37.1, the Contractor must:

- (a) pay all premiums and all deductibles applicable to the Insurance when due; and
- (b) promptly reinstate any Insurance required under this Clause 37 if it lapses or if cover is exhausted.

37.4 To the extent available at the times of placement and each renewal, each Insurance must:

- (a) 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;
- (b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and a failure by any insured Party to observe and fulfil the terms and conditions will not affect any other Party;
- (c) provide that where the Principal is not a named insured the insurer must waive rights of subrogation against the Principal;
- (d) 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; and
- (e) 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 the policy.

37.5 The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.

- 37.6 The Contractor must maintain *public and product liability insurance*. The public and product liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) be in the joint names of the Contractor and the Principal and the Principal's Personnel;
 - (c) be for an amount of 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 during any one 12 month period of insurance;
 - (d) cover the liability of the Contractor, the Contractor's Personnel and the Principal 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 any Legal Requirement to be insured under a workers compensation policy),
 arising out of or in connection with the performance of this Contract (including the provision of the Work under the Contract) by the Contractor; and
 - (e) be endorsed to cover:
 - (i) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract; and
 - (ii) sudden and accidental pollution.
- 37.7 In addition to any *compulsory motor vehicle third party insurance* required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain *vehicle and equipment insurance* for the Contractor's vehicles, registered plant and equipment used in connection with this Contract whether owned, hired or leased ('**Contractor's Vehicles**'). The vehicle and equipment liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) cover against all loss and/or damage to the Contractor's Vehicles;
 - (c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
 - (d) 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 aggregate; and
 - (e) other than compulsory motor vehicle third party insurance required by virtue of any Legal Requirement, 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.
- 37.8 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 by statute and at common law. This insurance cover must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) to the extent permitted by any Legal Requirement, 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; and
 - (c) be for not less than the amount set out in the Contract Specifics in respect of any one event.
- 37.9 The Contractor must maintain *professional indemnity insurance*. The professional indemnity policy must:
- (a) come into effect on or before the Start Date and be maintained without interruption until the date set out in the Contract Specifics;
 - (b) 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;
 - (c) include one full automatic reinstatement of the limit of liability;

- (d) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Contract;
 - (e) 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 any other state or territory, insofar as they relate to the provision of professional advice; and
 - (f) be endorsed to contain a principal's indemnity extension in favour of the Principal.
- 37.10 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.
- 37.11 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- 37.12 The Contractor must ensure that its Subcontractors are insured as required by this Clause 37, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- 37.13 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal evidence reasonably required by the Principal including terms to the extent necessary 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.
- 37.14 If the Contractor fails to procure and maintain the Insurance 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 immediately payable from the Contractor to the Principal.
- 37.15 Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.
- 37.16 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 for the preparation and negotiation of insurance claims.
- 37.17 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 the Insurance before enforcing any of its rights or remedies under the indemnities referred to 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.
- 37.18 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.

38. INDUSTRIAL AWARDS

- 38.1 With respect to all work done in Western Australia under this Contract, the Contractor shall 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 Work under the Contract and this Contract.
- 38.2 Failure by the Contractor to comply with Clause 38.1 hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate this Contract, but without prejudice to any other rights or remedies of the Principal.

39. GOVERNING LAW

This Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes).

40. PROPORTIONATE LIABILITY

Each Party agrees that Part 1F of the *Civil Liability Act 2002 (WA)*, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- (a) this Contract; and
- (b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

41. CONSTRUCTION CONTRACTS ACT

41.1 The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation to the Construction Contracts Act that the Contractor gives to the Principal or receives from a Subcontractor.

41.2 If the Principal's Representative becomes aware that a Subcontractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Subcontractor such money that may be owing to the Subcontractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.

41.3 The Contractor must ensure that none of its subcontracts contain terms which are prohibited by the Construction Contracts Act.

42. PERSONAL PROPERTY SECURITIES ACT

42.1 For the purposes of this Clause 42:

- (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 in this Clause 42 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

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

- (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.

42.3 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.

42.4 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 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.

