



Construct Only Contract

Shark Bay Resources Pty Ltd

ABN: 88 079 088 636

and

DTL (WA) Pty Ltd

ABN 45 677 646 454

Bitterns Recycling Project

2026

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THIS DEED is made on

2026

BETWEEN:

- (1) Shark Bay Resources Pty Ltd ABN: 88 079 088 636 (the **Principal**); and
- (2) **DTL (WA) Pty Ltd** ABN: 45 677 646 454 (the **Contractor**).

RECITALS:

- (A) The Principal wants to engage a contractor to undertake and complete the Works.
- (B) The Contractor is an experienced contractor that has undertaken work similar to the Works.
- (C) The Contractor has agreed to undertake and complete the Works on the terms of, and in accordance with, this Contract.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this Contract.

Actual Completion Date means the actual completion date nominated on the Certificate of Completion.

Affected Party means a party that is affected by a Force Majeure Event.

Approval includes any approval, authorisation, certificate, consent, determination, exemption or permit required to undertake any activity lawfully, including from any Government Authority and including any Principal Approval.

Approved Subcontractor has the meaning given in clause 14.6(a).

Artefact means any artefact, article of antiquity or cultural significance, bone, building, coin, fossil, natural feature, remains, structure or any other thing of an anthropological, archaeological, cultural, geological, historical, scientific or sociological interest or otherwise significant interest, including anything that is of cultural heritage significance.

As Built Documentation means the final issue of all documentation, diagrams, drawings, procedures, specifications, software licenses and 3D models contemplated as such in this Contract, including the drawings referred to in the Scope of Work in each case in a form and substance approved, in writing, by the Principal.

Australian Standard means any standard published by Standards Australia Limited (ABN 85 087 326 690).

Bank Guarantee means an irrevocable and unconditional bank guarantee:

- (a) in a form approved by the Principal, acting reasonably; and
- (b) issued by:
 - (i) an Australian trading bank registered pursuant to the *Banking Act 1959* (Cth) with the Required Rating; or
 - (ii) another financial institution licenced in Australia with the Required Rating.

Bank Guarantee Amount means the amount specified in Item 1 of the Contract Particulars.

Breach Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 32.1(a).

Business Day means:

- (a) for the purposes of clause 36, a Day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the communication is received; and
- (b) for all other purposes, a Day that is not a Saturday, Sunday, bank holiday or public holiday in the State of Western Australia.

Certificate of Completion means the certificate referred to in, and issued by the Principal in accordance with, clause 18.10 in the form prescribed in 0 certifying that Completion has been achieved.

Certificate of Completion Request means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 18.10(b).

Claim means, in relation to a person, any claim, allegation, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Claim for Extension of Time means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 18.4(a).

Commencement Date has the meaning given to it in clause 2.1(b).

Compensation Event means:

- (a) any breach of this Contract by the Principal (other than a failure to pay money);
- (b) any suspension by the Contractor pursuant to the SOP Act; and
- (c) any restriction, prevention, or material impediment to the Contractor's access to the Works, other than to the extent caused or contributed to by the Contractor, and other than to the reasonably foreseeable and preventable by the Contractor.

Completion means the stage in the execution of the Works or Separable Portions in accordance with this Contract when:

- (a) the Works or Separable Portion (as applicable) is complete in accordance with this Contract, other than for Minor Defects, and complies in all respects with the Specification;
- (b) all those tests that are required under this Contract to be undertaken and to be completed satisfactorily in accordance with this Contract, have been undertaken and completed satisfactorily; and
- (c) documents and other information required under this Contract that, in the opinion of the Principal, are necessary for the use, operation and maintenance of the Works or Separable Portion (as applicable), have been provided in accordance with this Contract and including all certificates in relation to the Works or Separable Portion (as applicable), including any construction certificate.

Confidential Information has the meaning given to it in clause 29.1.

Constructional Plant means any equipment, machinery or plant used or to be used or necessary to undertake and to complete any activity pursuant to, or for the purpose of, this Contract, including undertaking and completing any Works.

Contaminated means the presence on, in, over, under or emanating from land (including both surface and ground water and air) of a substance (whether heat, liquid, gas, odour, radiation, solid, sound or vibration) at a concentration or intensity above the concentration or intensity at which the substance is normally or naturally present on, in, over, under or emanating from that land (including both surface, sub-surface and ground water) or land or waters in the same locality, being a presence that presents a risk of harm to human health or any aspect of the Environment, and **Contamination** and **Contaminate** have corresponding meanings.

Contamination Notice means any notice given under any Law in relation to Contamination or Pollution of, or from, the Site.

Contract means this document, the Schedules and all documents referred to in and all requirements of any of them.

Contract Particulars means the particulars set out in Schedule 1.

Contract Price means:

- (a) where the Principal accepted a fixed lump sum, the lump sum set out in Schedule 3;
- (b) where the Principal accepted rates, the sum ascertained by multiplying the rates by the corresponding quantities in Schedule 3; or
- (c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b) above,

as adjusted in accordance with this Contract.

Contractor Personnel means the Contractor's directors, officers, invitees, nominees agents, employees, contractors, subcontractors and any other person engaged by the Contractor in any activity directly or indirectly related to this Contract.

Contractor Representative means the person appointed for the time being by the Contractor to be its representative in accordance with clause 4.2, which at the Execution Date is the person named in Item 3 of the Contract Particulars.

Convenience Termination Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 32.3.

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

Damages Payment Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 19.3(a).

Day means a calendar day and day means any period of twenty-four (24) consecutive hours beginning at 00:00 hours on any calendar day and ending at 24:00 on that calendar day at the local time at the location at which the particular obligation is to be performed or right is capable of exercise or activity is undertaken and completed.

Day 1 Clauses means those clauses expressed to be 'Day 1 Clauses' in clause 2.4.

Default Rate means 4% above the commercial lending rate of the bank notified to the Contractor by the Principal from time to time.

Default Termination Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 32.1(b).

Defect means, in relation to any appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works, or any part of them:

- (a) any aspect of the design, form, manufacture or fabrication, production or performance of the Works or any appliance, component, good, material, part, equipment, machinery or plant that is not consistent with the Specification or is not Fit for Purpose or otherwise not in accordance with this Contract;
- (b) any cracking, damage, defect, deficiency, displacement, disrepair, failing, fault, flaw, malfunction, irregularity, error, omission, shrinkage or other imperfection (including in relation to materials or workmanship) of any appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works, which results in the Works not being consistent with the Specification, not being Fit for Purpose or otherwise not in accordance with this Contract; or
- (c) any physical damage to any appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works resulting from any matter referred to in paragraphs (a) and (b) of this definition,

and **Defective** will be construed accordingly.

Defects Liability Period means the period specified in Item 4 of the Contract Particulars.

Delay Costs has the meaning given in clause 18.5(a)(ii).

Design Documentation means the documents described and detailed as such in the Scope of Work.

Determination Notice has the meaning given in clause 4.4(a).

Disclose includes in writing, by discussion (or any other communication) or disclosure, by whatever means, and **Disclosed**, **Discloses** and **Disclosure** are to be construed accordingly.

Dispute means any controversy, difference or dispute between the parties in relation to this Contract or any subject matter of it (including whether contractual, common law or equity, tort, regulatory or statutory or otherwise) including relating to any Claim or to the enforceability, existence, interpretation, scope, termination or validity of this Contract or any provision of it.

Documentation means all documentation (including all final drawings, specifications, manuals, models, samples, patterns and calculations) in computer readable and written form, or stored by any other means, created by, or on behalf of, the Contractor or any other person, in relation to the Works, or any part of those Works, appropriate or necessary for the Contractor to achieve Completion in accordance with this Contract or otherwise to comply with this Contract, including all documentation listed in the Scope of Work.

Encumbrance means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge;
- (c) an easement, restrictive covenant, caveat or similar restriction over property; or
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Environment means the physical characteristics of those surroundings including the atmosphere, the land and the waters, the biological characteristics of those surroundings including the fauna and flora and other forms of life and the aesthetic characteristics of those surroundings, including appearance, smells, sounds, tastes and textures.

Environmental Law means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, soil, ground water, chemicals, waste, water, the storage and

handling of dangerous goods, the health or safety of any person, or any other matter relating to the protection of the Environment, health or property.

Environmental Management Plan means the environmental management plan prepared by the Contractor and accepted by the Principal in accordance with clause 9.6.

Execution Date means the date on which the last of the parties to execute this Contract, executes this Contract.

Extension Event has the meaning given to it in clause 18.3(a)(iii).

Extension of Time means an extension to the Target Completion Date granted by the Principal pursuant to clause 18.5 or clause 31.1(b).

Extension of Time Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 18.5.

Fit for Purpose means fit for its or their (as the case may be) intended purpose in accordance with, or ascertainable from, the Specification and otherwise from this Contract, including for the purposes of enabling the use of the Works in a safe and lawful manner.

Force Majeure Event means the occurrence after the Execution Date of:

- (a) fire, explosion, lightning, storm, tempest, flood, ionising radiation, earthquakes, riot and civil commotion;
- (b) any blockade or embargo;
- (c) any official or unofficial strike, lockout, go-slow, or other dispute generally affecting the road transport, manufacturing, or stevedoring industries in Western Australia or a significant sector of them;
- (d) war, civil war, declared national emergency, armed conflict or terrorism;
- (e) nuclear, chemical or biological contamination; or
- (f) pressure waves caused by devices travelling at supersonic speeds,

which causes the Affected Party to be unable to comply with all or a material part of its obligations under this Contract and is outside the reasonable control of the Affected Party (or those for whom it is responsible) but does not include:

- (g) an event to the extent that it is caused or contributed to by the Affected Party and, if the Contractor is the Affected Party, to the extent that the effect of the event could have been avoided or mitigated by a prudent contractor acting reasonably; or
- (h) any event to the extent that it is caused or contributed to by a breach of this Contract or Law by the Affected Party and, if the Contractor is the Affected Party, to the extent that the effect of the breach of Contract or Law could have been avoided or mitigated by a prudent contractor, acting reasonably.

Further Work Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 18.10(d)(iii).

Good Industry Practice means, in relation to any activity, the application of a degree of care, diligence, foresight, prudence and skill that may be expected of an experienced, recognised and skilled person with a leading reputation, and applying best practices, in undertaking and completing any activity the same as or similar to that activity and performing obligations the same as or similar to those of the Contractor under this Contract (including undertaking and completing the Works) and so as to achieve the required outcome consistent with Law, due expedition (including avoiding delays), efficiency, reliability, protection of the environment and the health,

safety and welfare of people and in accordance, and compliance, with this Contract (including to ensure compliance with Environmental Law and Occupational Safety and Health Legislation), including in respect of the Specification, the intended purpose and Fit for Purpose.

Government Authority means any Federal, State or local government (including any local council), and any agency, department, directorate or instrumentality thereof, within Australia or anywhere in the world.

GST has the meaning given to it in the GST Law.

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

Health and Safety Management Plan means the plan prepared by the Contractor and accepted by the Principal, in accordance with clause 9.6.

Impending Completion Notice means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 18.10(a).

Industrial Action means any industrial action or dispute of any kind whatsoever, including any strike, lock-out, demarcation dispute, imposition of any ban on, difference in, or limitation on the manner in, which any work activity is customarily undertaken, non-attendance at or for work or any refusal of any worker to work in accordance with any contractual arrangement or applicable Industrial Instrument.

Industrial Instrument means any industrial award, enterprise agreement or other form of agreement, made, recognised or taken to exist under any industrial or labour law (including the *Fair Work Act 2009 (Cth)* and any Law to which the Contractor is subject).

Industrial Matter means any event, circumstance, matter or occurrence relating to any Claim for payment by any person, any Claim in relation to any change to any Industrial Instrument or work practice (including in relation to any work procedures, negotiated agreements or contracts, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, site allowances or bonuses) or any reduction in the construction industry working hours per week.

Insolvency Event means, in relation to any person, any of the following events:

- (a) a controller, manager, trustee, administrator or similar officer is appointed in relation to that person or any asset of that person;
- (b) a liquidator or provisional liquidator is appointed in respect of that person;
- (c) any application (not being an application withdrawn or dismissed within 15 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up that person; or
 - (iii) proposing or implementing a scheme of arrangement in respect of that person;
- (d) a moratorium of any debts of that person or an official assignment, composition or an arrangement (formal or informal) with the creditors of that person or any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of the creditors of that person is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;
- (e) that person becomes, admits, in writing, that it is, is declared to be, or is deemed under any applicable Law to be, insolvent or unable to pay its debts;

- (f) any writ of execution, garnishee order, Mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of that person; or
- (g) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (f) of this definition, in any jurisdiction.

Insolvency Termination Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 32.2.

Instruction Notice has the meaning given to it in clause 4.3(a).

Intellectual Property Rights means all copyright and analogous rights (including Moral Rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks, registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

International Standard means any international standard published by the International Organisation for Standardization and any other international guideline, practice or standard applicable and consistent with Good Industry Practice.

Key Personnel means the personnel specified in Item 5 of the Contract Particulars.

Law includes, as amended from time to time, and whether or not existing at the Execution Date, all applicable:

- (a) legislation, ordinances, regulations, by-laws, local laws, orders, proclamations, Approvals, directions or notices issued by any statutory, governmental or judicial authority, principles of law or equity, Standards, codes and guidelines; and
- (b) fees, rates, Taxes, levies and charges payable in respect of those things referred to in paragraph (a) of this definition.

Liquidated Damages means the liquidated damages (if any) detailed in Item 6 of the Contract Particulars.

Loss includes any cost (including any charge, deductible or premium payable in respect of any insurance and any cost of any adviser), expense, loss, damage or liability (including any charge, compensation, debt or fine), including those arising from any claim from a Third Party, whether direct, incidental, indirect or consequential (including economic or financial loss), present or future, ascertained or unascertained, actual, contingent or prospective, or (to the extent not against public policy or prohibited by Law) any fine or penalty, and whether arising under breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law or in equity.

Maintenance Services means the services identified in Schedule 7 which are only applicable if Item 7 of the Contract Particulars provides for Maintenance Services.

Milestone means each milestone (if any) identified in Item 8 of the Contract Particulars.

Milestone Payment means each amount (if any) specified to be a Milestone Payment as set out in Schedule 3.

Minor Defect means any Defect that:

- (a) does not, and will not, impair or prevent the Works from being, and continuing to be, Fit for Purpose and as such will not impair operability or performance, maintainability and reliability or make-good, rectification and repair or affect in any way the performance of the Works;

- (b) is able to be corrected, rectified or remedied without affecting adversely the safe, lawful, efficient and convenient use (including operation) of the Works; and
- (c) the Principal determines that the Contractor has reasonable grounds not to correct, rectify or remedy promptly.

Month means a calendar month and month means a period of 30 consecutive Days.

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, rights to alter or delete all or part of the works, rights to use the works or an adaptation of the works and rights of a similar nature conferred by statute anywhere in the world including as defined in the *Copyright Act 1968* (Cth).

No Completion Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 18.10(d)(ii).

Notice to Proceed means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 2.3.

Notice to Proceed (Longstop) means the date set out in Item 9 of the Contract Particulars.

Notifiable Incident means a notifiable incident under the Occupational Safety and Health Legislation or any other incident in relation to which the Contractor or any Contractor Personnel is required to notify any Government Authority under Occupational Safety and Health Legislation.

Occupational Safety and Health Legislation means any Law relating to workplace health, safety and/or welfare, electrical safety, dangerous goods, transport safety and/or any other Law in respect of the health and safety of persons carrying out the Works, entering the Site, or who may be affected by the Works or activities occurring on the Site and any relevant codes of practice, Standards, handbooks and guidelines relating to welfare, health and safety, electrical safety, dangerous goods, transport safety and/or any other Law in respect of the health and safety of persons carrying out the Works, entering the Site, or who may be affected by the Works or activities occurring on the Site, including the *Work Health and Safety Act 2020 (WA)* and the *Work Health and Safety Regulations 2022 (General or Mines, as applicable)*, *Mines Safety and Inspection Act 1994 (WA)*, and *Mines Safety and Inspection Regulations 1995 (WA)*, as amended or replaced from time to time.

Parent Company Guarantee means the parent company guarantee dated on or about the Execution Date between the Principal and the Parent Guarantor in the form set out in 0 or any replacement guarantee approved by the Principal pursuant to the terms of this Contract.

Payment Schedule has the meaning given in SOPA.

Parent Guarantor means the entity identified in Item 10 of the Contract Particulars or any replacement entity approved by the Principal pursuant to the terms of this Contract.

Permitted Purpose means:

- (a) in respect of any party, performing any obligation under or discharging any liability in accordance with this Contract, enforcing any right or remedy arising under or in respect of this Contract; and
- (b) in respect of the Principal, enjoying the use and benefit of any rights expressly granted to it under this Contract.

Personnel means the Contractor Personnel or the Principal Personnel, as applicable.

Pollution means gas, heat, liquid, odour, radiation, solid, sound, substance or vibration that makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by any person or animal;

- (b) degraded in its capacity to support plant life;
- (c) Contaminated; or
- (d) otherwise environmentally degraded.

PPS Security Interest means a security interest that is subject to the *Personal Property Securities Act 2009* (Cth).

Principal Approval means any Approval that will be obtained by the Principal in relation to the Works, as set out in the Principal Supplied Information or notified, in writing, by the Principal to the Contractor from time to time.

Principal Personnel means any director, employee or officer of the Principal, the Principal Representative and other person whose name is notified in writing to the Contractor by the Principal or the Principal Representative as Principal Personnel.

Principal Representative means the person appointed for the time being by the Principal to be its representative in accordance with clause 4.1, which at the Execution Date is the person named in Item 2 of the Contract Particulars.

Principal Supplied Information means all information provided to the Contractor by, or on behalf of, the Principal as set out in the Scope of Work (including the Design Documentation) and any information that is available in any public record or register in respect of the Site or that could be derived from an inspection of the Site.

Principal Supplied Items means the items described in Item 11 of the Contract Particulars and Schedule 5 that are to be provided by the Principal and intended to be used to undertake and to complete the Works and to form part of, or to be incorporated into, the Works.

Principal Works means any works that are to be undertaken by the Principal or Principal Personnel on the Site as further described in the Scope of Work.

Proportionate Liability Legislation means:

- (a) *Civil Liability Act 2002* (WA) – Part 1F;
- (b) *Competition and Consumer Act 2010* (Cth) – Part VI;
- (c) *Corporations Act 2001* (Cth) – Part 7.10, Div 2A; and
- (d) *Australian Securities & Investments Commission Act 2001* (Cth) – Part 2, Division 2, Subdivision GA.

Quality Management Plan means a project specific quality plan detailing the management and control of quality of all aspects of the activities of the Contractor under this Contract, including in relation to the Works, prepared by the Contractor and accepted by the Principal, in accordance with clause 9.6.

Recommendation Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 25.2(a).

Rectification Completion Notice means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 20(g)(i).

Rectification Direction Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 20(d)(i).

Rectification Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 13.6(a).

Representative means the Contractor Representative or the Principal Representative, as applicable.

Required Action Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 17.2(b).

Required Rating means:

- (a) a Standard & Poor's long-term credit rating of at least A+ or a Moody's long term credit rating of at least A1; or
- (b) in the case of a split rating, the lower of the two ratings must meet the requirements in paragraph (a) of this definition.

Required Rectification Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 17.2(a).

Scope of Work means the scope of work set out in Schedule 2.

Separable Portion means any portion of the Works that is described in the Scope of Work as a separable portion or work package.

Site means the whole of the site, facilities, infrastructure, utilities, buildings, structures and land where the Work is to be performed as further described in the Scope of Work and relevant maps and drawings.

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

Spare Parts means the spare parts described in Item 12 of the Contract Particulars.

Specification means the specifications and requirements described and detailed in the Scope of Work.

Standards means Australian Standards and International Standards.

Suspension Direction Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 25.4(a).

Suspension Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 25.1(a).

Target Completion Date means that date or period of time specified in Item 13 of the Contract Particulars with respect to each Separable Portion, as may be adjusted in accordance with this Contract.

Target Milestone Date means the date for the achievement of a Milestone specified in Item 8 of the Contract Particulars.

Tax or **Taxes** includes any present or future tax, levy, impost, rate, charge, fee, deduction, compulsory loan, withholding or duty (including in respect of imports) by whatever name called, levied, imposed or assessed under any Law, including income tax, stamp duty, taxes on the supply of goods and services (including GST), rates, land tax, water and municipal rates, together with any interest, penalty, charge, fine, fee or other amount of any kind assessed, charged or imposed on, or in respect of, any of them, and **Taxation** will be construed accordingly.

Third Party means any person, other than a party to this Contract, that has no relationship, direct or indirect, with either party to this Contract and is not a related body corporate of a party to this Contract.

Variation means any amendment, change, modification, replacement or variation of any kind, including:

- (a) any increase or decrease in, or addition to, or omission of, any part of the Works;
- (b) any change or variation in the brand, character, description, functionality or quality of any part of the Works;
- (c) any change to the dimensions, levels, lines and positions of any part of the Works;
- (d) any change to the method, sequence or timing of any Works (including any acceleration or re-sequencing of Works), other than as contemplated in the Work Plan;
- (e) any amendment, change, modification, replacement or variation that might affect compliance with the Specification or affect being Fit for Purpose or used for the intended purpose; or
- (f) any additional applicable equipment, materials or services.