42.5 The Contractor must not:

- (a) create 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 Work under the Contract; or
- (e) change its name without first giving the Principal 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

42.6 Everything the Contractor is required to do under this Clause 42 is at the Contractor's expense.

42.7 Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Clause 42.7 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

43. ENVIRONMENTAL ACTIVITIES

Without limiting Clause 7, the Contractor must:

- (a) ensure that any Work under the Contract affecting the Environment are carried out in accordance with the *Local Government Act 1995 (WA)* or other relevant Legislative Requirements, including the *Environmental Protection Act 1986 (WA)*; and
- (b) comply with all:
 - (i) Approvals (including Approvals issued by the Principal authorising clearance of native vegetation from prescribed areas); and
 - (ii) conditions of such Approvals, which in relation to clearance of native vegetation may include conditions specific to the management of flora, fauna, die-back and weed control, re-vegetation and rehabilitation within the prescribed area,in providing the Work under the Contract.

44. APPLICATION OF THIS CONTRACT

This Contract applies to the performance of the Contractor's obligations under this Contract whether performed before, on or after the Start Date.

45. DEDUCTION OF CHARGES OR DEBTS

45.1 Without limiting the Principal's rights under this Contract any debt due from the Contractor to the Principal under this Contract may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal under this Contract, and if such moneys are insufficient for this purpose, then from the Contractor's security (if any) under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

45.2 The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of this Contract and all Loss hereinbefore mentioned, and for which the Contractor shall become liable at any time under this Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of this Contract.

46. FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES

Where a State of Emergency is declared under the *Emergency Management Act 2005 (WA)* or where the Contractor is unable or fails (for whatever reason) to provide the Work under the Contract 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 Price which relates to the relevant Work under the Contract), obtain or acquire such goods, services and works as it requires from a third party.

PART B – GOODS AND/OR SERVICES

This Part B (Clause 47 to Clause 54 (inclusive)) applies if the Contractor is required to provide Goods and/or Services under this Contract.

47. QUALITY OF GOODS

47.1 The Contractor must ensure that all Goods supplied under this Contract:

- (a) conform to the description specified in this Contract and to samples provided (if any) by the Principal;
- (b) where no standards are specified in this Contract, the Goods shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation;
- (c) are fit for their Intended Purpose;
- (d) are properly, safely and securely packaged and labelled for identification and safety; and
- (e) are new and of merchantable quality.

47.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf if the Principal so requests).

48. QUALITY OF SERVICES

48.1 The Contractor must ensure that:

- (a) the Services match the description of the Services in this Contract;
- (b) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principal entered into this Contract or issued an Order for any of those Services, the Services correspond in nature and quality with the Services demonstrated or the services that achieved result (as the case may be);
- (c) the Services are fit for their Intended Purpose; and
- (d) to the extent that the Services are design Services, the works being designed will be fit for their Intended Purpose as described in this Contract.

48.2 The Contractor warrants that the Contractor's Personnel engaged to perform the Services:

- (a) have all the necessary skills, training, and qualifications (proof of which, along with an up-to-date resume, must be supplied to the Principal within 2 Business Days of request) to carry out the Services in accordance with this Contract; and
- (b) are able to:
 - (i) perform the Services without the supervision of the Principal's Personnel; and
 - (ii) resolve any matters arising from the performance of the Services.

49. SUPPLY OF GOODS AND SERVICES

49.1 The Contractor must supply the Goods and/or Services to the Principal in accordance with this Contract during the Term.