Variation Notice means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 24.2(a).

Variation Order means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 24.2(d).

Variation Proposal means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 24.3(a).

Variation Proposal Approval means a notice in writing in the form prescribed in 0 issued by the Principal pursuant to clause 24.3(b).

Variation Quotation means a notice in writing in the form prescribed in 0 issued by the Contractor pursuant to clause 24.2(b).

WHS Legislation means the Work Health and Safety Act 2020 (WA) and the Work Health and Safety Regulations 2022 (General or Mines, as applicable). "**PCBU**", "**Officer**", "**Worker**", "**Workplace**" and "**Notifiable Incident**" each have the meaning given in the WHS Legislation.

Work Plan means the program contained in Schedule 4 that details the plan and program to undertake and to complete the Works as approved by the Principal in accordance with clause 9.1(a) and which may be amended or departed from in accordance with clause 9.1(d), but not otherwise.

Working Hours means the working hours notified to the Contractor from time to time by the Principal.

Works means all of the work undertaken and completed or, as the case may be, to be undertaken and completed, by the Contractor in accordance with this Contract, as described in the Scope of Work, including any activity in relation to any Variation or any correction, rectification or remediation of any Defect and any work performed by the Contractor prior to the Execution Date.

1.2 Rules for interpreting this Contract

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Contract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document (including this Contract) or agreement, or a provision of a document (including this Contract) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this Contract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The expression **this Contract** includes the agreement, arrangement, understanding or transaction recorded in this Contract.
- (h) The expressions **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- (i) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (j) Any reference to time is to local time in Western Australia.

1.3 **Non-Business Days**

If the Day on or by which a person must do something under this Contract is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 **The rule about "contra proferentem"**

This Contract is not to be interpreted against the interests of a party merely because that party proposed this Contract or some provision in it or because that party relies on a provision of this Contract to protect itself.

1.5 **Order of precedence and ambiguities**

- (a) In construing the documents that comprise this Contract, the following rules of construction apply:
 - (i) if there is an inconsistency or ambiguity between any parts of this Contract, the order of precedence of the parts of this Contract is as follows:

- (A) the main body of this Contract;
 - (B) Schedule 1
 - (C) any Variation Order issued pursuant to this Contract;
 - (D) Schedule 2; and
 - (E) the remaining Schedules to this document;
 - (ii) notwithstanding clause 1.5(a)(i):
 - (A) if there is any conflict or inconsistency in respect of the required quality, the highest level of quality is required;
 - (B) if there is any conflict or inconsistency in respect of dimensions, figured dimensions take precedence over scaled dimensions; and
 - (C) if there is any conflict or inconsistency in respect of any scale in any drawing, larger scales take precedence over smaller scales;
 - (iii) if any requirement in relation to the quality or any aspect of the Works is not expressly depicted, discernible or specified, the quality must be consistent with the intended purpose of the Works; and
 - (iv) drawings showing particular parts of any of the Works take precedence over drawings for more general purposes.
- (b) If the Contractor considers that any term of this Contract is ambiguous, the Contractor must notify the Principal in writing of the ambiguity within 10 Business Days of the Execution Date.
- (c) Other than as expressly provided for to the contrary in this Contract:
- (i) if any reference is made to any Standard in this Contract, the edition of such Standard (to the extent any subsequent amendment to the Standard is not mandatory) that is current at the Execution Date will apply; and
 - (ii) the hierarchy in which the Standards referred to in this Contract must be complied with is as follows (in order of priority):
 - (A) statutory requirements of Australia;
 - (B) applicable Australian Standards; and
 - (C) applicable Standards required by any Government Authority which are not Australian Standards.

1.6 **Contractor Personnel**

- (a) The Contractor must ensure that no Contractor Personnel act or omit to act in a way which would result in the Contractor being in breach of this Contract or which, if the action was undertaken by the Contractor, would result in the Contractor being in breach of this Contract.
- (b) Without limiting clause 1.6(a), an act or omission of any Contractor Personnel in connection with any activity relating to the Works or the Site (including negligent acts and omissions and breach of this Contract) is taken to be an act or omission of the Contractor for the purposes of this Contract.

- (c) The Principal will have no liability to the Contractor if and to the extent that liability or Loss is caused or contributed to by, or arises out of or in connection with, an act or omission of any Contractor Personnel.

2. COMMENCEMENT

2.1 Commencement Date

- (a) This Contract (other than the Day 1 Clauses) will commence on the Commencement Date.
- (b) The Commencement Date is the earliest of:
 - (i) if the Principal has instructed the Contractor to perform any works or services prior to the Execution Date, the date of any such notice;
 - (ii) if Item 9 of the Contract Particulars indicates that the Notice to Proceed process is applicable, the date when the first Notice to Proceed is issued by the Principal to the Contractor; or
 - (iii) if paragraphs (i) and (ii) do not apply, the Execution Date.
- (c) If the Commencement Date has not occurred on or before the Notice to Proceed (Longstop), either party may terminate this Contract by notice, in writing, to the other party. No party has any liability to the other arising out of or in connection with a termination pursuant to this clause 2.1(c) other than for any breach of the Day 1 Clauses.
- (d) In the event that this Contract is terminated pursuant to clause 2.1(c), all Bank Guarantees held by the Principal in connection with this Contract will be released and returned to the Contractor within five Business Days of the date of termination.

2.2 Conditions Precedent

- (a) The conditions precedent are:
 - (i) if a Bank Guarantee is expressed to be applicable in Item 1 of the Contract Particulars, one or more Bank Guarantees have been provided by the Contractor in accordance with clause 7.2;
 - (ii) if a Parent Company Guarantee is expressed as applicable in Item 10 of the Contract Particulars, the Parent Company Guarantee has been duly executed and has been delivered by the Contractor in accordance with clause 7.1 (together with a legal opinion from legal counsel in the jurisdiction in which the Parent Guarantor is incorporated, acceptable to the Principal as to the due execution and enforceability of that deed, such opinion being in form and substance acceptable to the Principal);
 - (iii) the Contractor has provided evidence that the insurance policies have been effected and are on-risk in accordance with clause 28.1;
 - (iv) the Contractor has provided the Principal with a soft copy of the Work Plan in a format approved by the Principal;
 - (v) the Contractor's health and safety management plan has been approved by the Principal in accordance with Schedule 3; and
 - (vi) any other conditions precedent identified in Item 9 of the Contract Particulars.
- (b) Except where and to the extent otherwise expressly waived by the Principal in writing specifically referencing this clause 2, the Contractor must provide the Principal with the documentation referred to in clauses 2.2(a)(i), 2.2(a)(ii), 2.2(a)(iii), 2.2(a)(iv) and any other conditions precedent identified in Item 9 of the Contract Particulars that are the responsibility of the Contractor promptly after the Execution Date. Such documentation

must be complete (but for the insertion of dates) when provided (with authority to the Principal to insert relevant dates if required).

- (c) The Principal must use reasonable endeavours to satisfy any other conditions precedent identified in Item 9 of the Contract Particulars that are the responsibility of the Principal promptly after the Execution Date.

2.3 Issue of notice to proceed

- (a) If Item 9 of the Contract Particulars indicates that the Notice to Proceed process is applicable, this clause 2.3 will apply.
- (b) The Principal may, at any time after the conditions precedent in clauses 2.2(a)(i), 2.2(a)(ii), 2.2(a)(iii), 2.2(a)(iv) and any other conditions precedent identified in Item 9 of the Contract Particulars that are the responsibility of the Contractor being satisfied by the Contractor or waived by the Principal, issue a Notice to Proceed instructing the Contractor to proceed with the Works.
- (c) Following the issue of a Notice to Proceed, the Contractor must promptly perform the Works identified in the Notice to Proceed.
- (d) The Principal may issue more than one Notice to Proceed and clause 2.3(c) will apply to each Notice to Proceed.

2.4 Clauses that apply immediately

The Day 1 Clauses are in full force and effect on and from the Execution Date. The Day 1 Clauses are:

- (a) this clause 2;
- (b) clause 1;
- (c) clause 29;
- (d) clause 30; and
- (e) clause 33 to 38 (inclusive).

3. REPRESENTATIONS AND WARRANTIES OF EACH PARTY

Each party represents and warrants to the other party that:

- (a) it has the power to execute, deliver and perform its obligations under or as contemplated by this Contract and that all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this Contract constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject to the availability of equitable remedies; and
- (c) the execution by it of, the performance by it of its obligations under, and the compliance by it with the provisions of, this Contract does not, and will not, contravene any existing Law to which it is subject.

4. **REPRESENTATIVES**

4.1 **Principal Representative**

- (a) The Principal appoints the Principal Representative to perform the functions of the Principal under this Contract.
- (b) The Principal Representative has the authority to act on behalf of and bind the Principal in relation to any matter contemplated by or in connection with this Contract. However, the Principal Representative does not have authority to amend the terms and conditions of this Contract.
- (c) The Principal may, at any time by notice in writing to the Contractor, revoke the appointment of the Principal Representative and appoint another person to be the Principal Representative. The notice of revocation will take effect from when that notice is provided to the Contractor.
- (d) The appointment of the Principal Representative does not prevent the Principal from exercising any right, discretion or function of the Principal under this Contract.
- (e) When this Contract requires the Contractor to submit a notice, document or other thing to the Principal, the Contractor must submit such notice, document or other thing to the Principal Representative.
- (f) The Principal and the Contractor acknowledge that this Contract does not create any obligations running from the Principal Representative to the Contractor and shall not give rise to any liability on the part of the Principal Representative to the Contractor.

4.2 **Contractor Representative**

- (a) The Contractor Representative represents and acts for the Contractor at all times during the term of this Contract, and is responsible for overseeing the execution of the Works.
- (b) The Contractor is bound by the actions of the Contractor Representative. Matters within the knowledge of the Contractor Representative are deemed to be within the knowledge of the Contractor.
- (c) All notices, instructions and other communications to be given by the Principal to the Contractor must be given to the Contractor Representative, unless otherwise provided.
- (d) The Contractor must ensure that the Contractor Representative is available at all reasonable times for communication and engagement with the Principal Representative, and the Contractor hereby confirms that at all times the Contractor Representative has the power to bind the Contractor, including in respect of any amendment or modification to this Contract.

4.3 **Instructions**

- (a) By notice, in writing, at any time, and from time to time, the Principal may give instructions to the Contractor to the extent desirable or necessary in relation to undertaking or completing any activity, including the performance of any obligation by the Contractor (**Instruction Notice**).
- (b) The Contractor must comply with, and ensure that all Contractor Personnel comply with, each Instruction Notice.
- (c) No instruction or Instruction Notice or compliance with any instruction or Instruction Notice allows the Contractor to make any Claim (including for any extension of time or for any compensation) and does not constitute, and is not, a Variation.

4.4 **Determination**

- (a) If any provision of this Contract provides that the Principal will make a determination, the Principal will make the determination and by notice, in writing, notify the Contractor of it (**Determination Notice**).
- (b) The Contractor must comply with, and ensure that all Contractor Personnel comply with, each Determination Notice, unless the Contractor Disputes the Determination Notice within five Business Days after the date it is received by the Contractor, in which case the Contractor must comply with the Determination Notice pending resolution of the Dispute.
- (c) No determination or compliance with any Determination Notice allows the Contractor to make any Claim (including for any extension of time or for any compensation) and does not constitute, and is not, a Variation.

5. **PERFORMANCE AND CONTRACTOR'S OBLIGATIONS**

5.1 **Commencement and performance**

- (a) Without affecting the application of any other provision, the Contractor is responsible entirely and solely for undertaking and completing the Works in accordance with this Contract to ensure that:
 - (i) Completion is achieved on or before the Target Completion Date;
 - (ii) the Works comply with all relevant Approvals, Laws and Standards;
 - (iii) the Works comply with the Specification and are Fit for Purpose; and
 - (iv) the Works otherwise comply with this Contract.
- (b) Without affecting the application of any other provision, if this Contract obliges or requires the Contractor to undertake any activity (including any Works):
 - (i) the Contractor must undertake that activity in accordance with:
 - (A) this Contract;
 - (B) Good Industry Practice; and
 - (C) all relevant Approvals, Laws and Standards; and
 - (ii) the Contractor undertakes that activity at its own cost and expense, and at its absolute and sole risk (including as to the consequences, including any Loss).
- (c) Without affecting the application of any other provision, the Works must, and the Contractor represents and warrants that the Works will:
 - (i) comply with the descriptions and details of the Works and the Specification;
 - (ii) comply with all relevant Approvals, Laws and Standards;
 - (iii) be capable of use and be Fit for Purpose;
 - (iv) be free from any Defect;
 - (v) be capable of use by the Principal, and any Third Party if the Works are on-sold, without infringing any Intellectual Property Right;
 - (vi) comply with Occupational Safety and Health Legislation and, so far as is reasonably practicable, not expose any person to a risk to their health, safety and/or welfare;

- (vii) be safe, clean and free from risk (including free from risk to the health, safety and welfare of any person using or in proximity to the Works);
- (viii) be free from any Encumbrance or interest or right; and
- (ix) otherwise comply with this Contract.

5.2 **All inclusive Contract Price**

Without affecting the application of any other provision, the Contractor acknowledges that:

- (a) the Contract Price represents an amount that covers all of the costs and expenses of the Contractor to enable it to complete all Works in accordance with this Contract, including the Specification, such that all activities (including the Works) are achieved by the Target Completion Date and may be used by the Principal for the intended purpose and are Fit for Purpose; and
- (b) the Contract Price will not be adjusted and the Contractor is not entitled to make any Claim in relation to the amount of the Contract Price (including any increase in it), other than strictly in accordance with clause 24.

5.3 **Risks accepted**

In relation to all activities:

- (a) the Contractor accepts all risks in relation to each activity undertaken and completed by it, including the Works, including:
 - (i) any change in any interest rate and any currency exchange rate;
 - (ii) the actual cost of the Works (or any part of them) (including any increased cost or expense) being greater than assumed or estimated;
 - (iii) any delay in granting, or refusal to grant, any relevant Approval by any Government Authority and the conditions of any relevant Approval granted or any legal challenge to any relevant Approval or obtaining a relevant Approval, and maintaining each relevant Approval;
 - (iv) any interface between the Works and any other material, equipment, infrastructure, services or works (including any Principal Works);
 - (v) any welfare, health and safety issues at the Site;
 - (vi) any Industrial Action (including arising from any Industrial Matter);
 - (vii) the availability, cost, quality or quantity of any appliance, component, good, material, part, equipment, machinery or plant to be used in, or Contractor Personnel to undertake, the Works;
 - (viii) the time taken to undertake and to complete and perform any Works being greater than anticipated;
 - (ix) any Works or any part of them not being safe and Fit for Purpose, including by reason of having any Defect;
 - (x) the adequacy and suitability of the Site (including Site condition);
 - (xi) the adequacy and suitability of any structure or other thing in, on, above, adjacent to or under the surface of the Site;
 - (xii) the existence, location, condition or availability of any infrastructure at the Site;

- (xiii) geotechnical conditions;
 - (xiv) weather (including abnormal and severe);
 - (xv) any liability for any Tax being greater than estimated;
 - (xvi) the ability to obtain and maintain any insurance in accordance with this Contract and the cost and the adequacy of that insurance; and
 - (xvii) the availability (including obtaining and maintaining) of any finance and the cost of any finance; and
- (b) the amount of the Contract Price does not limit the costs, expenses and liabilities (including any Losses) that the Contractor must incur or suffer to comply with its obligations under this Contract;
 - (c) the Contractor accepts complete responsibility for procurement, supply and delivery of all appliances, components, equipment, goods, material, machinery, plants and tools required to complete the Works including their engineering, fabrication, manufacture and testing, and the means, methods and techniques used in respect of all Works to incorporate them; and
 - (d) other than as expressly provided under this Contract, the Contractor is not entitled to make, and must not make, any Claim in relation to any Loss in relation to this Contract, including in relation to any risk that it is stated to have assumed.

6. CONTRACTOR ACKNOWLEDGEMENTS AND WARRANTIES

6.1 Contractor acknowledgements

The Contractor acknowledges and agrees that:

- (a) the Principal is relying on the advice, expertise, experience, judgement and skill of the Contractor, including in relation to:
 - (i) procuring all appliances, components, equipment, goods, material, machinery, plants and tools required to complete the Works;
 - (ii) employing and engaging Contractor Personnel and Constructional Plant; and
 - (iii) undertaking and completing all Works,
 in accordance with this Contract, including the Specification;
- (b) the Specification:
 - (i) does not detail an exhaustive scope of the Works; and
 - (ii) does not detail an exhaustive scope of activities to be undertaken and completed including, in relation to the undertaking and completion of the Works or the employment and engagement of Contractor Personnel;
- (c) without affecting the application of any other provision, the Contractor accepts exclusive and sole risk in relation to, and that the obligations of the Contractor under this Contract are not affected in any way by, and will not be affected in any way (and remain unaffected) by:
 - (i) any element or part of the Specification;
 - (ii) any amendment, change, modification, replacement or variation, other than to the extent (if any) that any Variation is made in accordance with clause 24;

- (iii) any information Disclosed by any person (including by the Principal or any person on behalf of the Principal) to the Contractor, including in relation to the Site (or surroundings of the Site, including the Environment), the Site conditions, any Works or any part of the Works; and
 - (iv) any error, ambiguity, deficiency, or inadequacy (including any compliance matter, inconsistency or omission) in the Specification;
- (d) it has reviewed and considered carefully (including analysing, examining and checking) the Design Documentation and the Specification and is entirely satisfied that the Design Documentation and the Specification:
 - (i) are accurate, appropriate, adequate, complete and suitable;
 - (ii) are fit for their intended purpose (including being adequate, complete and suitable);
 - (iii) take into account, all relevant circumstances, factors and matters, including:
 - (A) the Site and its surroundings and conditions (including the Environment);
 - (B) the Principal Approvals;
 - (C) the Principal Supplied Information;
 - (D) the weather patterns generally and seasonal rainfall patterns in particular; and
 - (E) the terms of this Contract (including Good Industry Practice); and
 - (iv) comply with all relevant Approvals, Laws and Standards;
 - (v) provide sufficient information to the Contractor to allow the Contractor to discharge any obligations it has under Occupational Safety and Health Legislation; and
 - (vi) have no ambiguity, conflict, discrepancy or inconsistency between the Design Documentation, the Specification and any other document comprising this Contract;
- (e) without affecting the application of any other provision, it will use (or allow the use of) only proven design systems and technologies for the appliance, component, good, material, part, equipment, machinery, plant and Constructional Plant to comprise the Works, being systems and technologies, that have operated successfully in the conditions (including environment, operating and weather conditions) in which the Works are to be used for their intended purpose;
- (f) without affecting the application of any other provision, it will ensure that all appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works are new and unused and of quality consistent with the Specification and otherwise consistent with this Contract;
- (g) the Contractor has and will ensure that any subcontractor has the relevant skills, experience and competency to perform the Works it is engaged to perform in a manner which, so far as is reasonably practicable, will not expose any person to a risk to their health, safety and/or welfare; and
- (h) it will employ or engage, or procure the employment or engagement of, a sufficient number of appropriately accredited, experienced, qualified, skilled, trained, and supervised, Contractor Personnel to undertake and to complete activities necessary to enable the Contractor to undertake and complete the Works in accordance with the Specification and otherwise in accordance with this Contract.

6.2 Contractor representations and warranties in relation to the Site and the Works

Without affecting the application of any other provision, the Contractor represents and warrants to the Principal that:

- (a) it has done everything that would be expected of a competent, experienced and prudent contractor using suitable methodologies and technologies in assessing the scope of all activities (including all Works) to be undertaken and completed under this Contract;
- (b) before entering into this Contract it:
 - (i) has examined the Site and its surroundings and satisfied itself fully as to the Site conditions and the adequacy and suitability of the Site, including by reference to weather;
 - (ii) was given the opportunity to undertake sufficient enquiries, investigations and tests in relation to all circumstances, events, factors and matters relevant to the Works (including relating to geotechnical and topographical matters), and from any such enquiries, investigations and tests, obtain sufficient understanding of the risks of the Site and its surroundings to enable it to satisfy itself as to the Site conditions and the adequacy and suitability of the Site to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and the potential liabilities and risks that it imposes on the Contractor;
 - (iii) has examined, and relied exclusively and solely upon its own assessment, enquiries, expertise and skill in relation to all information (including the Principal Supplied Information) relevant to the risks, contingencies and other circumstances, events, factors and matters that may have any effect on its obligations in relation to all Works and otherwise in relation to this Contract; and
 - (iv) was given the opportunity to undertake, and did undertake, sufficient enquiries, investigations and tests:
 - (A) relating to the subject matter of the Principal Supplied Information (including the Principal Approvals);
 - (B) the weather; and
 - (C) in relation to the Site conditions,and that the results of those enquiries, investigations and tests were satisfactory to it.

6.3 Principal Supplied Information

- (a) The Contractor must undertake its own assessment of, and verify, the Principal Supplied Information.
- (b) Without affecting the application of any other provision, if the Contractor relies on any Principal Supplied Information, that reliance will not relieve the Contractor of any duty or obligation or entitle the Contractor to make, and the Contractor must not make, any Claim, including in relation to any increased cost or expense or any delay or disruption that arises as a result of such reliance.
- (c) The Principal:
 - (i) has no duty of care or any obligation to the Contractor in relation to the Principal Supplied Information, including any duty or obligation to disclose any Principal Supplied Information or to disclose Principal Supplied Information or for the accuracy, adequacy, completeness or sufficiency of any Principal Supplied Information provided to the Contractor or any Contractor Personnel;

- (ii) is not liable to the Contractor whether in contract (including for breach of any term, including any condition or warranty, and any implied term) or in tort, under statute or otherwise in relation to (including provision and non-provision of) any Principal Supplied Information (including use of it), including in relation to any Loss in relation to the disclosure or non-disclosure or the accuracy, adequacy, completeness or sufficiency of any Principal Supplied Information provided to the Contractor or any Contractor Personnel; and
- (iii) has no duty of care or any obligation to the Contractor in relation to the disclosure of any information, including any duty or obligation to disclose any information.

6.4 Non reliance and reliance

The Contractor:

- (a) represents and warrants to the Principal that it has not relied in any way upon:
 - (i) any information, data, document, representation or statement (including Principal Supplied Information) made or provided to the Contractor or any Contractor Personnel or any other person by, or on behalf of, the Principal, or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible, whether or not obtained from the Principal; or
 - (ii) the accuracy, adequacy, completeness, correctness or suitability of such information, data, document, representation or statement,

for the purposes of executing this Contract or undertaking or completing any activity in accordance with this Contract;
- (b) represents and warrants that it entered into this Contract based on its own assessment, data, deductions, determinations, enquiries, expertise, information, interpretations and investigations; and
- (c) acknowledges that it is aware that the Principal has entered into this Contract relying upon the acknowledgments, representations and warranties in this clause 6 and elsewhere in this Contract.

The provisions of this clause shall apply only to the extent permissible under a Construct Only Contract.

7. SECURITY AND PARENT COMPANY GUARANTEE

7.1 Parent Company Guarantee

If a Parent Company Guarantee is expressed to be applicable in Item 10 of the Contract Particulars, the Contractor must deliver to the Principal the Parent Company Guarantee as a condition precedent to the Commencement Date in accordance with clause 2.2.

7.2 Applicability of Bank Guarantee

If a Bank Guarantee is expressed to be applicable in Item 1 of the Contract Particulars, clauses 7.3, 7.4 and 7.5 will apply.

7.3 Provision of Bank Guarantee

Without affecting the application of any other provision, for the purposes of securing the due and punctual performance of obligations and the discharge of liabilities under this Contract, the Contractor must deliver to the Principal a Bank Guarantee:

- (a) as a condition precedent to the Commencement Date and, if the Bank Guarantee is not provided within or prior to the expiry of this period, the Principal shall be under no obligation

to make any payments to the Contractor unless and until the Bank Guarantee is provided to the Principal;

- (b) in Australian dollars and for an amount equal to the Bank Guarantee Amount;
- (c) in favour of the Principal;
- (d) payable at an office of the issuer in Perth (or such other place as the Principal may approve in writing);
- (e) if required, duly stamped (at the cost of the Contractor); and
- (f) with no expiry date (unless otherwise agreed by the Principal acting reasonably).

7.4 Ongoing application

- (a) The Principal may have recourse to the Bank Guarantee at any time in relation to any Claim it has against the Contractor, including (but not limited to):
 - (i) where a Bank Guarantee held by the Principal ceases to satisfy the requirements of clause 7.3;
 - (ii) failure of the Contractor to issue any replacement Bank Guarantee as required under clause 7.4(d);
 - (iii) failure by the Contractor to pay any amount due under this Contract including for a breach of this Contract by the Contractor, compensation on termination of this Contract and any indemnified sums; or
 - (iv) upon the occurrence of an event of default by the Contractor that is the subject of a Breach Notice given under clause 32.1(a).
- (b) The Principal:
 - (i) is not obliged to pay the Contractor any interest:
 - (A) in relation to any Bank Guarantee; or
 - (B) subject to clause 7.4(c), on the proceeds of any Bank Guarantee if it is converted into cash; and
 - (ii) does not hold the proceeds referred to in clause 7.4(b)(i)(B) on trust for the Contractor.
- (c) If the Principal makes a call upon any Bank Guarantee and obtains payment as a consequence:
 - (i) the Principal will pay simple interest, at the Default Rate, on the amount of any payment in excess of the sum to which the Principal is entitled at the time of such call;
 - (ii) the amount attracting interest pursuant to clause 7.4(c)(i) will be further reduced by any unsatisfied amounts that subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Principal at the time such amounts become payable; and
 - (iii) the Principal shall return to the Contractor the amount attracting interest pursuant to clause 7.4(c)(i) at the time that the Principal would otherwise have been obliged to return the Bank Guarantee under which such amount was obtained, had the Principal not made a call upon the Bank Guarantee.

- (d) If:
 - (i) the issuer of any Bank Guarantee ceases to have the Required Rating;
 - (ii) a call is made upon the Bank Guarantee; or
 - (iii) the Bank Guarantee is to expire within 30 Business Days,
 the Contractor must:
 - (iv) notify the Principal, by notice, in writing as soon as practicable (in the case of Required Rating ceasing or expiry); and
 - (v) irrespective of whether notice is so given, procure the issue to the Principal of a replacement Bank Guarantee that satisfies the requirements of clause 7.3. Such replacement shall be provided:
 - (A) where the issuer ceases to have the Required Rating or a call has been made, within 10 Business Days; or
 - (B) in the case of expiry, 20 Business Days prior to the expiry date.
- (e) On provision of a replacement Bank Guarantee, the Principal will immediately return the original Bank Guarantee to the Contractor.
- (f) The Contractor must not seek any injunction or seek to otherwise restrain:
 - (i) the issuer of any Bank Guarantee from paying the Principal pursuant to that Bank Guarantee;
 - (ii) the Principal from making any demand or receiving any payment or otherwise having recourse under any Bank Guarantee; or
 - (iii) the Principal using the proceeds of any Bank Guarantee.
- (g) Notwithstanding any other provision, the Principal must give the Contractor not less than 5 Business Days' written notice of its intention to have recourse to any Security, to the extent required by SOP Act.
- (h) Subject to any prior demand under a Bank Guarantee, the Principal's entitlement to hold all Bank Guarantees provided under this Contract will be reduced to Bank Guarantees in an amount of:
 - (i) 50 per cent of the Bank Guarantee Amount on the Actual Completion Date for the last Separable Portion to achieve Completion; and
 - (ii) zero on the later of the Day the Defects Liability Period for the last Separable Portion to achieve Completion expires or the Day on which the final determination of any Dispute that has been notified in any notice of Dispute given on or prior to the expiry of the Defects Liability Period for the last Separable Portion to achieve Completion is obtained (such that there will no further security).
- (i) On the Actual Completion Date for the last Separable Portion to achieve Completion, the Principal shall:
 - (i) where the Bank Guarantee is divisible, return to the Contractor the amount equal to the amount by which the Principal's entitlement to hold the security has been reduced; or

- (ii) where the Bank Guarantee is not divisible, exchange any Bank Guarantee the Principal then holds for a new Bank Guarantee from the Contractor in the amount equal to the Principal's reduced entitlement.
- (j) Without limiting any right of the Principal to claim on a Bank Guarantee, on the later to occur of:
 - (i) expiry of the Defects Liability Period for the last Separable Portion to achieve Completion; and
 - (ii) the final determination of any Dispute that has been notified in any notice of Dispute given on or prior to the expiry of the Defects Liability Period for the last Separable Portion to achieve Completion,

the Principal shall release any remaining Bank Guarantees to the Contractor.

- (k) Subject to any other specific arrangement for the release and return of Bank Guarantee(s) expressly agreed in this Contract, where this Contract is terminated or otherwise expires, all Bank Guarantees held by the Principal in connection with this Contract will be released and returned to the Contractor within 10 Business Days, unless:
 - (i) any Dispute detailed in a notice of Dispute has not been finally determined; or
 - (ii) any undisputed amount which is due and payable has not been paid,

in which case the Principal shall exchange the Bank Guarantee(s) for a new Bank Guarantee from the Contractor from a financial institution licensed in Australia with the Required Rating for the amount in Dispute.

- (l) In this paragraph, a reference to "Actual Completion Date" or "Defects Liability Period" is deemed to include, if there is more than one Actual Completion Date, the final Actual Completion Date for the Works or final Defects Liability Period.

7.5 Retention

If the Contractor fails to provide a Bank Guarantee in accordance with clause 7.3 or the Principal has, in its absolute, sole and unfettered discretion, approved the Contractor's request to provide alternative security, the Principal may deduct from moneys otherwise due to the Contractor an amount up to the percentage, if any, stated in Item 1 of the Contract Particulars of the value of each payment until the total value of retention money is equal to the Bank Guarantee Amount.

8. APPROVALS AND LAWS

8.1 Approvals to be obtained by Contractor

- (a) Subject to clause 8.1(c), the Contractor must, at its own cost:
 - (i) obtain all Approvals which are necessary to:
 - (A) procure all appliances, components, equipment, goods, material, machinery, plants and tools required to complete the Works;
 - (B) undertake and to complete the Works lawfully;
 - (C) construct the Works lawfully; and
 - (D) achieve Completion in accordance with this Contract;
 - (ii) do all things necessary to keep such Approvals valid and effective;

- (iii) take all steps necessary to renew, extend or amend such Approvals when appropriate; and
 - (iv) provide evidence to the Principal that it has obtained and continues to maintain all such Approvals if requested at any time by the Principal.
- (b) Without affecting the application of any other provision, the Contractor bears all risks associated with obtaining and maintaining any Approval or any amendment to any Approval that it is required to obtain or maintain under this clause 8.1.
- (c) The Contractor is not required to obtain or maintain the Principal Approvals.

8.2 Compliance with Approvals, Laws and Standards

- (a) The Contractor must, at its own cost, expense and risk, comply, and ensure that at all times all Works comply, with all relevant Approvals, Laws and Standards.
- (b) Without affecting the application of clause 8.2(a), the Contractor must ensure that all Contractor Personnel, in undertaking and completing any activity (including any Works), comply with all relevant Approvals, and must not cause the Principal to be in non-compliance with any Principal Approval or the Principal to be unable to obtain any Approval.
- (c) The Contractor must provide to the Principal a copy of each Approval obtained, amended or renewed by it and each notice received from any Government Authority in relation to any Approval.
- (d) The Contractor must provide to the Principal evidence reasonably satisfactory to the Principal that any condition, requirement or term of any Approval has been complied with, fulfilled or satisfied fully.
- (e) Without affecting the application of any other provision, by notice, in writing, the Contractor must notify the Principal immediately on becoming aware of any non-compliance with any Approval or this clause 7.

8.3 Co-ordination and co-operation

Without affecting the application of any other provision, to the extent desirable or necessary, each party must co-ordinate and co-operate with the other party to obtain any Approval.

8.4 Indemnity

The Contractor must indemnify, and keep indemnified, the Principal from and against any Claim or Loss in relation to any non-compliance with clause 8.1 or clause 8.2.

9. PLANS, PROGRAMS, REPORTING AND MEETINGS

9.1 Work Plan

- (a) The Contractor has developed the Work Plan, which identifies the planned sequence of activities in sufficient detail to enable control of all activities and monitoring of progress.
- (b) Without affecting the application of any other provision, in agreeing to undertake and complete the Works and within the time required by this Contract, the Contractor acknowledges that it has taken into consideration and made allowance for all circumstances, events, factors and matters that might affect the Work Plan.
- (c) The Contractor must comply (and ensure that all subcontractors comply) with the Work Plan.

- (d) Other than if granted an Extension of Time under clause 18.5, if the Contractor wants to amend or to depart from the Work Plan, by notice, in writing, to the Principal, it may request the amendment or departure.
- (e) By notice, in writing, the Principal, in its absolute, sole and unfettered discretion, may approve the amendment or departure to the Work Plan requested by the Contractor in accordance with clause 9.1(d).
- (f) If the Principal approves the amendment to the Work Plan requested by the Contractor in accordance with clause 9.1(d), the Work Plan will be amended by the Contractor in accordance with that approval, and the Contractor must comply with the amended Work Plan.
- (g) If the Principal does not approve the amendment to the Work Plan requested by the Contractor in accordance with clause 9.1(d), the amendment or departure requested may not, and must not, be undertaken.
- (h) No approval or non-approval of any amendment to, or departure from, the Work Plan will:
 - (i) constitute a Variation, unless the Principal issues a Variation Order;
 - (ii) relieve the Contractor from, or alter or affect, any liability or responsibility of the Contractor, whether under this Contract or otherwise according to Law; or
 - (iii) affect adversely any right that the Principal may have against the Contractor whether under this Contract or otherwise according to Law.

9.2 **Quality management**

- (a) The Contractor must:
 - (i) maintain and comply with the Quality Management Plan;
 - (ii) comply with the Contractor's quality management system managed and maintained in accordance with AS/NZS ISO 9001; and
 - (iii) if required by the Principal, provide to the Principal:
 - (A) evidence of the Contractor's AS/NZS ISO 9001 certification and provide the Principal with a copy of its currency; and
 - (B) if the Contractor's AS/NZS ISO 9001 certification has lapsed, details of the year when the Contractor was last certified.
- (b) Each party acknowledges that the Quality Management Plan will assist in monitoring compliance, and that compliance with the Quality Management Plan does not relieve the Contractor from any obligation under this Contract.

9.3 **Reporting**

- (a) Without affecting the application of any other provision, the Contractor must submit to the Principal:
 - (i) until three months prior to the Target Completion Date, monthly reports; and
 - (ii) on and from three months prior to the Target Completion Date, fortnightly reports, on the progress of the Contractor in relation to the likely Actual Completion Date, containing, as a minimum, the following:
 - (iii) an updated program;

- (iv) a timing chart with the critical path activities and/or delays, and the measures adopted in order to maintain scheduled progress;
 - (v) a written report on potential issues affecting progress or delivery; and
 - (vi) review of status of previous actions, including reporting of percentage of the work complete.
- (b) Without affecting the application of any other provision, the Contractor must submit to the Principal a weekly progress report:
- (i) containing as a minimum, the details described in the Scope of Work; and
 - (ii) any other information that the Principal reasonably requires.

9.4 Meetings

- (a) Without affecting the application of any other provision:
- (i) from the Commencement Date, the Contractor must ensure that the Contractor Representative (or delegate) attends a weekly status meeting;
 - (ii) the Contractor must ensure that all Contractor Personnel working on Site attend meetings as required by any plans and procedures prepared by the Contractor and approved by the Principal in accordance with clause 9.6; and
 - (iii) from the Commencement Date, the Contractor must ensure that the Contractor's Key Personnel attend scheduled progress meetings.
- (b) The structure, format and subject matter of all meetings referred to in this clause 9.4 is outlined in the Scope of Work and will otherwise be determined by the Principal.
- (c) Without affecting the application of any other provision, from the Commencement Date, the Contractor must attend a toolbox meeting to discuss relevant issues from the previous Day and the coming Day prior to the commencement of each shift.
- (d) Without affecting the application of any other provision, by notice, in writing, at any time, and from time to time, the Principal may require the Contractor to provide information to the Principal, and the Contractor must comply with any such requirement.

9.5 Working Hours

- (a) The Contractor must undertake all activities to be undertaken at the Site within Working Hours, or if any activity is required to be undertaken outside of Working Hours, in accordance with all relevant Approvals, Laws and Standards.
- (b) Without affecting the application of any other provision, the Contractor must monitor all activities undertaken by Contractor Personnel at the Site to ensure that they are undertaken within Working Hours or otherwise as permitted in accordance with all relevant Approvals, Laws and Standards.
- (c) The Contractor must not, and must ensure that each Contractor Personnel does not, undertake any activity at the Site outside of Working Hours, unless it is necessary to undertake that activity outside Working Hours in the interests of safety or to protect life or property and to the extent possible has been approved by the Principal Representative.

9.6 Plans

- (a) The Contractor must, within the time specified in the Scope of Work or if no time is specified within 10 Business Days after the Execution Date, prepare and submit for the Principal's

review all of the plans and procedures listed in the Scope of Work containing, as a minimum, the details described in the Scope of Work.

- (b) The Principal must, within 10 Business Days after receipt of any plan, review the plan and notify the Contractor whether the plan is approved.
- (c) If the Principal does not approve the plan:
 - (i) the Principal must notify the Contractor in writing with reasons as to why it has not approved the plan; and
 - (ii) the Contractor must, within 10 Business Days of receiving such notice, take the Principal's comments into account and submit an amended plan for the Principal's approval,

and this clause shall apply until the plan is approved by the Principal.

- (d) Without affecting clause 9.6(b), the Contractor must at all times comply with, and must ensure that its subcontractors at all times comply with, the plan approved by the Principal.
- (e) If the Contractor wants to amend or to depart from any plan that has been approved by the Principal, by notice, in writing, to the Principal it may submit the amendment or departure (**Revised Plan**) for the Principal's approval and clauses 9.6(b) and 9.6(c) will apply.
- (f) If the Principal does not approve the Revised Plan, the amendment or departure requested may not, and must not, be undertaken.
- (g) No approval or non-approval of any plan or any amendment or departure to any approved plan will:
 - (i) constitute a Variation, unless the Principal issues a Variation Order;
 - (ii) relieve the Contractor from, or alter or affect, any liability or responsibility of the Contractor, whether under this Contract or otherwise according to Law; or
 - (iii) affect adversely any right that the Principal may have against the Contractor whether under this Contract or otherwise according to Law.

10. **DOCUMENTATION**

10.1 **As Built Documentation**

The Contractor must prepare and keep up to date a complete set of As Built Documentation for the execution of the Works, showing the exact as-built location, sizes and details of the Works as executed. The records must be kept at the Site and must be used exclusively for the purposes of this clause.

10.2 **Delivery of Documentation**

Not less than 10 Business Days before the anticipated Actual Completion Date, the Contractor must deliver to the Principal all Documentation in the form specified in the Scope of Work and of substance such that it will enable the Principal to have full use and enjoyment of the Works.

10.3 **Acceptance of As Built Documentation**

Without affecting the application of any other provision, acceptance of the As Built Documentation will occur when:

- (a) As Built Documentation is completed to the satisfaction of the Principal;

- (b) the Contractor has delivered As Built Documentation as part of the Documentation in accordance with clause 10.2;
- (c) the As Built Documentation have been developed and delivered in accordance with a quality assurance system which is based on ISO9001;
- (d) the Contractor has vested all property in the Works and the As Built Documentation (including copyright) in the Principal and has effected waiver of all Moral Rights in relation to the As Built Documentation; and
- (e) the Contractor has undertaken and completed all acts desirable and necessary for the purposes of giving effect to this clause 10.3.

11. THE SITE

11.1 Access

- (a) The Principal will grant the Contractor sufficient access to and from the Site as is reasonably necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract. If Separable Portions apply, then access to the corresponding part of the Site will be granted for the Works comprising that Separable Portion from the commencement date applicable to the Separable Portion.
- (b) Unless the Principal otherwise advises the Contractor, the Contractor is not entitled to exclusive access to the Site.

11.2 Denial of and duration of access

- (a) Notwithstanding any other provision, the Principal may deny the Contractor or any Contractor Personnel access to the Site if the Contractor or any Contractor Personnel are in breach of any requirement of this Contract in relation to the Site, until the Contractor provides to the Principal assurance satisfactory to the Principal that such act or omission will not occur or reoccur.
- (b) Without affecting the application of any other provision, the Contractor will cease to have the right to access the Site in accordance with clause 11.1 from the Actual Completion Date.

11.3 Site adequacy and suitability

- (a) Without affecting the application of any other provision, the Contractor accepts the Site "as-is" at the time of access and, in accordance with clause 6.2, must satisfy itself that the Site is adequate and suitable for the purposes of undertaking and completing the Works in accordance with this Contract, including in accordance with the Specification.
- (b) If the Site is not adequate or suitable for the purposes of undertaking and completing any Works, the Contractor must, at its own cost and expense, ensure that it is made so adequate and suitable.
- (c) Neither the Principal nor any other person makes any representation or gives any warranty to the Contractor in relation to the adequacy, appropriateness or suitability of the Site or the accuracy, adequacy, completeness or suitability of the Principal Supplied Information provided to the Contractor or to any Contractor Personnel.

11.4 Site requirements

The Contractor must:

- (a) only use the Site for activities necessary for carrying out the Works and for no other purpose;
- (b) access the Site only through access points designated by the Principal;

- (c) not allow any person to access or to attend the Site or to undertake or to complete any activity (including the performance of any Works) unless that person:
 - (i) is an employee engaged by the Contractor, and the access and attendance of that person has been approved by the Principal;
 - (ii) is an Approved Subcontractor or is a subcontractor who has been approved in writing by the Principal pursuant to clause 14.6; and
- (d) ensure that no subcontractor allows any person to access to attend the Site, or to undertake or to complete any activity (including the performance of any Works), unless the access and attendance of that person has been approved by the Principal;
- (e) ensure that all of the Contractor Personnel undergo induction training required for the Site, in accordance with the reasonable requirements of the Principal and the Health and Safety Management Plan, before they are given access to the Site;
- (f) maintain industrial relations to ensure there is harmony among workers and enforce the requirements set out in the Site procedures, regulations, work rules and work hours;
- (g) perform the Works in a manner that does not cause or threaten to cause Pollution, Contamination or Environmental harm of, on, under or outside the Site;
- (h) comply with the Health and Safety Management Plan (as amended from time to time) when attending the Site or if attending any premises operated by the Principal and comply with any plan applicable to those premises as reasonably directed by the Principal;
- (i) comply with the Principal's security requirements and at all times conduct the Works in a manner to avoid the risk of loss, theft or damage to any equipment, material, work or other property at the Site;
- (j) ensure that the Contractor Personnel do not, while on the Site:
 - (i) possess, use, distribute, manufacture or be under the influence of any alcohol or illegal drugs; or
 - (ii) possess or use any prescribed medications in any manner other for which they were prescribed or are possessed or used by any person other than the person to which they were prescribed; and
- (k) keep the Site clean and tidy and regularly remove and properly dispose of rubbish caused by the Works.