- 49.2 Where this Contract is for the supply of Goods by reference to:
- (a) **'Variable Quantities'**, the Principal shall not be required to purchase all or any Goods listed except such of the Goods as may be ordered by the Principal.
 - (b) **'Approximate Quantities'**, the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
 - (c) **'Fixed Quantities'**, the Principal shall purchase the actual quantity shown.
- 49.3 Where this Contract does not specify whether the required quantities are Fixed Quantities, Approximate Quantities or Variable Quantities, the Parties agree that they shall be deemed to be Variable Quantities.
- 49.4 The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.
- 49.5 The Principal shall not be required to take or accept all or any of the Services listed except such of the Services as may be ordered by the Principal from time to time during the Term.
- 49.6 Where the quantity or value set out in Scope of Services is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under this Contract and the Principal shall not be required to take or accept said nominated approximate quantity or value of Services.
- 49.7 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the purchase of goods or services the same as and/or similar to the Goods and/or Services.
- 49.8 If the Contractor:
- (a) delivers more Goods than the quantity specified in this Contract, the Principal may return any quantity of Goods provided by the Contractor in excess of that specified in this Contract to the Contractor at the Contractor's sole risk and expense; or
 - (b) performs more Services than the quantity specified in this Contract, the Principal is not liable to pay for the additional quantity.

50. INSPECTION

- 50.1 Subject only to providing reasonable notice, the Principal may itself or through an agent:
- (a) review, inspect, examine and witness tests of, any Goods and/or Services, or the performance of any Goods and/or Services; and
 - (b) inspect any equipment used in measuring any Goods and/or Services at any time up to 12 months after the measurement of the Goods and/or Services occurs,
- at the Delivery Point, the Site, the Principal's premises, the Contractor's premises and/or at the premises of any Subcontractors, as the case may be, and the Contractor must ensure that the Principal is granted the necessary access required for them to review, inspect, examine or witness tests of the Goods and/or Services.
- 50.2 The Contractor must give the Principal 10 Business Days notice (or such other period as the Parties agree) prior to the date the Goods and/or Services will be ready for delivery, inspection or testing.
- 50.3 Any review, inspection, examination or witnessing of testing by the Principal or their results does not relieve the Contractor of its responsibilities under this Contract.
- 50.4 If, as a result of any review, inspection, examination, or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply with this Contract and the Contractor is notified in writing of such dissatisfaction, the Contractor agrees to take such steps as are necessary to ensure compliance.

51. DELIVERY OBLIGATIONS

51.1 The Contractor must, in delivering the Goods to the Delivery Point:

- (a) not interfere with the Principal's activities or the activities of any other person at the Delivery Point; and
- (b) leave the Delivery Point secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Point immediately prior to the delivery of Goods.

52. RECEIPT AND ACCEPTANCE OF GOODS AND SERVICES

52.1 Delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal.

52.2 Acceptance of the Goods and/or Services occurs on the earlier of:

- (a) the Principal's Representative notifies the Contractor in writing that the Goods and/or Services have been accepted; or
- (b) when after the lapse of 14 days after delivery of the Goods to the Delivery Points without the Principal notifying the Contractor in writing that the Goods have been rejected.

52.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to Acceptance remains with the Contractor except where the damage, deterioration, theft or loss is caused by a negligent act or omission of the Principal or its agents or employees.

52.4 Where Goods are found to be Defective Goods, the Principal may reject any or all of the Defective Goods in accordance with Clause 53.

53. REJECTION AND REMOVAL OF DEFECTIVE GOODS OR DEFECTIVE SERVICES

53.1 During the Defects Liability Period the Principal's Representative shall notify the Contractor in writing of the Defective Goods and/or Defective Services and may:

- (a) in the case of Defective Goods:
 - (i) direct that the Defective Goods be either replaced or rectified by the Contractor (at the Contractor's expense) within such reasonable time as the Principal's Representative may direct; or
 - (ii) elect to accept the Defective Goods whereupon the Contract Price shall be reduced by the extra costs the Principal incurs as a result of accepting those Goods; and/or
- (b) in the case of Defective Services:
 - (i) reject the Defective Services, in which case the Contractor must re-perform the Services free of charge; or
 - (ii) make good or engage another contractor to make good the Defective Services whereupon the Contract Price shall be reduced by the extra costs the Principal incurs as a result of making good those Defective Services.

53.2 Should the Contractor fail to comply with a notice issued under Clause 53.1(a)(i) or 53.1(b)(i) within the time specified in that notice, the Principal shall be entitled to:

- (a) replace the Defective Goods or the Defective Services with goods/services (as applicable) of the same or similar quality; and
- (b) sell the Defective Goods; and/or
- (c) have the Defective Goods redelivered at the Contractor's risk and expense to the Contractor's premises,

and recover its costs losses and expenses of so doing from the Contractor.