11.5 **Lay down and amenities area**

The Contractor must:

- (a) if the Contractor is allocated any lay down area on the Site, only utilise the nominated lay down and amenities area for the Works; and
- (b) procure that only Contractor Personnel that require access to the Site for the Works, utilise general car parking outside the Site.

11.6 **Access by the Principal**

- (a) Without affecting the application of any other provision, the Principal:
 - (i) may enter the Site at any time for the purpose of ensuring compliance with any matter in accordance with clause 17.1; and

- (ii) reserves the right to enter the Site to undertake and to complete any works (including the Works).
- (b) The Contractor:
 - (i) acknowledges that other contractors of the Principal may require access to the Site to undertake certain works or services;
 - (ii) must cooperate with such other contractors and not hinder them in the undertaking of their obligations to the Principal; and
 - (iii) must coordinate the carrying out of the Works with the carrying out of any other works or services on the Site.

11.7 **Notices regarding Site**

The Contractor must promptly deliver to the Principal copies of all notices, orders or summonses relating to, or which could relate to, the Site, received by the Contractor from any person or any Government Authority.

11.8 **Interference, obstruction and nuisance**

Without affecting the application of any other provision, in undertaking any activity, the Contractor must:

- (a) avoid any interference or obstruction with any activity, including the passage of any person, any vehicle or any property or the provision of any service to the Site or, if it is not possible to avoid interference or obstruction with the passage of any person, any vehicle or any property or the provision of any service to the Site, to minimise the interference or obstruction, and must not cause damage to the Site; and
- (b) avoid any nuisance including any nuisance caused by any dust, light, emission, disturbance, noise or vibration or, if it is not possible to avoid any nuisance, to minimise the nuisance.

11.9 **Disruption and complaints**

- (a) Without affecting the application of any other provision, by notice, in writing, the Contractor must notify the Principal immediately if any person makes any complaint.
- (b) Without affecting the application of any other provision, the Contractor must deal with any complaint in accordance with any relevant plan prepared by the Contractor and accepted by the Principal in accordance with clause 9.6.

11.10 **Artefacts**

- (a)
- (b) The Contractor:
 - (i) must, by notice, in writing, notify the Principal immediately upon discovery of any Artefact;
 - (ii) must at all times allow the Principal (or any other person nominated by the Principal) to examine, inspect or observe any excavation on the Site and any part of that Site;
 - (iii) must take every reasonable precaution to prevent any Artefact being disturbed, damaged or removed until appropriate arrangements for dealing with, or removing, that Artefact have been made; and
 - (iv) must comply with:

- (A) any instruction from the Principal;
 - (B) any relevant Approval;
 - (C) any direction given to the Principal by any Government Authority; and
 - (D) an order of any court or tribunal,
- in relation to any Artefact.

12. ENVIRONMENTAL COMPLIANCE

12.1 Risk of Contamination

- (a) The Contractor accepts sole responsibility for, and assumes the entire risk of, delay or disruption and any Loss in relation to Contamination in, on, above, adjacent to or under the surface of the Site to the extent that the Contamination was caused or contributed to by the Contractor or any Contractor Personnel.
- (b) Subject to clause 12.1(c), if the Contractor discovers or otherwise becomes aware of any Contamination in, on, above, adjacent to or under the surface of the Site (whether or not the Contractor or any Contractor Personnel caused or contributed to that Contamination), the Contractor must, as soon as practicable and in any event within five Business Days after the discovery or it otherwise becoming aware of the Contamination, notify the Principal in writing.
- (c) The Contractor is not required to give notice pursuant to clause 12.1(b) in relation to any Contamination that is permitted under any Approval.
- (d) The Contractor must not do anything likely to cause or contribute to any Contamination or give rise to the service of a Contamination Notice.
- (e) The Contractor must indemnify and keep indemnified the Principal from and against any Claim or Loss in relation to any Contamination existing in, on, above or adjacent to, or under the surface of the Site, to the extent that the Contamination was caused or contributed to by the Contractor or any Contractor Personnel.

12.2 Specific and general environmental compliance

Without affecting the application of any other provision, the Contractor must:

- (a) prior to the commencement of any activity (including any Works) on the Site, develop a 'Construction Environmental Management Plan' or 'CEMP' that complies with all relevant Approvals relating to the Works and the Site and the Environmental Management Plan;
- (b) not use the Site or allow the Site to be used such that:
 - (i) any controlled or industrial waste or hazardous substance is abandoned, buried, discarded or dumped or otherwise left on the Site or handled in a manner that is likely to cause hazard to any person, the Works or the Environment or a breach of any relevant Approval or Law relating to the Environment; or
 - (ii) other than as authorised by an Approval, any other substance is deposited on or released or emanates from or any odour, vibration, noise or other thing is released or emanates from the Site such that a state of Contamination occurs;
- (c) comply with all Environmental Laws, all Approvals relating to the Works and the Site and the Environmental Management Plan and obtain and maintain in full force and effect and comply with the terms of all Approvals required in order to release or emit anything from the Site into the air or water or on to the ground or otherwise into the Environment or to emit any noise, and ensure that all Contractor Personnel do so;

- (d) maintain and operate an environmental management system, in compliance with the 'CEMP' in accordance with all relevant Approvals, Laws and Standards relating to the Environment and the Environmental Management Plan;
- (e) keep the Site and the Works in a good and safe condition so as to ensure that the Site and the Works do not present a risk to the health, safety or welfare of any person or a risk of harming the Environment and is suitable for undertaking and completing any activity (including the Works);
- (f) take all measures to avoid, and to the extent not possible to avoid, to minimise and mitigate any damage to the Environment at all times in accordance with all relevant Approvals;
- (g) undertake the Works in accordance with the objectives and targets that apply to the Principal as notified to the Contractor from time to time; and
- (h) undertake and complete, and ensure that all Contractor Personnel undertake and complete, all activities (including all Works) in an environmentally responsible manner and in accordance with Good Industry Practice.

12.3 Contamination Notice

- (a) The Contractor must comply with any Contamination Notice relating to Contamination in, on, above or under the surface of the Site regardless of whether that Contamination Notice is addressed to the Principal or the Contractor or any other person.
- (b) The Contractor is responsible for any cost and expense and the risk (including any consequence, including any Loss) of Contamination caused by the Contractor or any Contractor Personnel or identified in the Principal Supplied Information.
- (c) The Contractor must not exercise any statutory right that it may have to recover its cost of compliance with any Contamination Notice issued against the Principal.
- (d) Without affecting the application of any other provision, if the Contractor becomes aware of any threat that would give rise to material damage to the Site (other than arising as a result of weather conditions), by notice, in writing, the Contractor must notify the Principal as soon as practicable.

13. SECURITY OF THE SITE AND CARE AND PROTECTION OF THE WORKS

13.1 Security

The Contractor is responsible for security of all equipment and material (including all Principal Supplied Items and Principal Works provided to it), Constructional Plant, the Site and the Works.

13.2 Protection of people and property

- (a) Without affecting the application of any other provision, the Contractor must:
 - (i) provide all things necessary and take all measures necessary to protect people and property at or in the vicinity of the Site and the Works;
 - (ii) without affecting the application of clause 13.1, provide appropriate barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets and clothing if and to the extent required in accordance with Good Industry Practice;
 - (iii) ensure that all Works are undertaken and completed in a safe manner and in compliance with all relevant Approvals, Laws and Standards and the Specification;

- (iv) take full responsibility for the adequacy, stability and safety of all appliances, components, equipment, goods, material, machinery, plants and tools required to complete the Works, and methods of construction; and
 - (v) establish, maintain and comply with emergency safety and security procedures applicable to the Works.
- (b) Without affecting the application of any other provision, if any damage to, destruction of or loss of any property of any Third Party (including any utility or service and property on or adjacent to the Site) or of the Principal (other than the Works) occurs as a result of any activity (including any Works) undertaken by, or any omission of, the Contractor or any Contractor Personnel, the Contractor must promptly rebuild, reinstate, repair or replace that property or compensate that Third Party or the Principal (as applicable), or both, in relation to the damage, destruction or loss of that property at its cost and expense and risk. Any amount payable in these circumstances is not subject to any exclusion or limitation of liability under this Contract.
- (c) Without affecting the application of any other provision, if the Contractor does not comply with clause 13.2(b) after being given a reasonable opportunity by the Principal to do so, the Principal, in its absolute, sole and unfettered discretion, may rebuild, reinstate, repair or replace the applicable property (or have a Third Party do so) or compensate the applicable Third Party, or both, and any cost or expense or liability incurred by the Principal in doing so is a debt due and payable by the Contractor to the Principal and must be paid on demand being made for it. Any amount payable in these circumstances is not subject to any exclusion or limitation of liability under this Contract.

13.3 Transfer of title in and risk

- (a) Without affecting the application of any provision, as any appliance, component, equipment, goods, material, machinery, plant or tool is incorporated into the Works or (if earlier) those Works are paid for by the Principal, the Contractor must ensure that sole legal title and the entire beneficial ownership in them pass to the Principal.
- (b) Risk in the Works remains with the Contractor until hand-over of the Works in accordance with this Contract and, as such, until such hand-over of the Works, the Contractor is a bailee of the Works.
- (c) Without affecting the application of any other provision, from the Commencement Date to 4:00 pm on the Actual Completion Date:
- (i) the Contractor must apply Good Industry Practice and otherwise act in such a way so as to ensure that the Works are not damaged, destroyed or lost; and
 - (ii) the Contractor:
 - (A) bears the risk of; and
 - (B) does not have any Claim against the Principal, and must not make any Claim against the Principal, as a result of or in relation to,
- any damage to, destruction of or loss of (including loss of use) the Works or the Site.

13.4 Care of the Works

Without limiting the application of any other provision, the Contractor is responsible for the care of:

- (a) all parts of the Works (whether at the Site or away from the Site), including ensuring that all parts of the Works are protected from any damage, destruction or loss during loading, transit, delivery, unloading and incorporation into the Works and during hand-over to the Principal;

- (b) all Works; and
- (c) anything provided by the Principal to the Contractor (including all Principal Supplied Items) or brought onto the Site by the Contractor or any Contractor Personnel that is to be used in undertaking and completing the Works,

from the Commencement Date until the Actual Completion Date.

13.5 Loss or damage to the Works

If any damage, destruction or loss occurs to the Works or any part of them:

- (a) during which they are at the risk of the Contractor pursuant to clause 13.3 and the period for which the Contractor is responsible for the care of them pursuant to clause 13.4; or
- (b) after that period, due to any circumstance, event, factor, matter or occurrence that occurred prior to the Actual Completion Date or due to an act or omission of the Contractor or any Contractor Personnel during the Defects Liability Period,

the Contractor must notify the Principal of that damage, destruction or loss as soon as practical, but in any case within five (5) days of becoming aware of such loss or damage and rectify that damage, destruction or loss at its cost and expense and risk so that the Works are in conformity with this Contract.

13.6 Contractor does not rectify damage, destruction or loss

- (a) Without affecting the application of any other provision, if the Contractor does not rectify the damage, destruction or loss in accordance with clause 13.5, the Principal may issue a Rectification Notice requiring the Contractor to rectify the damage, destruction or loss.
- (b) If the Contractor does not rectify the damage, destruction or loss within the time specified in the Rectification Notice issued pursuant to clause 13.6(a), the Principal, in its absolute, sole and unfettered discretion, may (or may require a Third Party to) rectify the damage, destruction or loss and any cost and expense or liability incurred by the Principal in doing so will be a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.
- (c) Any amount payable in these circumstances is not subject to any exclusion or limitation of liability under this Contract.

13.7 Urgent protection

- (a) Without affecting the application of any other provision, if any urgent action is necessary to protect the Works, other property, or people, from imminent or immediate threat of damage, destruction or loss or injury or death and the Contractor does not take such action:
 - (i) the Principal may take any action that it considers necessary; and
 - (ii) the reasonable costs incurred by the Principal in relation to action taken under clause 13.7(a)(i) will be a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.
- (b) Any amount payable in these circumstances is not subject to any exclusion or limitation of liability under this Contract.
- (c) If time permits in all the circumstances and it is reasonable, the Principal will give the Contractor notice, in writing, of the intention to take action under this clause 13.7.

14. SUBCONTRACTING AND CONTRACTOR PERSONNEL

14.1 Contractor Personnel

The Contractor must:

- (a) without affecting the application of any other provision, submit for prior approval in writing by the Principal, the name, experience, qualifications, skills, certifications, safety record and any prior work undertaken on the Site for each Contractor Personnel, before employing or engaging any Contractor Personnel to undertake any activity, and must ensure that each subcontractor does likewise;
- (b) not employ or engage any Contractor Personnel, and must ensure that no subcontractor employs or engages any Contractor Personnel, who has not been approved, in writing, by the Principal, and the Contractor acknowledges that the Principal may, in its absolute, sole and unfettered discretion, refuse to approve any proposed Contractor Personnel;
- (c) employ and engage as Contractor Personnel people who have the required ability, experience, expertise, licences, qualifications, resources, safety record, skills and training necessary to undertake all necessary activities and to complete all activities in accordance with this Contract, and, if requested by the Principal, to provide proof of any ability, experience, expertise, licences, qualifications, resources, safety record, skills, and training;
- (d) ensure that Contractor Personnel undertaking any activity (including operating or using Constructional Plant) are properly accredited, licensed, qualified and trained;
- (e) ensure that all Contractor Personnel are supervised in undertaking and completing all activities by a person who has the requisite accreditation, certification, competence, experience, knowledge, qualifications, skills and training to undertake that supervision including as required by Good Industry Practice and Law;
- (f) employ or engage a sufficient number of appropriately experienced, qualified and skilled people to undertake activities desirable and necessary to enable the Contractor to undertake and to complete all activities, and otherwise perform its obligations, efficiently and promptly, and otherwise in accordance with this Contract;
- (g) ensure that a sufficient number of appropriately accredited, certificated, competent, knowledgeable, qualified, skilled and trained Contractor Personnel are employed or engaged in superintendence in relation to all activities being undertaken and completed under this Contract, including in relation to operational activities (including the method and techniques required, the hazards likely to be encountered and prevention of accidents) to ensure the undertaking and completion of all activities (including any Works) safely;
- (h) staff the Site with appropriate management and supervision personnel; and
- (i) ensure all Contractor Personnel comply with all relevant Laws, including Occupational Safety and Health Legislation, the applicable Health and Safety Management Plan and any Principal policies and procedures as required.

14.2 Key Personnel

- (a) If Key Personnel are expressed to be applicable in Item 5 of the Contract Particulars, clauses 14.2(b)-(e) apply.
- (b) The Contractor must ensure that the Key Personnel are:
 - (i) dedicated to undertaking and completing relevant activities on a full time basis;
 - (ii) permanent senior staff of the Contractor;

- (iii) fully qualified and appropriately experienced in the field and position in which they are to undertake and complete activities; and
 - (iv) approved, in writing, by the Principal, prior to undertaking activities under this Contract.
- (c) The Contractor acknowledges that the Principal, in its absolute, sole and unfettered discretion, may approve or refuse to approve any proposed Key Personnel.
- (d) Once approved by the Principal, the Key Personnel must not change, other than in the following cases as evidenced satisfactorily by supporting documents:
 - (i) serious illness or injury of a Key Personnel or their immediate family; or
 - (ii) resignation of a Key Personnel if not followed by any hiring back by the Contractor or any of its Contractor Personnel.
- (e) If any person is to cease to be Key Personnel, the Contractor must submit to the Principal information relating to, and the résumé of, the proposed substitute Key Personnel. By notice, in writing, the Principal may approve or refuse to approve the proposed substitute Key Personnel. If the Principal approves the proposed substitute Key Personnel, the Contractor must ensure an appropriate and sufficient transition between outgoing and incoming Key Personnel is undertaken and completed. Any replacement, substitution and transition of Key Personnel is at the sole cost and expense and risk of the Contractor.

14.3 **Superintendence**

Without affecting the application of any other provision, at all times, in undertaking and completing any activity under this Contract, and as appropriate and necessary after that time, the Contractor must provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

14.4 **Removal of Contractor Personnel**

- (a) Without affecting the application of any other provision, the Principal may, in its absolute, sole and unfettered discretion, by notice in writing, direct the Contractor (at the Contractor's cost) to remove any Contractor Personnel (including any Key Personnel) employed or engaged in any activity if:
 - (i) the behaviour of that person is not acceptable to the Principal or that person is the subject of any complaint;
 - (ii) the Principal considers that person is not competent in undertaking any activity or is considered to be carrying out any work in an unsafe or unsatisfactory manner such that the safety of any person or property may be prejudiced;
 - (iii) in the reasonable opinion of the Principal, the person is guilty of misconduct, is incompetent or negligent;
 - (iv) the person has failed to comply with the Principal's requirements in respect of drugs and/or alcohol; or
 - (v) the conduct of that person results in or contributes to any non-compliance with this Contract or Law, including any requirement relating to health, safety or welfare.
- (b) The Contractor must ensure that any Contractor Personnel the subject of a direction under clause 14.4(a) ceases to be employed or engaged in the applicable activity (and as appropriate must leave the Site) immediately, and must not be employed or engaged in the future in relation to any activity (including any Works) relating to this Contract.
- (c) Without affecting the application of any other provision:

- (i) if any Contractor Personnel is removed pursuant to this clause 14.4 other than Key Personnel, the Contractor must replace them, or must ensure they are replaced, by Contractor Personnel having the ability, experience, expertise, licences, qualifications, skills and training necessary to enable them to undertake and complete all activities they are required to undertake and to complete in the role for which they are employed or engaged; and
 - (ii) if any Contractor Personnel is removed pursuant to this clause 14.4 who is Key Personnel, they will be treated as having resigned for the purposes of clause 14.2(d), and clause 14.2(e) will apply.
- (d) No direction under this clause 14.4 allows the Contractor to make any Claim (including for any extension of time or for any compensation) and does not constitute any Variation.

14.5 **Personnel costs**

- (a) The Contractor is responsible for, and must pay and discharge, all costs and expenses and liabilities and risks (including in relation to any Loss) incurred in relation to the employment or engagement of all Contractor Personnel (including all remuneration including entitlements, insurances and Taxes) directly engaged by the Contractor.
- (b) Without affecting the application of any other provision, the Contractor must:
 - (i) comply with all Laws relating to employment and engagement of individuals it engages as employees or contractors;
 - (ii) establish and maintain records of all employees and contractors it engages, in accordance with Good Industry Practice;
 - (iii) deduct from salaries and wages all PAYG payments for individual employees and contractors it engages;
 - (iv) pay all other Taxes and contributions relating to employees and contractors it engages, including charges levied under payroll or superannuation legislation; and
 - (v) make all superannuation payments that it is required to make under any Law or Industrial Instrument.

14.6 **Subcontracting**

- (a) The Principal has approved the subcontractors listed in Item 14 of the Contract Particulars (if any) including persons with which its subcontractors want to contract and subcontract (**Approved Subcontractor**).
- (b) The Contractor must not subcontract the whole or any part of the Works to any person other than an Approved Subcontractor without the prior agreement, in writing, of the Principal, which shall not be unreasonably withheld. The Principal may require (as a condition of its consent) that the subcontractor enters into a direct agreement in form and substance required by the Principal. Any such requirement will be deemed not to be unreasonable.
- (c) The Contractor must ensure that each subcontractor is reputable and has access to sufficient capability, experience, expertise and resources to undertake and to complete the applicable supply or the applicable activities, function or tasks subcontracted to it before contracting with that subcontractor, and must contract in writing with each subcontractor.
- (d) The Contractor is at all times responsible for the performance of any supply or non-supply or activity undertaken and completed, or to be undertaken and to be completed, by any subcontractor, and no act or omission of any subcontractor will reduce or relieve the Contractor from liability for any non-compliance with this Contract.

- (e) The Contractor must not terminate any contract with any subcontractor without the prior approval, in writing, of the Principal.

15. WELFARE, HEALTH AND SAFETY

15.1 General compliance

- (a) Each party acknowledges that the health, safety and welfare of:
 - (i) its Personnel; and
 - (ii) the public and any other person,is the paramount consideration in undertaking and completing any activity, function or task.
- (b) The Contractor warrants that it has the skills, expertise and competency to perform the Works in a manner that will, so far as is reasonably practicable, not expose any person to a risk to their health, safety or welfare.
- (c) Without affecting the application of any other provision, the Contractor:
 - (i) must comply with Occupational Safety and Health Legislation and ensure that all Contractor Personnel do the same;
 - (ii) must do all things necessary to ensure the Contractor discharges its obligations under the Occupational Safety and Health Legislation and ensure that any Contractor Personnel do the same;
 - (iii) must, so far as is practicable, provide and maintain a working environment in which its employees and subcontractors are not exposed to hazards, including (without limitation) by satisfying all of the requirements of the Occupational Safety and Health Legislation;
 - (iv) must ensure, so far as is practicable, the workplace and the means of access to and egress from the workplace, are such that persons who are at the workplace or who use the means of access to and egress from the workplace are not exposed to hazards, in satisfaction of the requirements of the Occupational Safety and Health Legislation;
 - (v) must provide such information relating to work health and safety in relation to the Works and the Site to the Principal as the Principal may reasonably request from time to time to allow the Principal to comply with its and any obligations of the Principal's Personnel under the Occupational Safety and Health Legislation;
 - (vi) must consult, cooperate and coordinate the Works with the Principal, Third Parties and any other person that shares a duty under the Occupational Safety and Health Legislation;
 - (vii) has control and management of the Site during undertaking and completing the Works; and
 - (viii) must comply with any lawful direction of the Principal in relation to welfare, health and safety.
- (d) Without affecting the application of any other provision, the Contractor must, and ensure all Contractor Personnel, take all reasonable steps in relation to any activity and the performance of the Works to ensure that:
 - (i) Contractor Personnel are not exposed to any risk to their welfare, health and safety;

- (ii) systems of work and the working environment are safe and without risk to welfare, health and safety;
 - (iii) any appliance, component, equipment, goods, material, machinery, plant or tool is safe and can be used without risk to welfare, health and safety;
 - (iv) it provides all necessary information, instruction, supervision and training to ensure that all activities are undertaken and completed safely and lawfully;
 - (v) it provides adequate and sufficient facilities for the welfare of all Contractor Personnel;
 - (vi) access and egress to the Site is safe and is undertaken without risk to welfare, health and safety; and
 - (vii) appropriate emergency and safety equipment is provided to and maintained for use by Contractor Personnel and that all Contractor Personnel use equipment provided in accordance with the equipment's intended use and any instructions provided by the Contractor.
- (e) Without affecting the application of any other provision, if the Contractor or any Contractor Personnel receive any notice or correspondence from any Government Authority in relation to welfare, health or safety, in relation to any activity on the Site, the Contractor must provide a copy of the correspondence to the Principal immediately.
- (f) The Contractor must ensure that each subcontractor complies with the requirements of this clause 15.1 and must ensure that any agreement the Contractor enters into with a subcontractor includes a clause that is substantially the same as this clause 15.1.

15.2 Suspension of Works on health and safety grounds

- (a) Without affecting the application of any other provision:
- (i) if, in the reasonable view of the Principal, the Contractor does not or any Contractor Personnel do not comply with any Occupational Safety and Health Legislation on the Site;
 - (ii) if, in the reasonable view of the Principal, any circumstance, event, factor or matter arises which presents actual or potential risk to life or serious injury on the Site; or
 - (iii) if a Notifiable Incident occurs on the Site,
- the Principal may suspend in whole or in part the activities being undertaken by the Contractor or any Contractor Personnel (including any Works) and the Contractor must bear any cost and expense and any Loss that it incurs or suffers as a result of the suspension in whole or in part where due to any act or omission of the Contractor or any Contractor Personnel.
- (b) If the Principal has suspended any activities (including Works) in accordance with clause 15.2(a):
- (i) the Contractor must within 24 hours of the suspension develop and deliver a plan to the Principal indicating how it will remedy the issue(s) which gave rise to the suspension;
 - (ii) the Principal may request that the Contractor review and revise any plan provided in accordance with clause 15.2(b)(i); and
 - (iii) the Principal may, in its absolute, sole and unfettered discretion, lift any suspension once it is satisfied with the plan provided by the Contractor or any amendment to

that plan provided in accordance with clause 15.2(b)(i) or clause 15.2(b)(ii), as the case may be.

15.3 Contractor to undertake risk assessment

Without affecting the application of any other provision, the Contractor must:

- (a) before commencement of the Works at the Site, undertake an assessment of the risks associated with all activities involved in the Works and identify and implement appropriate measures to control all such risks;
- (b) following the lifting of any suspension of the Works in accordance with clause 15.2(b)(iii), undertake an assessment of the risks associated with all activities involved in the Works which are to be re-commenced and identify and implement appropriate measures to control all such risks; and
- (c) provide details of the risk assessment and evidence of implementation of adequate risk control measures to the Principal on and in accordance with any reasonable request by or on behalf of the Principal.

15.4 Health and Safety Management Plan

The Contractor must comply with its Health and Safety Management Plan.

15.5 Incident notification

- (a) Without affecting the application of any other provision, in addition to notifying the relevant Government Authority under the Occupational Safety and Health Legislation, by notice, in writing, the Contractor must notify the Principal of any Notifiable Incident immediately.
- (b) The Contractor must within 24 hours of any Notifiable Incident provide to the Principal a written report which sets out the facts and circumstances of the Notifiable Incident.
- (c) The Contractor must, within five Business Days of a Notifiable Incident, provide a report to the Principal which identifies the root causes and any contributing factors to the Notifiable Incident and the actions to be taken by the Contractor in relation to the Notifiable Incident to ensure, so far as is reasonably practicable, that a similar incident will not occur.

15.6 Duties as main contractor under the OS&H Regulations

- (a) For the purposes of the *Occupational Safety and Health Regulations 1996 (WA) (OS&H Regulations)*, the Contractor acknowledges and agrees that it:
 - (i) is the main contractor within the meaning given to that term under regulation 1.3 of the OS&H Regulations;
 - (ii) has the duties of a main contractor under the provisions of the OS&H Regulations, as described in regulation 1.6 of the OS&H Regulations; and
 - (iii) must ensure compliance with its duties as main contractor under the OS&H Regulations.
- (b) If the Contractor fails to comply with any of its duties referred to in clause 15.6(a), the Principal may have the Contractor's obligations carried out by the Principal or by others and the cost incurred by the Principal in having those obligations carried out will be a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.
- (c) Nothing in this clause 15.6 requires the Principal to monitor the Contractor's compliance with this clause 15.6 and the OS&H Regulations. Any monitoring or review by the Principal is solely for the benefit of the Principal and no monitoring, review or approval (or failure to

do those actions) by the Principal will relieve the Contractor from its obligations under this clause 15.6 and/or the OS&H Regulations.

- (d) Without limiting the Contractor's reporting or other obligations elsewhere under the Contract, the Contractor shall promptly provide the Principal with a copy of:
 - (i) the site specific occupational health and safety management plan including the Contractor's workplace health and safety policies and procedures;
 - (ii) the site induction process;
 - (iii) subcontractors' safe work method statements;
 - (iv) the Contractor's records of persons carrying out construction work;
 - (v) any register of hazardous substances; and
 - (vi) any other registers, records or documents that the Contractor is required to prepare and maintain in connection with its obligations as a main contractor under the OS&H Regulations.
- (e) Nothing in this clause 15.6 or elsewhere in the Contract in any way limits or excludes the obligations the Contractor has as a main contractor under the OS&H Regulations.
- (f) In this subclause, the terms **main contractor** and **construction work** have the same meanings given to those terms under the OS&H Regulations.

15.7 **Auditing and Monitoring**

Without affecting the application of any other provision of the Contract, the Principal may:

- (a) audit and monitor or otherwise seek assurance from the Contractor of the compliance by the Contractor with:
 - (i) this clause 15;
 - (ii) the Contractor's obligations under the Occupational Safety and Health Legislation;
 - (iii) the Contractor's performance under the Health and Safety Management Plan; and/or
 - (iv) the Contractor's auditing and monitoring of any Contractor Personnel,which may include requiring documentary material that evidences the satisfaction of any circumstance, event, factor or matter;
- (b) engage a Third Party to conduct any auditing and monitoring;
- (c) direct the Contractor to conduct an audit of its compliance with:
 - (i) the Contractor's obligations under this clause 15;
 - (ii) the Contractor's obligations under the Occupational Safety and Health Legislation;
 - (iii) the Contractor's compliance with the Health and Safety Management Plan; and/or
 - (iv) the Contractor's auditing and monitoring of Contractor Personnel; and
- (d) direct the Contractor to report to the Principal, in the form required by the Principal, about the outcome of any audit undertaken by the Contractor in accordance with clause 15.7(c).

15.8 Indemnity

Without affecting the application of any other provision, to the extent permitted by law, the Contractor must indemnify and keep indemnified the Principal from and against any Loss incurred or suffered by the Principal in relation to any non-compliance with this clause 15 or any cost or expense incurred by the Principal to ensure compliance with any Occupational Safety and Health Legislation, including steps or equivalent steps that should have been taken by the Contractor to comply with this clause 15.

15.9 Industrial Action and Industrial Matters

- (a) Without affecting the application of any other provision of this Contract, the Contractor is responsible for industrial relations (including all cost and performance implications) relating to Contractor Personnel, and, in undertaking and completing all activities under this Contract, and the Contractor must:
 - (i) observe, perform and comply with all Laws and Industrial Instruments and orders of courts or industrial tribunals relating to industrial and labour relations and the employment or engagement of Contractor Personnel and must ensure Contractor Personnel do the same;
 - (ii) consult with the Principal in relation to any matter that could adversely affect industrial or labour relations in relation to Contractor Personnel or the undertaking and completion of all activities;
 - (iii) keep the Principal informed of any Industrial Matter that could affect the performance of any obligation under this Contract, including promptly advising the Principal of any actual, anticipated or threatened Industrial Action;
 - (iv) establish and maintain all necessary policies, procedures and other arrangements required to ensure harmonious industrial relations with and between all Contractor Personnel;
 - (v) exert its best endeavours to avoid any Industrial Action; and
 - (vi) comply with any direction of the Principal in relation to any Industrial Matter.
- (b) Subject to clause 31 in relation to the occurrence of a Force Majeure Event, the Principal is not liable in relation to any Claim or Loss, and the Contractor is not entitled to make, and must not make, any Claim against the Principal, in relation to any Industrial Action or other Industrial Matter.
- (c) To the extent permitted by Law, the Contractor must indemnify and keep indemnified the Principal from and against any Loss incurred or suffered by the Principal in relation to any Claim:
 - (i) by or in relation to any Industrial Action, other than to the extent that it constitutes a Force Majeure Event;
 - (ii) by or in relation to any non-compliance by the Contractor with this clause 15.9;
 - (iii) by or in relation to any Contractor Personnel for damages (including at common law) or workers' compensation payments or contribution to any such damages or payment;
 - (iv) by any Government Authority or any other person, in relation to any levy or premium in relation to any activity required by Law; and
 - (v) by any Government Authority or any other person, in relation to any indemnity for or recovery of workers' compensation paid or other Loss paid to or with respect to

any person engaged in relation to activity, other than to the extent such Loss or Claim is caused by the Principal only.

16. THE WORKS

16.1 Contractor's obligations

Without affecting the application of any other provision, the Works must, and the Contractor represents and warrants that the Works will comply with the Design Documentation and the Specification and otherwise be in accordance with this Contract;

16.2 Provision of materials, equipment, labour and Constructional Plant

- (a) Without affecting the application of any other provision, the Contractor must procure and supply all things desirable or necessary for the proper performance of the obligations and the discharge of liabilities of the Contractor under this Contract (the cost and expense of doing so having been included in the Contract Price), including:
 - (i) all labour;
 - (ii) all Constructional Plant;
 - (iii) any materials, supplies, consumables and transportation; and
 - (iv) all other facilities and services necessary to undertake and complete the Works.
- (b) Without affecting the application of any other provision, subject to clause 16.2(c), the Contractor must not source or contract for the supply of any appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works, other than with the applicable Approved Subcontractor.
- (c) If the Contractor wishes to source or contract for the supply of any appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into the Works from any person other than the applicable Approved Subcontractor, by notice, in writing, the Contractor must seek the agreement of the Principal, and must not source or contract for any good or material unless the Principal has agreed, in writing.

16.3 Origin clause

If any appliance, component, good, material, part, equipment, machinery or plant to comprise or be incorporated into the Works under this Contract are to be wholly or partly manufactured in the country from which that appliance, component, good, material, part, equipment, machinery or plant is exported to Australia, the Contractor must complete and deliver to the Principal documents containing the following information:

- (a) the place where the last process in the manufacture of that appliance, component, good, material, part, equipment, machinery or plant took place;
- (b) a list of the components and materials used in the production of the appliance, component, good, material, part, equipment, machinery and/or plant, including:
 - (i) the country in which each appliance, component, good, material, part, equipment, machinery and plant was produced;
 - (ii) the cost to the Contractor of purchasing each appliance, component, good, material, part, equipment, machinery and plant; and
 - (iii) the six-digit classification in the "Harmonised System" that applies to each appliance, component, good, material, part, equipment, machinery and plant;
- (c) a statement setting out the factory cost of the finished goods; and

- (d) a "Certificate of Origin" issued by the relevant authority in the country from which the goods are exported to Australia.

16.4 Customs regulations and procedures

- (a) Without affecting the application of any other provision, the Contractor is responsible for obtaining, and must, at the cost and expense of the Contractor, and at no cost or expense to the Principal, obtain and comply with, all applicable customs clearances, procedures and requirements in relation to all appliances, components, equipment, goods, material, machinery, plants and tools required to complete the Works.
- (b) Any customs duty paid by any person in respect of any imported appliances, components, equipment, goods, material, machinery, plants and tools supplied directly or indirectly to the Principal, being customs duty that is subsequently refunded to that person pursuant to the making of a by-law or other duty concession, must be paid to the Principal.
- (c) If any amount is payable, but is not paid, pursuant to clause 16.4(b), without affecting the application of any other provision, the Principal may pay the customs and deduct that amount from any amount payable by it pursuant to this Contract, and in relation to any imported appliance, component, good, material, part, equipment, machinery or plant comprising or incorporated into any Works may deduct any amount so paid.

16.5 Constructional Plant

- (a) All Constructional Plant must be fit for the intended purpose and must be operated and maintained at all times in good operating condition and in accordance with manufacturers' specifications, and applicable Laws and Standards.
- (b) The Contractor acknowledges that any Constructional Plant which is required to be registered with a Government Authority under the Occupational Safety and Health Legislation will be registered by the Contractor and that registration will remain valid at all times that the Constructional Plant is on the Site or being used to carry out any Works.
- (c) The Contractor must provide to the Principal the details about the Constructional Plant set out in the Scope of Work as soon as reasonably practicable after the Execution Date.
- (d) The Contractor is responsible for, and must pay and discharge, all costs and expenses and liabilities and risks (including in relation to any Loss) of mobilisation and demobilisation of all Constructional Plant to and from the Site.

16.6 Provision of Principal Supplied Items and Principal Works

- (a) Without affecting the application of any other provision, the Principal must:
 - (i) if Item 11 of the Contract Particulars identifies any Principal Supplied Items, procure and supply all Principal Supplied Items to the nominated delivery point at or by the times set out in Item 11 of the Contract Particulars and Schedule 5 will apply to those Principal Supplied Items; and
 - (ii) if the Scope of Work identifies any Principal Works, undertake all Principal Works in accordance with the Scope of Work.
- (b) The Contractor may, during and on completion of any Principal Works, inspect the Site to identify any failure by the Principal Works to satisfy the requirements of this Contract. If the Contractor considers that any Principal Works are not in accordance with or consistent with the Scope of Work or are otherwise not consistent with this Contract, the Contractor may, by notice, in writing, notify the Principal (such notice to be given as soon as reasonably practicable), detailing that non-compliance and the consequence of the non-compliance and both parties must work together to rectify the non-compliance.

- (c) Subject to clause 16.6(b), the Principal makes no representation and gives no warranty to the Contractor (including as to the adequacy or suitability) of the Principal Works, and the Contractor accepts all risks in relation to the Principal Works.

17. INSPECTION OF WORKS

17.1 General right of inspection

- (a) At any time, the Principal (or any person nominated by it) may inspect any Works or Constructional Plant at the Site.
- (b) If the Principal (or any person nominated by it) wishes to inspect any Works, or Constructional Plant at the Site, it may, after providing notice in writing to the Contractor Representative, so inspect.
- (c) If the Principal notifies the Contractor in accordance with clause 17.1(b):
 - (i) the Contractor must:
 - (A) allow any inspection so notified to be undertaken;
 - (B) provide such assistance (including making available Contractor Personnel) as may be required by the person or the people undertaking the inspection; and
 - (C) procure that its Contractor Personnel provide access to inspect the Works or Constructional Plant; and
 - (ii) the Principal will endeavour to minimise disruption to the undertaking of any Works in undertaking such inspection.
- (d) No inspection, nor any action or inaction (including in giving or not giving notice) after any inspection, will be construed as an approval or acceptance of any Works, part of the Works or Constructional Plant or affect any right or remedy of the Principal, or constitute a Variation.

17.2 Consequence of other non-compliance

- (a) If the Principal considers that any:
 - (i) appliance, component, good, material, part, equipment, machinery or plant to comprise or be incorporated into the Works; and/or
 - (ii) activity in relation to the Works, or the Works,

is or are not in accordance with this Contract or is or are not being undertaken in accordance with this Contract; or
 - (iii) that the Works may not comply with this Contract,

the Principal may issue a Required Rectification Notice requiring the Contractor to rectify the applicable situation.
- (b) If the Principal (acting reasonably) considers that there is any risk that Works will not achieve Completion on or before the Target Completion Date, the Principal may issue a Required Action Notice requiring the Contractor to rectify the applicable situation, including by requiring the Contractor to provide additional personnel and resources.
- (c) The Contractor must comply with each Required Rectification Notice and each Required Action Notice in accordance with its terms and at the Contractor's costs. If the Contractor does not comply with any Required Rectification Notice or Required Action Notice, by notice, in writing, the Principal may require the Contractor to ensure that its Chief Executive Officer

meets with the Chief Executive Officer of the Principal within three Business Days. If the Chief Executive Officer of the Principal does not consider that the action proposed by the Contractor will address the subject matter of the applicable notice in a way that will ensure that Works achieve Completion by the Target Completion Date, this will be treated as breach for the purposes of clause 32.1(a).

- (d) No notice under this clause constitutes a Variation. The giving or not giving of any notice under this clause will not in any way affect any liability or obligation of the Contractor under this Contract or affect any remedy or right of the Principal.

18. TIMING AND COMPLETION

18.1 Delay in Completion

Without affecting the application of any other provision, if the Contractor becomes aware of any event, circumstance, matter or occurrence that will, or is likely to, delay the achievement of any matter detailed in the Work Plan or completion of any applicable activity to allow Completion by the Target Completion Date, the Contractor must, as soon as possible, and in any event within three Business Days after the Contractor became aware of the delay, give notice, in writing, to the Principal identifying the cause of the delay, the anticipated length of the delay and the steps taken or proposed by the Contractor to minimise the delay and ensure that Completion will be achieved by the Target Completion Date.

18.2 Mitigation

- (a) Without affecting the application of any other provision, if progress of any activity (including any Works) is or may be delayed, the Contractor must:
 - (i) take, and must ensure that all Contractor Personnel take, all necessary and reasonable action to mitigate (including overcoming) the occurrence, or consequences, of any delay;
 - (ii) consult with the Principal; and
 - (iii) comply with any direction of the Principal to ensure that any matter detailed in the Work Plan is achieved or the applicable activity is completed to allow Completion to be achieved by the Target Completion Date and no direction allows the Contractor to make any Claim (including for any extension of time or for any compensation) and does not constitute a Variation.
- (b) Without affecting the application of any other provision, if the Contractor does not, in whole or in part, comply with any obligation in accordance with clause 18.2(a), the Principal may give the Contractor notice in writing requiring the Contractor to remedy such breach.

18.3 Extension of Time for Completion

- (a) If the Contractor is delayed in achieving:
 - (i) Completion by the Target Completion Date; and/or
 - (ii) a Milestone by the Target Milestone Date,

the Contractor may claim an Extension of Time in accordance with clause 18.4 for each Day that the Contractor is delayed, provided that:

 - (iii) the delay was caused directly by any of the following causes:
 - (A) any breach of this Contract by the Principal (other than a failure to pay money);

- (B) any delay by the Principal in making a determination within the required timeframes set out in this Contract;
- (C) any delay due to a disruption to the Works caused by any of the Principal's other contractors;
- (D) any non-compliance by the Principal with clause 11.1;
- (E) any Variation to the extent the adjustment to the Target Completion Date is not agreed by the Principal in the Variation Order issued pursuant clause 24.2(d)(i);
- (F) any suspension pursuant to clause 25.4 (other than where the suspension was necessary because of one or more of the circumstances set out in clause 25.1);
- (G) any suspension pursuant to the SOP Act;
- (H) any failure or delay by the Principal to procure the delivery of Principal Supplied Items or Principal Works in accordance with this Contract; or
- (I) any restriction, prevention, or material impediment to the Contractor's access to the Works, other than to the extent caused or contributed to by the Contractor, and other than to the extent reasonably foreseeable and preventable by the Contractor,

(each an **Extension Event**);

- (iv) the delay was beyond the reasonable control of the Contractor and all Contractor Personnel,
- (v) the delay to the achievement of Completion or the Milestone due to the Extension Event can be demonstrated by an analysis of the critical path;
- (vi) the Contractor has provided a notice in accordance with clause 18.1 and submits a Claim for Extension of Time and any updated Claim for Extension of Time in accordance with clause 18.4;
- (vii) the Contractor is complying with clause 18.2; and
- (viii) the Contractor has submitted an updated Works Plan which:
 - (A) illustrates the critical path of the Works and the activities forming part of the critical path;
 - (B) indicates the sequence in which the Contractor proposes to perform the Works to achieve Completion by the Target Completion Date and/or a Milestone by the Target Milestone Date;
 - (C) specifies the time any Principal Supplied Items and Principal Works must be provided (which must be no earlier than the time the Principal is required to provide those things as set out in this Contract, or if not set out, the time a Contractor in the position of the Contractor would reasonably require those things);
 - (D) at least provides the same level of detail as the current Works Plan and is submitted in native electronic format agreed by the Principal in writing as well as pdf; and
 - (E) addresses any other matters reasonably required in writing by the Principal.