53.3 Where the Contractor has made good any Defective Goods or Defective Service under this Clause 53, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods

and/or Services, from the date the Contractor made good the Defective Goods or Defective Services (as applicable).

- 53.4 The Principal shall not be responsible for the care or custody of any Defective Goods after the Contractor has been notified that they are defective.
- 53.5 Upon a refund of the price paid for the Defective Goods which had previously been Accepted, property in those Goods shall revert to the Contractor.
- 53.6 Without limiting Clause 11, any cost or expense incurred by the Principal in connection with the Defective Goods and/or the Defective Services under this Clause 53, shall be a debt due from the Contractor to the Principal.
- 53.7 Nothing in this Contract shall prejudice any other right which the Principal may have against the Contractor arising out of the failure by the Contractor to provide Goods and/or Services in accordance with this Contract.

54. PROPERTY AND RISK IN THE GOODS

- 54.1 Risk in Goods will pass from the Contractor to the Principal on Acceptance of those Goods.
- 54.2 Upon payment for the Goods, property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.
- 54.3 The Contractor warrants that:
- (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and that it sells the Goods to the Principal on that basis; and
 - (b) the Principal will be entitled to clear title to and complete and quiet possession of the Goods upon payment for them.

PART C – WORKS

This Part C (Clause 55 to Clause 66 (inclusive)) applies if the Contractor is required to provide Works under this Contract.

55. PERFORMANCE

- 55.1 The Contractor must (at its cost) perform and complete the Works (including all design) by the Date for Completion and in accordance with:
- (a) this Contract;
 - (b) Good Industry Practice; and
 - (c) all Legal Requirements.
- 55.2 The Contractor must ensure that the Works when Completed will be fit for the Intended Purpose.

56. SITE RISKS

- 56.1 Without limiting Clause 6, the Contractor warrants that before the Start Date the Contractor has had access to the Site, carried out its own inspections of the Site and the Environment, and has conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of:
- (a) the Site and the Environment; and
 - (b) all risks and contingencies associated with the Site and the Environment,
- or has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, in which case the Contractor acknowledges that there will be no adjustment to the Contract Price or Date for Completion, except as expressly stated in this Contract.

- 56.2 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.
- 56.3 Without limiting Clauses 56.1 and 56.2, 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 Start Date.

57. COOPERATION

- 57.1 The Contractor acknowledges that all contractual communications between the Contractor and those Third Parties responsible for carrying out the Related Works must be directed through the Principal.
- 57.2 In performing the Works, the Contractor must:
- (a) take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the Works (including the work of Subcontractors) with the Related Works; and
 - (b) not carry out the Works 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 Works from accidental damage caused by the Related Works.
- 57.3 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 detailed information provided by those responsible for carrying out the Related Works.
- 57.4 If the Contractor fails to comply with this Clause and additional work or any alterations or remedial work to either the Works or the Related Works becomes necessary as a result, the additional costs, if any, will be a debt due and payable immediately from the Contractor to the Principal.

58. PROTECTION OF PROPERTY

- 58.1 If urgent action is necessary to protect the Works, other property or people and the Contractor fails to take such action, then, in addition to any other remedies of the Principal, the:
- (a) Principal or Principal's Representative may take the necessary action; and
 - (b) reasonable cost incurred by Principal or Principal's Representative in the circumstances will be a debt due and payable immediately from the Contractor to the Principal.

59. CONTRACTOR ACKNOWLEDGMENT AND WARRANTIES

- 59.1 The Contractor represents and warrants to the Principal that the Contractor will:
- (a) at all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Contractor in the performance and Completion of the Works (including all design);
 - (b) develop and complete the Design Documents so that the Design Documents are accurate, suitable, appropriate and adequate for the Intended Purpose taking into account the Site and the Environment; and
 - (c) perform and complete the Works in accordance with the Design Documents so that when completed, the Works will be fit for the Intended Purpose and be in accordance with this Contract.