- (b) The Contractor's entitlement to an Extension of Time will be reduced to the extent that the Contractor or any Contractor Personnel have by any act or omission directly or indirectly caused or contributed to the delay or extended it.

18.4 **Claiming an Extension of Time**

- (a) To claim an Extension of Time, the Contractor must, within 10 Business Days after the Contractor became aware, or ought reasonably to have become aware, of a delay in achieving:
 - (i) Completion by the Target Completion Date; and/or
 - (ii) a Milestone by the Target Milestone Date,
 due to an Extension Event, issue a Claim for Extension of Time to the Principal:
 - (iii) giving detailed particulars of the delay, and any likely future delay, and the specified Extension Event causing that delay;
 - (iv) stating the period of time for which an Extension of Time is claimed as a result of the specified Extension Event, together with the basis of calculating that period, including details of the Extension Event and any relevant supporting documentation demonstrating that the Contractor will be delayed in achieving Completion by the Target Completion Date and/or a Milestone by the Target Milestone Date; and
 - (v) describing any action that the Contractor has taken and proposes to take to avoid or, if it is not possible to avoid, to minimise the consequences of the specified Extension Event.
- (b) If the effects of the delay in relation to the Claim for Extension of Time continue beyond the period of Extension of Time claimed in the Claim for Extension of Time provided pursuant to clause 18.4(a), and the Contractor wants to claim an Extension of Time in relation to any delay beyond that period, the Contractor must, within 10 Business Days after the expiry of the period of Extension of Time claimed in the first Claim for Extension of Time (and each consecutive period of 10 Business Days), submit an updated Claim for Extension of Time to the Principal, until seven Business Days after the end of the effects of the applicable delays and each updated Claim for Extension of Time must contain the information required by clause 18.4(a).

18.5 **Extension of Time and Delay Costs**

The Principal must, within 20 Business Days after receipt of a Claim for Extension of Time (or such longer period as is agreed between the parties each acting reasonably), issue an Extension of Time Notice to the Contractor setting out:

- (a) if each condition precedent to an Extension of Time in clause 18.3 has been satisfied in relation to that Extension of Time:
 - (i) the reasonable extension to the Target Completion Date and/or the relevant Target Milestone Date (as the case may be) granted by the Principal;
 - (ii) if the Extension of Time is a Compensation Event, that the Principal will pay the Contractor any increased or new direct, reasonable and verified costs and expenses actually incurred as a direct result of the delay in relation to the Compensation Event for which the Extension of Time is given (valued to the extent possible using the rates and prices set out in Schedule 3) (**Delay Costs**); and
 - (iii) if the Extension of Time is a Variation, the Contractor's entitlement to be paid the amount agreed or determined as part of the Variation pursuant to clause 24.4; and

- (b) if each condition precedent to an Extension of Time in clause 18.3 has not been satisfied in relation to that Extension of Time, that the Contractor is not entitled to any Extension of Time or Delay Costs.

18.6 Prevention Principle

- (a) Any delay by the Principal in providing any Extension of Time Notice or not providing any Extension of Time Notice strictly in accordance with any clause, any breach or non-compliance by the Principal with this Contract or other act or omission of the Principal, will not cause the Target Completion Date or any Target Milestone Date to be set at large.
- (b) The Contractor is not entitled to make, and must not make, any Claim or raise any defence against the Principal to the effect that an act of prevention of the Principal has set any time to achieve Completion or a Milestone at large or any other time at large.

18.7 Acceleration of the Works

- (a) The Principal may, at any time, issue a Variation Order in accordance with clause 24 requiring the acceleration of any activity (including any of the Works) and the time for the completion of the Works ahead of the Target Completion Date.
- (b) At any time, the Contractor may choose to accelerate the undertaking and completion of the Works. If the Contractor accelerates the Works, notwithstanding any other provision:
 - (i) the Principal has no duty of care or responsibility to do, or to refrain from doing, anything to assist or to enable the Contractor to achieve Completion by the Target Completion Date; and
 - (ii) the time for undertaking any activity required to be undertaken by the Principal under this Contract will not be affected.

18.8 Sole and exclusive remedy

- (a) Other than as expressly stated in this Contract or otherwise agreed in writing between the parties, the grant of an Extension of Time, the adjustment of the Target Completion Date and/or any Target Milestone Date and the payment of any Delay Costs (if applicable) shall be the sole and exclusive remedy of the Contractor, and the Contractor has no further Claim, is not entitled to make, and must not make any Claim, in relation to any delay or disruption in undertaking and completing any activity (including any of the Works).
- (b) The Contractor is only entitled to an increase or addition to the Contract Price or an extension to the Target Completion Date and/or any Target Milestone Date, pursuant to the express terms of this Contract, and the Contractor has no further Claim, is not entitled to make, and must not make any Claim, in relation to any delay or disruption in undertaking and completing any activity (including any of the Works).

18.9 Concurrent delay

Where more than one event causes concurrent delays and at least one of those events, but not all of them, is not an Extension Event, the Contractor is not entitled to an Extension of Time to the extent of the concurrency.

18.10 Certificate of Completion

- (a) Not less than 10 Business Days before the date upon which the Contractor anticipates that Completion will be achieved, the Contractor must issue an Impending Completion Notice notifying the Principal of the anticipated Actual Completion Date.
- (b) If the Contractor is of the opinion that Completion has been achieved, the Contractor must issue a Certificate of Completion Request requesting the Principal to issue a Certificate of Completion.

- (c) Within 10 Business Days after the Principal receives a Certificate of Completion Request, the Principal and the Contractor will jointly inspect the Works at a mutually convenient time to determine whether Completion has been achieved.
- (d) Within five Business Days after joint inspection, the Principal will issue to the Contractor:
 - (i) a Certificate of Completion certifying the Actual Completion Date and noting any Minor Defects;
 - (ii) a No Completion Notice giving the Contractor reasons for not issuing the Certificate of Completion, including a list of items that are required to be done to achieve Completion; or
 - (iii) a Further Work Notice setting out that the Works are so far from Completion that it is not yet practicable to issue a notice under clauses 18.10(d)(i) or 18.10(d)(ii) and requiring the Contractor to continue to perform the Works.
- (e) If the Principal gives a notice under clause 18.10(d)(ii) or 18.10(d)(iii), the Contractor must notify the Principal when the Contractor considers that it has achieved Completion and clauses 18.10(a) to 18.10(d) will apply again until Completion is achieved.
- (f) If the Principal is of the opinion that Completion has been achieved, the Principal may issue a Certificate of Completion, whether or not the Contractor has made a request for its issue.

18.11 Effect of certificates

The issue of a Certificate of Completion does not constitute approval of, or in relation to, the Works or any other circumstance, event, factor, matter or occurrence (including any non-compliance with the Contract) nor will it prejudice any Claim by the Principal.

18.12 Hand-over of the Works

- (a) On the applicable Actual Completion Date, the Contractor must hand-over the Works to the Principal.
- (b) On hand-over of the Works, the Works must be free from any Encumbrance and sole legal title and entire beneficial ownership in all the Works must pass to the Principal to the extent that it has not already done so as contemplated by clause 13.3(a).
- (c) If any Works are not free from any Encumbrance or the Contractor does not pass title and ownership in all the Works to the Principal:
 - (i) the Contractor must indemnify and keep indemnified the Principal from and against any Claim or Loss that the Principal incurs or suffers as a result; and
 - (ii) the amount of any such Loss is a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.
- (d) Any amount payable pursuant to clause 18.12(c) is not subject to any exclusion or limitation of liability under this Contract.

18.13 Clearing of the Site

- (a) At the time of the Certificate of Completion, the Contractor must have removed or procured the removal of all rubbish, surplus material and Constructional Plant from the Site.
- (b) If the Contractor does not remove or procure the removal of all rubbish, surplus material and Constructional Plant from the Site, the Principal may remove or procure the removal of it or them, and the costs and expenses and liabilities incurred or suffered by the Principal in removing or procuring the removal of it or them is a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.

- (c) Any amount payable pursuant to clause 18.13(b) is not subject to any exclusion or limitation of liability under this Contract.

19. LIQUIDATED DAMAGES

19.1 Liquidated Damages for delay to Completion

If Liquidated Damages are identified as applicable in Item 6 of the Contract Particulars and Completion is not achieved by the Target Completion Date or Completion in relation to a Separable Portion is not achieved by the Target Completion Date corresponding to that Separable Portion, without affecting the application of any other provision, the Contractor will be immediately indebted to the Principal and must pay or allow to the Principal an amount equal to the Liquidated Damages for each Day after the applicable Target Completion Date until the earlier of the Actual Completion Date in relation to the Works or Separable Portion (as the case may be) and the date of termination of this Contract.

19.2 Liquidated Damages for failure to achieve Milestone

If Milestones are expressed as applicable in Item 8 of the Contract Particulars and Liquidated Damages are identified as applicable for those Milestones in Item 6 of the Contract Particulars and a Milestone is not achieved by the Target Milestone Date, without affecting the application of any other provision, the Contractor will be immediately indebted to the Principal and must pay or allow to the Principal an amount equal to the Liquidated Damages for each Day after the Target Milestone Date until the earlier of the date that Milestone is achieved and the date of termination of this Contract.

19.3 Payment of Liquidated Damages

- (a) At any time after Liquidated Damages are payable or allowable, and from time to time, the Principal may issue a Damages Payment Notice requiring the Contractor to pay or allow Liquidated Damages that have accrued.
- (b) The Contractor must, within 10 Business Days after the date of the Damages Payment Notice, pay or allow the amount of Liquidated Damages detailed in the notice.
- (c) If the amount of Liquidated Damages is determined to be not payable or allowable for any reason (including because any provision of this Contract is invalid or unenforceable), the Contractor is liable to the Principal for any damage or Loss incurred or suffered by the Principal.
- (d) If, subsequent to the Contractor having paid or allowed Liquidated Damages for delay pursuant to clause 19.1 or clause 19.2, the Contractor is granted an Extension of Time, the Principal must, within 20 Business Days after the grant of the Extension of Time, repay to the Contractor any Liquidated Damages recovered by the Principal for each day the subject of the Extension of Time, together with interest on the amount owing to the Contractor, calculated at the Default Rate from the date the Contractor paid or allowed the relevant Liquidated Damages up to and including the date of repayment by the Principal.

19.4 Liquidated Damages not a penalty

Without affecting the application of any other provision, each party acknowledges that the amount of Liquidated Damages:

- (a) have been the subject of negotiation between the parties;
- (b) are considered to be a sum commensurate with the Principal's interests that will be adversely affected if Completion is not achieved by the Target Completion Date or a Milestone is not achieved by the Target Milestone Date (as applicable);
- (c) are not exorbitant, extravagant or unconscionable and are not intended, and the parties do not want them to be construed, as a penalty; and

- (d) are a debt due and payable as they arise.

19.5 **No effect on any Claim**

Nothing in this clause 19 affects any remedy or right that the Principal may have to make any Claim that is not a Claim for not achieving Completion by the Target Completion Date or not achieving a Milestone by the Target Milestone Date (as applicable).

20. **DEFECTS LIABILITY**

- (a) The Defects Liability Period commences at 4.00pm on the Actual Completion Date.
- (b) As soon as possible after the Actual Completion Date, the Contractor must rectify any Minor Defect in the Works existing at the Actual Completion Date.
- (c) Without affecting the application of any other provision, for the Works to be in the condition required by the Specification and otherwise in accordance with this Contract at the end of the Defects Liability Period, the Contractor must undertake and complete all activities to rectify any Defect on or before the end of the Defects Liability Period.
- (d) At any time during the Defects Liability Period, the Principal:
 - (i) may issue a Rectification Direction Notice directing the Contractor to rectify any Defect; and
 - (ii) must provide the Contractor with reasonable access in order to undertake and to complete such rectification work.
- (e) Each Rectification Direction Notice must describe the Defect or Defects to which it relates, and state a date by which the Contractor must have commenced and completed the rectification work.
- (f) Without affecting the application of any other provision, the Contractor must comply with each Rectification Direction Notice at its cost, expense and risk.
- (g) As soon as practicable after rectification work has been completed in accordance with the notice under clause 20(d)(i):
 - (i) the Contractor must issue a Rectification Completion Notice notifying the Principal; and
 - (ii) within 5 Business Days after receipt of any Rectification Completion Notice, the Principal and the Contractor will inspect jointly that rectification work to determine whether the Rectification Direction Notice has been complied with and whether the Works (as rectified) comply with this Contract.
- (h) If the rectification work is not commenced or completed in accordance with the Rectification Direction Notice, the Principal, in its absolute, sole and unfettered discretion, may (or may require a Third Party to) undertake and complete the rectification work and any cost and expense or liability incurred by the Principal in doing so is a debt due and payable immediately by the Contractor to the Principal and must be paid on demand being made for it.
- (i) Any amount payable pursuant to clause 20(h) is not subject to any exclusion or limitation of liability under this Contract.
- (j) The Contractor must undertake any rectification work at times determined by the Principal and notified, in writing, to the Contractor and in a manner that minimises inconvenience to

the Principal (or any other occupant or user of the Site) and the activities undertaken at the Site.

- (k) In respect of any rectification work performed by the Contractor pursuant to clause 20(j), a new and separate Defects Liability Period for that rectification work will:
 - (i) commence on the date that rectification work is completed; and
 - (ii) expire upon the later of:
 - (A) the date specified in Item 4 of the Contract Particulars; and
 - (B) the date specified in Item 4 of the Contract Particulars for rectified work,
- provided that the extended Defects Liability Period (if any) shall not exceed the date specified in Item 4 after the Actual Completion Date for the relevant Separable Portion.
- (l) Nothing in this clause 20 limits the obligation of the Contractor to rectify any Defect arising prior to the Actual Completion Date.
 - (m) No provision in relation to any Defect is intended to and will not be applied to affect any remedy or right of the Principal under the defect's liability regime under this Contract or any remedy or right under this Contract or at Law.
 - (n) Without affecting the application of any other provision, to the extent permitted by Law, if a provision contemplates that any outcome or state of affairs must be achieved or continues for a period of time, notwithstanding any Law or any provision of this Contract (including this clause 20), the applicable party will remain responsible and liable and no time bar or limit will apply to prevent any claim.

21. MAINTENANCE SERVICES

If Maintenance Services are identified in Item 7 of the Contract Particulars as forming part of this Contract, the Contractor will provide the Maintenance Services:

- (a) at the times set out in;
- (b) in the manner set out in; and
- (c) for the prices set out in,

Schedule 7.

22. SPARE PARTS

If Spare Parts are identified in Item 12 of the Contract Particulars as forming part of this Contract:

- (a) until the end of the Defects Liability Period, the Contractor must supply to the Principal any Spare Part detailed in Item 12 of the Contract Particulars for the price identified in Item 12 of the Contract Particulars;
- (b) after expiry of the Defects Liability Period, if the Principal advises the Contractor that the Principal requires any Spare Part set out in Item 12 of the Contract Particulars and wishes to purchase that Spare Part, the Contractor must supply the Principal with that Spare Part for a reasonable market price and within a reasonable period of time after a request from the Principal in accordance with this clause 22(b);
- (c) the Contractor warrants the performance of all Spare Parts supplied by it for the period that expires on the expiry of a period of time equal to the Defects Liability Period; and

- (d) if a Spare Part supplied by the Contractor contains a Defect or needs to be utilised to rectify a Defect during a period of time equal to the Defects Liability Period, the Contractor must (at its own cost) promptly replace that Spare Part and clause 22(c) will apply to such replacement Spare Part.

23. ACCESS TO BOOKS AND RECORDS

Without affecting the application of any other provision:

- (a) the Contractor must allow the Principal to inspect any books and records relating to any activity undertaken in relation to this Contract and otherwise co-operate fully with the Principal in relation to the provision of information to the Principal;
- (b) copies of documents requested by the Principal Representative must be provided within five Business Days of such request;
- (c) the Contractor must establish and maintain a system of records that provides objective evidence that the requirements of this Contract have been satisfied; and
- (d) the Contractor shall make all records pertaining to this Contract available to the Principal at all reasonable times and on completion of this Contract (including both at the Actual Completion Date and the expiry of the Defects Liability Period).

24. VARIATIONS

24.1 Variations

- (a) The Contractor must not undertake or allow to be undertaken any Variation other than in accordance with a Variation directed by the Principal in accordance with clause 24.2 or approved by the Principal in accordance with clause 24.3.
- (b) If the Principal directs any Variation, that Variation will be valued in accordance with this clause 24 and in no other circumstance will a Variation be valued or the Contract Price varied.

24.2 Variation procedures

- (a) If the Principal wants to direct a Variation, the Principal may do so by issuing a Variation Notice to the Contractor detailing the proposed Variation.
- (b) Within five Business Days after the receipt of a Variation Notice or such longer period as the Principal may require, the Contractor must provide the Principal with a Variation Quotation detailing the effect (if any) that the proposed Variation would have on the Contract Price, the Target Completion Date and any Target Milestone Date (if applicable).
- (c) If requested by the Principal, the Contractor must promptly meet with the Principal to discuss the Variation Quotation.
- (d) The Principal may direct the Contractor to undertake and to complete a Variation by issuing a Variation Order in which the Principal will state that:
 - (i) the Variation Quotation is agreed and the Contract Price, the Target Completion Date and Target Milestone Date (if applicable) will be adjusted accordingly as detailed in the Variation Quotation or otherwise agreed, in writing; or
 - (ii) the value of the Variation and any adjustment to the Target Completion Date and/or Target Milestone Date (if applicable) will be determined pursuant to clauses 18.5 and 24.4.

24.3 **Proposed variations by the Contractor**

- (a) If the Contractor proposes any Variation to the Works, the Contractor may issue a Variation Proposal requesting the Principal to approve that Variation.
- (b) The Principal may, in its absolute and sole discretion, approve the Variation requested in any Variation Proposal and issue a Variation Proposal Approval, specifying any action to be undertaken by the Contractor in relation to the Variation, including any amendment to this Contract or any document referred to in the Contract.
- (c) If the Principal issues a Variation Proposal Approval, the Contractor must undertake and complete the Variation, and any action specified in the Variation Proposal Approval, in accordance with the Variation Proposal Approval.
- (d) If the Principal does not issue a Variation Proposal Approval, the Variation may not, and must not, be undertaken.
- (e) Non-approval of any Variation Proposal will not:
 - (i) entitle the Contractor to any amount, including any increase in the Contract Price;
 - (ii) relieve the Contractor from, or alter or affect, any liability or responsibility of the Contractor, whether under this Contract or otherwise according to Law; or
 - (iii) affect adversely any right that the Principal may have against the Contractor whether under this Contract or otherwise according to Law.

24.4 **Valuation**

If clause 24.2(d)(ii) applies, the Principal must determine the amount of the adjustment to the Contract Price, being an amount equal to the estimated actual increase or decrease in the costs or expenses reasonably incurred by the Contractor in relation to the amount of the Variation, using:

- (a) where possible the rates and prices set out in Schedule 3; and
- (b) where rates set out in Schedule 3 cannot be applied to the determination of variation costs, the actual costs reasonably incurred, substantiated by the provision of authentic original invoices, receipts or other vouchers required, inclusive of all discounts, plus a reasonable amount for overhead and profit (provided that the overhead and profit amount does not exceed 10% of the actual costs incurred).

25. **SUSPENSION**

25.1 **Suspension by the Principal**

- (a) If the Principal wants to suspend any activity (including any Works), whether in whole or in part:
 - (i) because of any act or omission of the Contractor or any Contractor Personnel;
 - (ii) for the protection, welfare, health or safety of any person or property;
 - (iii) there is environmental risk or non-compliance;
 - (iv) community complaints warrant pause; or
 - (v) to comply with an order of a court,

the Principal may issue a Suspension Notice directing the Contractor to suspend that activity to the extent and for the period of time directed by the Principal.
- (b) The Contractor must comply with any Suspension Notice.

25.2 Recommencement

- (a) If the Principal has issued a Suspension Notice, the Principal may issue a Recommencement Notice directing the Contractor to recommence any activity the subject of a Suspension Notice.
- (b) The Contractor must comply with any Recommencement Notice.

25.3 Effect and cost of suspension

If a Suspension Notice is given, any new or increased cost or expense incurred by the Contractor by reason of a suspension pursuant to clause 25.1(a) must be borne by the Contractor, and there will be no amendment or modification of the Target Completion Date or the Work Plan.

25.4 Suspension for any reason

- (a) Without affecting the application of any other provision, the Principal may at any time issue a Suspension Direction Notice directing the Contractor to suspend any activity (in whole or in part) for any period of time.
- (b) The Contractor must comply with a Suspension Direction Notice.
- (c) If, as a direct result of any suspension pursuant to clause 25.4(a), the Contractor actually incurs any new or increased cost or expense as a result of the suspension, subject to clause 25.4(e), it will be treated as a Variation and that Variation will be valued and the Contract Price adjusted (if applicable) by the Principal in accordance with clause 24.4.
- (d) The valuation of any Variation and any adjustment to the Contract Price pursuant to clause 25.4(c) will not, and must not, include any amount in relation to any loss of profit or any unreasonable, indirect or unverified cost or expense.
- (e) The Contractor must use best endeavours to avoid and, if it is not possible to avoid, to minimise the extent of any new or increased costs or expenses resulting from any suspension pursuant to clause 25.4(a).

25.5 Indemnity

The Contractor must indemnify and keep indemnified the Principal from and against any Claim or Loss in relation to any suspension pursuant to clause 25.1(a) where such suspension was necessary:

- (a) as a result of a breach of this Contract by the Contractor;
- (b) as a result of a negligent act or omission by the Contractor or any Contractor Personnel;
- (c) for the protection or safety of any person or property where that is necessary because of any of the matters mentioned in clause 25.5(a) or clause 25.5(b);
- (d) to comply with an order or direction of a court, tribunal or Government Authority resulting from any of the matters mentioned in clause 25.5(a) or clause 25.5(b); or
- (e) due to an act, default or omission of the Contractor or the Contractor Personnel.

26. PAYMENT

26.1 Payment obligation

The Principal must pay the Contractor the Contract Price in accordance with this clause 26.

26.2 Claims for payment

- (a) The Contractor must give the Principal Representative a claim for payment on account of all amounts then payable by the Principal to the Contractor under this Contract on the following dates:
 - (i) on the twenty-fifth day of each month (or if this day is not a Business Day, the next Business Day after this day), or upon payment milestones set out in Schedule 3 if applicable; and
 - (ii) within 30 Business Days after:
 - (A) the issue of the Certificate of Completion for the final Separable Portion to achieve Completion; and
 - (B) the expiry of the Defects Liability Period for the final Separable Portion to achieve Completion.
- (b) Claims for payment shall be given in writing to the Principal Representative in the form set out in 0 including an electronic format, showing or including:
 - (i) a detailed breakdown, in a form agreed with the Principal Representative, of the contract value of the Works executed, showing separately the value of the Works executed:
 - (A) since the Commencement Date; and
 - (B) since the previous claim for payment was made;
 - (ii) in respect of any Variation, the contract value of the variation work executed and incorporated into the Works since the previous claim for payment was made;
 - (iii) any amount previously paid to the Contractor in respect of the items in paragraphs (i) and (ii) above;
 - (iv) the Contractor's estimate of the cost to complete the Works;
 - (v) a program status report, payment register and financial statement, in the form as required by the Principal Representative;
 - (vi) a pro-forma invoice;
 - (vii) the purchase order number provided by the Principal to which the payment claim relates (if any); and
 - (viii) all such other information as may be reasonably required by the Principal Representative.
- (c) Each claim for payment must set out or attach (to a standard directed by the Principal from time to time) sufficient details, calculations, supporting documentation and any other information required by the Principal in respect of all amounts claimed by the Contractor:
 - (i) to enable the Principal Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under the Contract and by the Contractor to the Principal; and
 - (ii) including any such documentation or information which the Principal Representative may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment or not.

- (d) The Contractor acknowledges and agrees that:
 - (i) the Contractor's entitlement to payment for the value of the Works shall be the lesser of the amount identified for that month in Schedule 3 and the value of the Work executed;
 - (ii) an early claim for payment shall be deemed to have been given and served on the date for making that claim;
 - (iii) if a claim for payment for any month is submitted after the relevant date for making that claim:
 - (A) the Contractor's entitlement to payment for Works the subject of that claim for payment does not accrue until the next date for making a claim for payment; and
 - (B) the claim for payment will be deemed to have been submitted by the Contractor and received by or on behalf of the Principal on the next date for making a claim for payment; and
 - (iv) clause 26.2(d)(iii) does not prevent the Contractor from submitting a claim for payment in respect of Works provided in the following claim period on the next date for making a claim for payment.
- (e) If the time for any claim for payment under clause 26.2(a) falls due on a day which is not a Business Day, the Contractor shall submit the claim either on the Business Day before or the next Business Day following that date which itself is not a Business Day.
- (f) If the Contractor does not serve a claim for payment in accordance with clause 26.2(a) then:
 - (i) the Principal Representative will not be obliged to undertake any assessment of that purported claim for payment; and
 - (ii) the Principal will not be obliged to make any payment in respect of that claim,
 until a claim for payment has been served in accordance with clause 26.2(a).

26.3 **Payment Certificate**

- (a) The Principal Representative must, on behalf of the Principal, within 10 Business Days of receipt of the Contractor's claim under clause 26.2(a), issue to the Contractor and the Principal, a payment certificate in the form set out in 0 stating the amount (if any) which the Principal Representative believes to be then payable by the Principal to the Contractor under this Contract and which the Principal proposes to pay to the Contractor or the amount which the Principal Representative believes to be then payable by the Contractor to the Principal, including details of the calculation of the amount claimed.
- (b) In issuing a payment certificate, the Principal Representative:
 - (i) may deduct from the amount which would otherwise be payable to the Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including any amount which the Principal is entitled to set-off or withhold under clause 26.9; and
 - (ii) must if the payment certificate shows an amount less than the amount claimed by the Contractor in the claim for payment, set out in the payment certificate why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.

- (c) If the Contractor does not give the Principal Representative a claim for payment at a time required by clause 26.2(a), the Principal Representative may nevertheless (but is not obliged to) issue a payment certificate as if a claim for payment was made at the time required.
- (d) Following receipt of a payment certificate, the Contractor may issue a tax invoice to the Principal or the Principal may issue a tax invoice to the Contractor (as applicable) in the amount detailed in the payment certificate.
- (e) Subject to the provisions of this Contract:
 - (i) within 30 Days after the end of the Month during which the Contractor issues a tax invoice in accordance with clause 26.3(d); and
 - (ii) otherwise no later than 35 days after the date of the relevant payment claim under clause 26.2(a),
 where the payment certificate provides that:
 - (iii) an amount is payable by the Principal to the Contractor, but subject to clauses 26.6, 26.7, 26.8, 26.9 and Schedule 3, the Principal must pay the Contractor the progress payment due to the Contractor as certified in the payment certificate; and
 - (iv) an amount is payable by the Contractor to the Principal, the Contractor must pay the Principal the amount due to the Principal as certified in the payment certificate.
- (f) If the Contractor lodges a claim for payment earlier than at the times specified under clause 26.2(a), the Principal Representative will not be obliged to issue the payment certificate in respect of that claim for payment earlier than it would have been obliged had the Contractor submitted the claim for payment in accordance with this Contract.
- (g) Failure by the Principal Representative to set out in a payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (h) The Contractor must include in the claim for payment lodged by it after:
 - (i) the issue of the Certificate of Completion for the final Separable Portion to achieve Completion; and
 - (ii) the expiration of the Defects Liability Period for the final Separable Portion to achieve Completion,
 all Claims (excluding third party claims for death, injury or property damage of which the Contractor is unaware (and ought not reasonably have been aware)) that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Contract which occurred:
 - (iii) in the case of the payment claim referred to in clause 26.3(h)(i), prior to the date of that payment claim; and
 - (iv) in the case of the payment claim referred to in clause 26.3(h)(ii), in the period between the date of the payment claim referred to in clause 26.3(h)(i) and the date of the payment claim.
- (i) The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works or this Contract that occurred prior to the date of submission of the relevant payment claim referred to in clauses 26.3(h)(i) or 26.3(h)(ii), except for any Claim which:

- (i) has been included in the relevant payment claim which is given to the Principal Representative within the time required by, and in accordance with, clause 26.2(a); and
- (ii) has not been barred under another provision of this Contract.

26.4 Effect of payment certificates and payments

- (a) Neither the issue of a payment certificate under clause 26.3(a), nor the making of any payment pursuant to any such payment certificate, will:
 - (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal Representative;
 - (ii) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this Contract; or
 - (iii) prejudice the right of either party to Dispute under clause 33 whether any amount certified as payable in a payment certificate is the amount properly due and payable (and on determination, whether under clause 33 or as otherwise agreed, of the amount properly due and payable, the Principal or the Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment certificate are payments on account only.

- (b) The Principal Representative may at any time correct, modify or amend any payment certificate.

26.5 Conditions for payment

- (a) Notwithstanding anything else in this Contract, the Contractor will not be entitled to submit a payment claim to the Principal Representative or be entitled to receive payment in respect of any payment claim submitted to the Principal Representative unless:
 - (i) all Bank Guarantees required pursuant to clause 7.3 have been provided;
 - (ii) the Principal Representative has been provided with a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form set out in O, made out not earlier than the date of the claim for payment;
 - (iii) in relation to any unfixed plant and materials which the Contractor proposes to claim in a claim for payment, the Principal Representative has been provided with the evidence and documents required by, and the Contractor has otherwise satisfied the requirements of, clause 26.7;
 - (iv) the Contractor has demonstrated to the Principal Representative that it has effected and is maintaining, or has procured to be effected the insurances required to be effected by the Contractor under clause 28 and (if requested) provided supporting evidence of this to the Principal Representative;
 - (v) the Contractor has provided any updated Work Plan required by clause 9.1; and
 - (vi) the Contractor has done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment.
- (b) If the Contractor has not satisfied the conditions in clause 26.5(a) at the time of submitting a payment claim to the Principal Representative for payment, then:

- (i) the payment claim will be deemed to have been invalidly submitted under clause 26.2(a);
- (ii) the Principal Representative will not be obliged to include in any payment certificate any amount included in the payment claim; and
- (iii) the Principal will not be liable to pay any amount included in the payment claim.

26.6 Payment of subcontractors, workers compensation and payroll tax

- (a) If a worker or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Works, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the court order to the worker or subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (b) If the Principal receives notice of:
 - (i) the Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the Contractor,
 the Principal will not make any payment to a worker or subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 26.5(a)(ii), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal Representative that the moneys have been paid to the relevant persons.

26.7 Unfixed Plant and Materials

- (a) Subject to clause 26.7(b), the value of unfixed or off-site plant and materials must not be included in a claim for payment.
- (b) Unless otherwise agreed in writing by the Principal, the Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clauses 26.7(a) and 26.7(c) if:
 - (i) the Contractor provides evidence of;
 - (A) ownership of the plant or materials;
 - (B) identification and labelling of the plant and materials as the property of the Principal; and
 - (C) adequate and secure storage and protection;
 - (ii) security acceptable to the Principal in the form of a bank guarantee satisfying the same requirements as the Bank Guarantee but in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the Contractor to the Principal;
 - (iii) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal Representative;
 - (iv) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal Representative or its agents or nominee; and

- (v) if the *Personal Property Securities Act 2009* (Cth) applies, the Contractor has registered a PPS Security Interest in the unfixed plant and materials in favour of the Principal.
- (c) The only unfixed plant or materials to be allowed for in a payment certificate are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment certificate that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.
- (d) The security provided in accordance with clause 26.7(b)(ii) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

26.8 **SOP Act**

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) The Contractor must ensure that a copy of any written communication it delivers or receives of whatever nature in relation to the SOP Act is promptly provided to the Principal Representative.
- (c) The Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
 - (i) a suspension by a subcontractor of work which forms part of the Works pursuant to the SOP Act; or
 - (ii) a failure by the Contractor to comply with its obligations under clause 26.8(b).
- (d) Unless the parties agree otherwise in writing, the Chair of the Western Australian Chapter of the Resolution Institute is appointed as the prescribed appointor for all Disputes referred to adjudication under the SOP Act.
- (e) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal Representative in issuing a payment certificate under clause 26.3(a); and
 - (ii) if the adjudicator's determination is quashed, overturned or declared to be void:
 - (A) the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (B) the Principal Representative:
 - (aa) is not bound by the adjudication determination;
 - (bb) may reassess the value of the work that was valued by the adjudicator; and
 - (cc) may, if it disagrees with the adjudication determination, express its own valuation in any payment certificate.

26.9 **Right of set-off**

Without limiting the Principal's rights under any provision of this Contract or at Law, the Principal may withhold, deduct or set-off from any amounts otherwise due to the Contractor under this

Contract any amount which the Principal asserts is or may become payable by the Contractor to the Principal, including amounts by way of liquidated or unliquidated damages.

26.10 GST

- (a) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- (b) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (c) In addition to paying the Contract Price and any other consideration payable or to be provided under this Contract (which is exclusive of GST), the recipient must:
 - (i) pay to the supplier an amount equal to any GST payable on any supply by the supplier under or in connection with this Contract; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- (d) The supplier must promptly create an adjustment note for, or apply to the Commissioner for, a refund of, and refund to the recipient any overpayment by the recipient for GST.

26.11 Taxes

- (a) Subject to clause 26.11(b), the Contractor:
 - (i) must pay all Taxes, including any import duty, in relation to this Contract and any transaction evidenced or contemplated by it and is responsible for ensuring that its subcontractors pay all Taxes in relation to all activities (including all Works); and
 - (ii) must indemnify and keep indemnified the Principal from and against any Tax, including any import duty, in relation to this Contract and any transaction evidenced or contemplated by it.
- (b) The liability of the Contractor to pay all Taxes under clause 26.11(a) does not include a liability to pay any income tax of the Principal.

27. SECURITY INTEREST

- (a) The Contractor must not create or do anything (including by act or omission) which could result in the creation of any Encumbrance on any Principal property and the Contractor declares that it has not created any such Encumbrance or done anything as described in this clause before the Execution Date.
- (b) To the extent permitted by law, the Principal is not required to give any notice under the *Personal Property Securities Act 2009* (Cth).

28. INSURANCE AND INDEMNITY

28.1 Insurance to be taken out by the Contractor

- (a) From the Commencement Date, the Contractor must effect and maintain, at its own cost and expense and at no cost to the Principal, with an insurer with a Standard & Poor's long term credit rating of at least A- or a Moody's long term credit rating of at least A3:
 - (i) not used;

- (ii) employers' liability and workers' compensation insurance covering all Claims and Losses for death or bodily injury to any person employed or engaged by the Contractor or any subcontractor of the Contractor, including liability at common law and under statute and with a principal's indemnity extension;
 - (iii) motor vehicle and third party liability insurance required by Law in relation to any vehicles used in or relating to the transportation or delivery of any appliance, component, good, material, part, equipment, machinery or plant to comprise or be incorporated into the Works in each case for an amount not less than the amount set out in Item 15 of the Contract Particulars for each claim, and unlimited in the amount of aggregate claims;
 - (iv) product liability and public liability insurance in relation to legal liability for loss of, loss of use of, damage to or destruction of real or personal property, death or bodily injury, and disease and sickness in each case in an amount not less than the amount set out in Item 16 of the Contract Particulars in respect of any one incident or series of accidents arising out of one event and the amount set out in Item 17 of the Contract Particulars in the aggregate for product liability;
 - (v) all transit risk insurance in relation to damage or loss arising from any insurable risk while in transit to and from the Site, including during loading and unloading, in an amount of not less than the amount set out in Item 18 of the Contract Particulars;
 - (vi) plant and equipment insurance providing comprehensive cover in relation to any plant, machinery and equipment brought onto Site by the Contractor or any Contractor Personnel, including associated third party liability insurance and a waiver of subrogation in favour of the Principal, in an amount not less than the market value for that plant and equipment; and
 - (vii) if any activity is capable of being insured by professional indemnity insurance, for the duration of this Contract and for a period of six years after the earlier of the termination of this Contract and the end of the Defects Liability Period, professional indemnity insurance in an amount of not less than the amount set out in Item 19 of the Contract Particulars and to contain an indemnity to principal clause in favour of the Principal.
- (b) The product liability and public liability insurance policy and all transit risk insurance effected and maintained under clause 28.1(a) must name the Principal as an insured, must contain a principal's indemnity clause (whereby the Principal is indemnified for liability in relation to the supply of any goods by the Contractor or any of its subcontractors), must cover all subcontractors as third party beneficiaries, provide that no act or omission (including any non-compliance by any insured party with any term of that policy, and whether before or after the policy was entered into) will prejudice any right under the policy of any other insured (including by vitiation or being void or voidable), provide a waiver by which the insurer waives all rights of subrogation it may have against the Principal and provide that it cannot be altered, amended or cancelled or vitiated or be void or voidable without the prior consent, in writing, of the Principal, including for any non-disclosure.
- (c) Within 10 Business Days after the Commencement Date and on request during the term of this Contract, the Contractor must provide to the Principal copies of certificates of currency, schedules or wording in relation to any insurance policy and any other documentation necessary to satisfy the Principal that the Contractor is complying with its obligations under clause 28.1(a).
- (d) The Contractor must pay:
- (i) all premiums and deductibles for insurance policies it is required to effect under this Contract; and

- (ii) all deductibles payable in respect of any claims on any insurance policy effected by the Principal in accordance with this Contract,

other than any deductible payable for an insurable event that has occurred due to or as a result of the Principal, the Principal's Personnel, its contractors, Principal Works or Principal Supplied Items.

- (e) The Contractor must not adversely vary or cancel any insurance required under this Contract or allow it to lapse (without renewal or replacement) during the term of this Contract or otherwise do or allow to be done or not done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse or reduce its liability for a claim.
- (f) The Contractor must, as soon as is reasonably practicable, inform the Principal in writing of any occurrence that may give rise to any claim under an insurance policy and must keep the Principal informed of any developments in relation to the claim.
- (g) The Contractor must, as soon as practicable after receiving any notice from the insurer, which is a notice of avoidance, cancellation or intention not to renew of any insurance relevant to this Contract or any other notice relevant to this Contract under or in relation to the insurance policy, inform the Principal in writing that the notice has been given to or served on the Contractor and provide details of the content of the notice.
- (h) The Contractor must ensure that all subcontractors effect and maintain insurance policies complying with clauses 28.1(a)(ii), 28.1(a)(iii), 28.1(a)(v) and 28.1(a)(vii).
- (i) The Principal will effect contract works insurance and the Contractor must promptly provide any information required to support the Principal in obtaining and maintaining that insurance.
- (j) The insurances are primary, and not secondary, to the indemnities in this Contract, and do not limit liabilities or obligations under other provisions of this Contract.

28.2 Term

The Contractor must effect and maintain the insurance policies referred to in clause 28.1 for the duration of the term commencing on the Commencement Date and ending on the later of the expiry of the Defects Liability Period and the termination of this Contract.

28.3 Indemnity

Without affecting the application of any other provision, the Contractor must indemnify, and keep indemnified, the Principal from and against any Claim or Loss in relation to:

- (a) any non-compliance by the Contractor with this Contract;
- (b) the wilful misconduct, the wilful default, wilful neglect or fraud of, or breach of any Law by, the Contractor or Contractor Personnel; and
- (c) to the extent caused or contributed to by, arising out of or in relation to, undertaking or completing any activity (including any Works) by the Contractor or any Contractor Personnel or any activity for which the Contractor is responsible (including remedying any Defect), any:
 - (i) loss of, or physical damage to, any property, real or personal; and
 - (ii) personal injury (which expression includes illness) or death of any person.

29. **CONFIDENTIALITY**

29.1 **Meaning of Confidential Information**

Confidential Information means this Contract and all information, in whatever form, relating to:

- (a) negotiations relating to this Contract and any information arising from, in relation to or provided during negotiations;
- (b) any information arising from or in relation to this Contract; and
- (c) the other party or its business and its assets,

other than information that:

- (d) at the Execution Date, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation;
- (e) at the time it was Disclosed to a party, was in the possession of that party lawfully and without breach of any duty or obligation; or
- (f) has been Disclosed to a party and was not generally and publicly available at that date of Disclosure, but subsequently, through no act or omission of that party (or any person to whom it Disclosed that information), becomes available from another source and is not subject to any duty or obligation as to confidence.