60. ACCESS

- 60.1 From the Start Date until the Date of Completion, the Principal must provide non-exclusive access to the Contractor to the Site.
- 60.2 The Contractor must comply with the directions of the Principal's rules, procedures and practices, including the:
- (a) Standards and Procedures;

- (b) Works 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.

61. TIME

61.1 The Contractor must:

- (a) commence performance of the Works on the Start Date; and
- (b) perform the Works with due expedition and without delay.

62. PROGRAMMING

62.1 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 Start Date.

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

- (a) showing key dates, float, logic links and constraints; and
- (b) on a weekly basis with each week ending on the Sunday evening.

62.3 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 Works, and must clearly mark the critical path.

62.4 The Construction Program must take into account the requirements and the program constraints set out in the Works Specification.

62.5 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. Once approved, the updated Construction Program is the Construction Program for the purposes of this Contract.

62.6 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 Works.

62.7 At each meeting referred to in Clause 62.6, the Contractor must provide to the Principal's Representative a report in the form advised by the Principal from time to time.

63. PROCEDURE FOR COMPLETION TESTS

63.1 The Contractor must prepare and perform the Completion tests in accordance with this Contract and the Works Specification. The Contractor will be fully responsible for the proper conduct and results of the Completion tests.

63.2 The Contractor must provide to the Principal full and substantiated test results for all Completion tests by the earlier of:

- (a) 5 Business Days after completion of the relevant test; or
- (b) the date required (if any) under the Works Specification or Construction Program.

63.3 Except:

- (a) with the prior written consent of the Principal; or
- (b) to the extent necessary to comply with Clause 63.4(a),

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

- 63.4 If the whole or any part of the Works fails to pass a Completion test, the Contractor must:
- (a) promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failures, imperfections or other faults as may be required to ensure that all Completion tests are satisfied;
 - (b) be responsible for all costs and expenses incurred or sustained (including the cost of the Completion tests being borne by the Contractor); and
 - (c) if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.
- 63.5 If the Contractor fails to perform any Completion test in accordance with this Contract:
- (a) the Principal is to provide notice to the Contractor stating:
 - (i) the Contractor's failure to perform the Completion test; and
 - (ii) that the Contractor has 5 Business Days, or as otherwise agreed with the Principal at the Principal's absolute discretion, from the date of the notice to perform the Completion test;
 - (b) if the Contractor fails to satisfy the requirement in 63.5(a)(ii), the Principal may perform that Completion test at a date and time determined by the Principal; and
 - (c) the cost incurred by the Principal in performing that Completion test will be a debt due and payable immediately from the Contractor to the Principal.

64. COMPLETION

- 64.1 The Contractor must give the Principal at least 21 days written notice of the date on which the Contractor anticipates that Completion will be achieved. When the Principal is satisfied that Completion has been achieved, the Principal must issue a Completion Certificate for the Works.
- 64.2 On the issue of the Completion Certificate, the Principal will take over the Works.
- 64.3 The Principal must pay the Contractor (or the Contractor must pay the Principal, as the case may be) within 28 days after the issue of the Completion Certificate, the amount stated in that certificate as being due by the Principal (or by the Contractor, as the case may be).
- 64.4 The issue of a Completion Certificate does not constitute approval of any work or other matter and does not prejudice any claim by the Principal.

65. DEFECTS LIABILITY PERIOD

- 65.1 The Principal may, at any time up to Completion and during the Defects Liability Period, conduct performance reviews of the Works. The Principal may notify the Contractor of any failure by the Contractor to comply with this Contract.
- 65.2 The Contractor must, within a reasonable time (but no later than 30 days), from receipt of a notice from the Principal, rectify any Defect notified to the Contractor before or at Completion, or during the Defects Liability Period.
- 65.3 If the Contractor fails to rectify any Defect in accordance with this Clause 65, the Principal may rectify the Defect and any resulting liability incurred by the Principal in so doing will be a debt due from the Contractor to the Principal.
- 65.4 The Defects Liability Period applicable to any work performed for the purposes of rectifying Defects, is the period commencing on the date of completion of that remedial work and ending on the expiry of the times stated in the Contract Specifics.

66. SECURITY AND RETENTION MONEY

- 66.1 The Principal, as security for the Contractor's performance may deduct as retention monies, as per Annexure 4 of this contract
- 66.2 The Principal may require the Contractor to provide, at any time, in lieu of retention monies, security equal to the value of the Contract Price, or part thereof, as set out in the Contract Specifics, in the form of an unconditional and irrevocable bank undertaking in a form, and from a financial institution, approved by the Principal.
- 66.3 The Principal may have recourse to any retention money or other form of security held under this Contract at any time it may be entitled to recover from, or be paid by or has a bona fide claim that it is entitled to, the Contractor an amount claimed as due under this Contract or otherwise than under this Contract.
- 66.4 The Contractor accepts that the Principal may convert into money security provided under this Contract that does not consist of money at any time that it may be entitled to recover from, or be paid by, the Contractor an amount claimed as due and payable under this Contract or otherwise than under this Contract.
- 66.5 If the Principal wrongly makes a claim on any security provided by the Contractor under this Contract, the Principal must repay the amount wrongfully claimed plus interest calculated at the rates specified in the Contract Specifics from the day that the claim was made until the day that the money was repaid. The Contractor's entitlement under this Clause 66.5 is the sole entitlement in respect of the wrongful claim.
- 66.6 Subject to its rights of set-off under Clause 45, the Principal must pay the Contractor:
- (a) 50% of the aggregated retention monies or other security retained by the Principal under Clause 55 within 28 days after issuing the Completion Certificate; and
 - (b) the remainder of the aggregated retention monies or other security within 28 days of the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case the payment must be made within 28 days after the last notified Defect has been rectified).

Schedule 1 Contract Specifics

Framework Agreement	No
Contract Price	(Lump Sum) - \$[insert]
Principal's Representative	Shire of Northam Address: 395 Fitzgerald Street NORTHAM WA 6401 Telephone: (08) 9622 6100 Facsimile: (08) 9622 1910 Email: records@northam.wa.gov.au
Contractor's Representative	[Insert name, title] Address: [insert] Telephone: [insert] Facsimile: [insert] Email: [insert]
Start Date	[Insert the date the obligations under this Contract start]
End Date	[Insert the agreed date on which the obligations under this Contract are due to end]
Goods to be supplied	The Goods are described in the Specification.
Services to be provided	The Services are described in the Scope of Services.
Services being Reoccurring Services	No
Works to be performed	The Works are described in the Works Specification.
Time to Submit Progress Claims	At the end of the month for payment prior to then of the following month.
Additional details required in Progress Claims and Invoices	Not Used
Goods Date for Completion	120 Days from receipt of executed copies of Contract.
Services Date for Completion	120 Days from receipt of executed copies of Contract.

Works Date for Completion	120 Days from receipt of executed copies of Contract.
Time for performance for Reoccurring Services	Not Used
Additional requirements for Reoccurring Services	Not Used
Delivery Point	Rural Number 830 Inkpen Road, Inkpen
Site	Rural Number 830 Inkpen Road, Inkpen
Contractor Maximum Liability Amount	\$ 20,000,000
Principal Maximum Liability Amount	\$ 20,000,000
Defects Liability Period	12 months from Practical Completion
Minimum level of Public Liability Insurance Cover required	\$ 20,000,000
Minimum level of Product Liability Insurance Cover required	\$ 20,000,000
Minimum level of Professional Indemnity Cover Required	\$ 20,000,000
Minimum level of Contractor's Vehicle Insurance Cover required	\$35,000
Minimum Employee Insurance Cover required	\$ 5,000,000
Public and Product Liability Insurance End Date	[insert] months from the last Date of Completion.
Contractor's Vehicles Insurance End Date	[insert] months from the last Date of Completion.
Employee Insurance End Date	[insert] months from the last Date of Completion .
Professional Indemnity Insurance End Date	[insert] years from the last Date of Completion.
Liquidated Damages	\$ 100 per day