29.2 **Obligations in relation to Confidential Information**

- (a) Subject to clauses 29.2(c) and 29.2(d), each party must, in respect of Confidential Information Disclosed to it:
 - (i) treat as confidential, and keep confidential, any Confidential Information provided to it by, or on behalf of, any other party;
 - (ii) other than for the Permitted Purpose, not copy, duplicate or otherwise reproduce any documents containing Confidential Information, without the prior consent, in writing, of the other party;
 - (iii) not create any document containing Confidential Information, other than with the prior consent, in writing, of the other party;
 - (iv) use its best endeavours to protect the confidentiality of the Confidential Information and ensure that the confidentiality of the Confidential Information is maintained, including:
 - (A) keeping all documents containing the Confidential Information in a secure place;
 - (B) clearly marking all documents created by it containing the Confidential Information as being confidential; and
 - (C) doing all things necessary to prevent any breach of this clause 29; and
 - (v) comply with all reasonable instructions given to it from time to time by the other party regarding the protection of that other party's Confidential Information, and ensuring that confidentiality is maintained.
- (b) No party may Disclose Confidential Information provided to it by any other party other than:

- (i) subject to clause 29.2(d), to its related bodies corporate and its related bodies corporate's directors, officers, employees (on a need to know basis), legal advisers, financial advisers, auditors, financiers and to the legal and other professional advisers of its financial advisers or financiers and all of their respective directors, officers and employees (on a need to know basis);
- (ii) subject to clause 29.2(d), with the prior consent, in writing, of the other party;
- (iii) to its shareholders;
- (iv) in the case of the Principal, to any actual or potential financier or equity investor or any actual or potential purchaser of some or all of the investment interests in the Principal;
- (v) in the case of the Principal, to its financiers in connection with the financing of the Works; and
- (vi) to the extent:
 - (A) required by Law;
 - (B) required by the rules of any stock exchange applicable to the party;
 - (C) required by any accounting standards applicable to the party; or
 - (D) appropriate in respect of any court order or any court proceedings.
- (c) A party may use the Confidential Information for the Permitted Purpose only, and accordingly, not for any other purpose, including any purpose that may have an adverse effect on the party that Disclosed the Confidential Information or its business.
- (d) Any party Disclosing Confidential Information must use reasonable endeavours to ensure that no person to whom it Disclosed that Confidential Information Discloses it to any other person and that no such person uses the Confidential Information for any other purpose other than for the Permitted Purpose or as otherwise permitted pursuant to clause 29.2(b)(vi).
- (e) This clause 29 survives for a period of five years after the earlier of the expiry of the Defects Liability Period or the termination of this Contract or such other period as may be necessary to comply with Law.

29.3 **Publicity**

The Contractor may not issue any press release or make any other public announcement relating to this Contract other than as ordered or required by Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, without prior written approval of the Principal.

30. **INTELLECTUAL PROPERTY RIGHTS**

- (a) The Contractor warrants that:
 - (i) in undertaking and completing the Works or in using any appliance, component, good, material, part, equipment, machinery or plant to comprise or be incorporated into the Works, or otherwise undertaking any activity, or retaining any person to do so, no person will infringe any Intellectual Property Right;
 - (ii) it owns or has licensed to it all Intellectual Property Rights necessary to enable it lawfully to undertake and to complete the Works in accordance with this Contract or otherwise undertake any activity in relation to this Contract; and

- (iii) the use of the Works by the Principal will not infringe any Intellectual Property Right.
- (b) The Contractor grants to the Principal a non-exclusive, perpetual, royalty-free, non-transferable licence to the information in any documents or other property created by the Contractor for or in connection with the Works to be used for any purpose, other than for the purpose of completing any works on any site other than the Site.
- (c) The Contractor must indemnify, and keep indemnified, the Principal and any person nominated or authorised by the Principal (including any assignee) (each an **Indemnified Person**) against:
 - (i) any Claim threatened, brought or made against any Indemnified Person in relation to:
 - (A) any alleged or actual infringement of Intellectual Property Rights by the Contractor or any Contractor Personnel;
 - (B) any exercise or any use by the Principal of any Intellectual Property Rights; or
 - (C) any alleged or actual infringement of any Moral Rights;
 - (ii) any Loss that is or may be suffered or incurred by any Indemnified Person in relation to any Claim in relation to any Intellectual Property Rights; or
 - (iii) any Loss that is or may be suffered or incurred by any Indemnified Person in relation to any Intellectual Property Rights necessary for the undertaking and completion of the Works in accordance with this Contract.
- (d) Any amount payable in these circumstances is not subject to any exclusion or limitation of liability under this Contract.

31. **FORCE MAJEURE**

31.1 **Force Majeure Events**

- (a) The Affected Party must give a written notice to the other party of any Force Majeure Event that precludes the Affected Party (whether partially or wholly) from complying with its obligations under this Contract (**Affected Obligations**) promptly upon the occurrence of, and in any event within 15 Business Days of, the Force Majeure Event and must either:
 - (i) to the extent practicable, specify in the notice the length of delay or disruption that will result from the Force Majeure Event; or
 - (ii) where it is not practicable to specify the length of delay or disruption 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 to have an effect.
- (b) Subject to clause 31.1(d), the Affected Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay or disruption arising out of the Force Majeure Event and any event that would otherwise give rise to a right to terminate this Contract is disregarded to the extent arising out of the non-performance of the Affected Obligations. Subject to clause 31.1(c), the Principal must grant an Extension of Time to the Target Completion Date and any applicable Target Milestone Date for the period of the actual delay or disruption.
- (c) Where more than one event causes concurrent delays and at least one of those events, but not all of them, is not a Force Majeure Event, then the Contractor is not entitled to an Extension of Time to the Target Completion Date or any Target Milestone Date under clause 31.1(b) to the extent of the concurrency.

- (d) The parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay or disruption caused by any Force Majeure Event.
- (e) Each of the parties will be responsible for their own costs incurred during the period of the Force Majeure Event.

31.2 Termination for prolonged Force Majeure Event

If a party is prevented from performing any obligation under this Contract as a result of a Force Majeure Event for a continuous period of 60 days, the Principal may, by notice, in writing, terminate this Contract immediately.

32. DEFAULT AND TERMINATION

32.1 Termination for default

- (a) If the Contractor is in breach of any of its obligations under this Contract, the Principal may issue a Breach Notice notifying the Contractor of the breach and requesting that the Contractor take remedial steps within the period of time specified in the Breach Notice (which must be a reasonable time).
- (b) If the Contractor fails to remedy the breach within the time specified in the Breach Notice, the Principal may, at any time and in its absolute, sole and unfettered discretion:
 - (i) step-in and take out of the Contractor's hands the whole or part of the Works remaining to be completed, and suspend any further payment to the Contractor until the time when clause 32.5 applies; or
 - (ii) issue a Default Termination Notice and terminate this Contract.

32.2 Termination for Insolvency Event

If an Insolvency Event occurs in relation to the Contractor or any Parent Guarantor, the Principal may immediately:

- (a) step-in and take out of the Contractor's hands the whole or part of the Works remaining to be completed, and suspend any further payment to the Contractor until the time when clause 32.5 applies; or
- (b) terminate this Contract by issuing an Insolvency Termination Notice.

32.3 Termination for convenience

The Principal may, in its absolute, sole and unfettered discretion, at any time, without cause and for any reason, terminate this Contract, in whole or in part, on 10 Business Days' notice by issuing the Contractor a Convenience Termination Notice.

32.4 Effect of termination

- (a) If this Contract is terminated pursuant to clause 32.3, Schedule 6 will apply.
- (b) Subject to clause 32.4(c), termination of this Contract will not affect the remedies and rights, or obligations and liabilities, of any party under this Contract which have accrued prior to the date of termination, which will continue to be enforceable.
- (c) Other than as expressly provided for in clause 32.4(a), the Principal will not be liable to the Contractor or to any other person as a consequence of termination of this Contract in accordance with its terms or as otherwise allowed or provided for at Law.
- (d) If this Contract is terminated, pursuant to clause 32.1 or clause 32.2, the Contractor must pay the Principal the costs and Loss suffered or incurred by the Principal arising out of the

termination, including the reasonable and proper costs of procuring an alternative contractor to undertake works that are the same or substantially the same as the Works.

32.5 Effect of step-in

When:

- (a) Works taken out of the Contractor's hands have been completed to the stage and satisfaction determined by the Principal; or
- (b) the Principal has ceased to exercise its right to take out of the Contractor's hands the whole or part of the Works,

the Principal Representative shall assess the cost incurred by the Principal in taking out of the Contractor's hands the whole or part of the Works and shall certify as moneys due and payable by the Contractor the difference between that cost and the amount which would otherwise have been paid to the Contractor if the Works had been completed by the Contractor.

32.6 Subcontractor novation

- (a) If the Contract is terminated or the whole or part of the Works are taken out of the Contractor's hands due to the Contractor's default or insolvency, the Contractor must promptly assign or novate all or part of its rights and/or obligations under any subcontract to the Principal on demand from the Principal.
- (b) The Contractor irrevocably appoints the Principal to be the Contractor's attorney solely for the purpose of effecting the assignment or novation referred to in this clause 32.6.
- (c) The Contractor must ensure that the terms of each subcontract permit its transfer to the Principal without the consent of the relevant subcontractor and that the Principal may otherwise exercise the rights contemplated in this clause 32.6.

32.7 Survival

This clause 32 survives termination of this Contract.

33. DISPUTE RESOLUTION

33.1 Notice of Dispute

If a Dispute arises in relation to this Contract, by notice, in writing, either party may notify the other party of the Dispute, such notice to detail the nature and substance of the Dispute.

33.2 Meeting of Representatives

Within seven Days after a notice of Dispute has been given under clause 33.1, each party will ensure that its Representative meets by telephone conference with the Representative of the other party to attempt to resolve the Dispute.

33.3 Appointment of delegate

If the Representatives do not resolve the Dispute within 14 Days after a notice of Dispute has been given under clause 33.1, each party must ensure that its Chief Executive Officer appoints a delegate to attempt to resolve the Dispute, such delegate to have sufficient authority to agree to a binding resolution of the Dispute on behalf of that party. Such delegate appointment to be made no later than 28 Days after the notice under clause 33.1.

33.4 **Legal proceedings**

If the delegates appointed under clause 33.3 do not resolve the Dispute within 28 Days after appointment of a delegate under clause 33.3, subject to clause 33.5, either party to the Dispute may commence legal proceedings.

33.5 **Expert determination**

- (a) Where the Chief Executive Officers of each party jointly agree in writing that an expert should resolve the Dispute, or where this Contract otherwise expressly states that an expert should resolve a Dispute, the process in this clause 33.5 will apply in relation to the matter to be referred to the expert (but not otherwise).
- (b) Within five Business Days after the Chief Executive Officers jointly agree in writing to expert determination, by notice, in writing, each party must nominate an individual to act as an expert. If the parties do not agree on the individual to act as an expert within five Business Days, by notice, in writing, either party may request that the President for the time being of the Law Society of Western Australia identify an individual (who does not have any actual or perceived conflict of interest) to act to determine the matter, being an individual with the requisite experience, expertise, skill and training to determine the matter.
- (c) If the parties agree on an individual, or an individual is identified pursuant to clause 33.5(b), each party must appoint that individual to act as an expert, such appointment to be on the terms determined by the Principal, which terms must require the matter to be determined as soon as possible and in any event within 20 Business Days following the appointment.
- (d) The individual appointed as an expert will act as an expert, not as an arbitrator, in making the determination which will be final and binding other than in case of manifest error.

33.6 **Equitable relief**

Nothing in this clause 33 limits either party from seeking any equitable relief.

34. **ASSIGNMENT AND NOVATION**

- (a) The Principal may at any time and in its absolute, sole and unfettered discretion assign or novate any right, benefit, interest or obligation under this Contract to:
 - (i) a related body corporate of the Principal; or
 - (ii) any person providing senior secured lending to the Principal for the purposes of the Works,without the Contractor's consent and, if requested by the Principal, the Contractor must sign all documents and do all things reasonably necessary to give effect to this clause.
- (b) The Contractor must not assign or novate this Contract or assign or dispose of any right, benefit or interest under this Contract to any person or entity without the prior written consent of the Principal.

35. **ANTI-BRIBERY**

35.1 **Compliance**

- (a) Each party must:
 - (i) comply with all Laws, statutes and regulations relating to anti-bribery and anti-corruption and related compliance regulations, including the United States *Foreign Corrupt Practices Act* and the United Kingdom *Bribery Act 2010* (**Relevant Requirements**);

- (ii) have and maintain in place adequate policies and procedures to ensure compliance with the Relevant Requirements;
 - (iii) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the Works and/or this Contract; and
 - (iv) immediately notify the other party if a public official that has the ability to influence the activities under this Contract becomes an officer, employee or agent of it (and each party warrants that it has no public officials as officers, employees or agents as at the Execution Date).
- (b) Other than where lawful, the Contractor may not give or offer to give to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
- (i) for doing or forbearing to do any action in relation to this Contract; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to this Contract, or if any of the Contractor Personnel gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this clause 35, not including lawful inducements.

35.2 **Warranty**

Each party warrants that, as at the Execution Date, it has not breached, and is not in breach, of any Relevant Requirement.

35.3 **Responsibility for others**

The Contractor will ensure that any Contractor Personnel or other person associated with it who is carrying out the Works or otherwise performing obligations in connection with this Contract does so only on the basis of a written contract which imposes on such person terms equivalent to those terms in this clause 35. The Contractor will be responsible for the compliance by such persons of such terms.

36. **NOTICES**

- (a) 0 prescribes the form of notices to be given in specific circumstances. If a form of notice is prescribed and that form of notice is not used or completed as prescribed it will not be effective.
- (b) For ease of reference, prescribed notices include: clauses 2.3, 13.6(a), 18.4(a), 18.5, 18.10(a), 18.10(b), 18.10(d)(i), 18.10(d)(ii), 18.10(d)(iii), 19.3(a), 20(d)(i), 20(g), 24.2(a), 24.2(b), 24.2(d), 25.1(a), 25.2(a), 25.4(a), 26.2(b), 26.3(a), 26.5(a)(ii), 32.1(a), 32.1(b), 32.2 and 32.3.
- (c) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (d) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, three Business Days after it is posted; and
 - (iii) if it is sent in electronic form:
 - (A) if it is transmitted by 5.00 pm (Perth time) on a Business Day – on that Business Day; or

(B) if it is transmitted after 5.00 pm (Perth time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.

(e) A person's addresses are those set out below, or as the person notifies the sender:

Principal

Address: PO Box
Email Address: [email address]
Attention: [name]

Contractor

Address: [address]
Email Address: [email address]
Attention: [name]

37. GENERAL

37.1 Governing Law

- (a) This Contract and any Dispute arising out of or in connection with this Contract is governed by the laws of the State of Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them, in respect of any proceedings arising out of or in connection with this Contract.

37.2 Operation of this Contract

- (a) Subject to clause 37.2(b), this Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.
- (b) Any right that a person may have under this Contract is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of this Contract.

37.3 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Contract.

37.4 Amendment

This Contract can only be amended or replaced by another document executed by the parties.

37.5 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Contract. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Contract.

37.6 Liability for expenses

Other than as expressly provided for in this Contract, each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Contract.

37.7 Duty

- (a) As between the parties, the Contractor is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by the other party) on or relating to this Contract, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than the Contractor pays any duty (including any fine, interest or penalty) on or relating to this Contract, any document executed under it or any dutiable transaction evidenced or effected by it, the Contractor must pay that amount to the paying party on demand.

37.8 Rights cumulative

The rights of a party under this Contract are cumulative and are in addition to any other rights of that party.

37.9 Approvals and consents

Other than as provided expressly otherwise in this Contract, a party may conditionally or unconditionally give or withhold any approval or consent to be given under this Contract and is not obliged to give its reasons for doing so.

37.10 Non-merger

The indemnities, covenants and warranties and any other provision of this Contract will not merge on completion or termination of this Contract unless expressly set out in this Contract.

37.11 Counterparts

This Contract may be executed in counterparts. Delivery of a counterpart of this Contract by email attachment or fax constitutes an effective mode of delivery.

37.12 Relationship

This Contract does not create a relationship of employment, agency, partnership or joint venture between the parties.

37.13 Operation of indemnities

- (a) A party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.
- (b) If a provision of this Contract is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this Contract, the Contractor agrees that the Principal holds the benefit of that indemnity, exclusion, limitation or other benefit for that person and may enforce this Contract on their behalf and for their benefit.

37.14 Proportionate liability

- (a) The operation of the Proportionate Liability Legislation is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.

- (b) Without limiting the generality of clause 37.14(a), it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as stated in this Contract and not otherwise, whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (c) The Contractor must ensure that all insurances required by this Contract which cover third party liability (other than compulsory third party motor vehicle and workers' compensation insurances):
 - (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of the Proportionate Liability Legislation; and
 - (ii) to the extent available at a commercially reasonable premium, do not exclude cover for any potential liability the Contractor may have to the Principal in accordance with, or by reason of, this Contract.
- (d) The Contractor further agrees that
 - (i) in each subcontract into which it enters for the carrying out of the Works, it will include provisions that, to the extent permitted by law, effectively exclude the operation of the Proportionate Liability Legislation in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
 - (ii) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of the Works, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of the Proportionate Liability Legislation in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

37.15 Survival of obligations

- (a) Any term by its nature intended to survive termination of this Contract, survives termination of this Contract.
- (b) Without limiting clause 37.15(a):
 - (i) clauses 19.3(c), 28.3, 29, 30, 32.4, 33, 38 and this clause 37 survive the expiry or termination of this Contract; and
 - (ii) each indemnity in this Contract survives the expiry or termination of this Contract.

38. PROCESS AGENT

If the Contractor is not an entity that is incorporated in Australia, the Contractor hereby irrevocably appoints the entity in Item 20 of the Contract Particulars as its agent for the service of any legal process or notices.

- (a)

SCHEDULE 1

Contract Particulars

Item No	Item Description	Clause Reference	Particulars
1.	Bank Guarantee Amount	Clause 1.1, 7.2, 7.5	5% of the Contract Price in 2 Bank Guarantees: (50% (i.e. 2.5% of the Contract Price) to be returned upon Completion; and 50% to be returned at the end of the Defects Liability Period subject to the satisfactory remediation of all Defects.)
2.	Principal Representative	Clause 1.1, 4.1	Mr John Stephens
3.	Contractor Representative	Clause 1.1, 4.2	Mr Tyson Knight
4.	Defects Liability Period	Clause 1.1, 20	24 months after the Actual Completion Date for the relevant Separable Portion The Defects Liability Period for rectified work: 24 months after the date of rectification The Defects Liability Period longstop: 36 months after the Actual Completion Date for the relevant Separable Portion
5.	Key Personnel	Clause 1.1, 14.2	Key Personnel:
6.	Liquidated Damages	Clause 1.1, 19	The rate of Liquidated Damages is: \$1800 per day, and not to exceed 5% of the contract sum in aggregate.
7.	Maintenance Services	Clause 1.1, 21	Are Maintenance Services part of this Contract: Yes ☐ No ☒ If Yes, Schedule 7 applies.

Item No	Item Description	Clause Reference	Particulars								
8.	Milestones	Clause 1.1, 19.2	Are Milestones applicable: Yes ☐ No ☐ If yes, the Milestones are as follows: <table><tr><th>Milestone</th><th>Target Milestone Date</th></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>	Milestone	Target Milestone Date						
Milestone	Target Milestone Date										
9.	Notice to Proceed	Clause 1.1, 2	NA								
10.	Parent Guarantor	Clause 1.1, 7.1	Not applicable								
11.	Principal Supplied Items	Clause 1.1, 16.6	If applicable, as set out in Table 1 of Schedule 5								
12.	Spare Parts	Clause 1.1, 16.6	Are Spare Parts applicable: Yes ☐ No ☒ If yes, the Spare Parts are as follows: <table><tr><th>Item</th><th>Price</th></tr><tr><td></td><td></td></tr></table>	Item	Price						
Item	Price										
13.	Target Completion Date	Clause 1.1, 18	20 November 2026								
14.	Approved Subcontractors	Clause 14.6	Not Applicable								
15.	Motor vehicle and third party liability insurance amount per claim	Clause 28.1	The minimum insured limit is: \$20,000,000								
16.	Insurance (PPL)	Clause 28.1	The minimum insured limit is: 50,000,000								
17.	Product liability insurance limit on aggregate claims	Clause 28.1	The minimum insured limit is: 20,000,000								
18.	Insurance (Marine Transit)	Clause 28.1	The minimum insured limit is: NA								

Item No	Item Description	Clause Reference	Particulars
19.	Professional indemnity insurance	Clause 28.1	Not Applicable
20.	Process Agent	Clause 38	Is the Contractor a foreign company or entity: Yes ☐ No ☒ If Yes, the process agent appointed by the Contractor is: [Insert]

SCHEDULE 2

Scope of Work

1. Description

The Contractor must carry out the Works in accordance with:

- a) Scope of Work titled Bitterns Recycling Project Field Piping Installation, document number 23092-SOW-024, revision D, dated 2 July 2026.

Together with all documents referenced therein (the Scope of Work).

The Scope of Work forms part of this Contract and is incorporated by reference.

Table 1 – Works Summary

Works Type	Date
As defined in the Scope of Work	As per the Contract Program

Table 2 – Scope of Work

Ref.	Item	Description	Date
1.	Scope of Work	As defined in the SOW Rev D.	As per the Contract Program

2. Separable Portions

As defined in the Scope of Work.

3. Purpose

As defined in the Scope of Work.

4. Training

Not Applicable.

5. Reporting

As defined in the Scope of Work.

6. Meetings

As defined in the Scope of Work.

7. Plans

As defined in the Scope of Work.

8. Drawings

As defined in the Scope of Work.

9. Documentation
As defined in the Scope of Work.
10. Works
As defined in the Scope of Work.
11. Principal Works
As defined in the Scope of Work.
12. Constructional Plant
As defined in the Scope of Work.
13. Specification
As defined in the Scope of Work.
14. Standards
As defined in the Scope of Work.
15. Quality
As defined in the Scope of Work.
16. Principal Supplied Information
As defined in the Scope of Work.

The Contractor warrants that its Contract Sum and program allow for compliance with the Scope of Work as amended by Supplementary Notice 01, including all revisions, clarifications and confirmations issued during the tender process.

SCHEDULE 3

Contract Price and Rates

1. General Provisions

- (a) The Contract Price is a fixed lump sum.
- (b) All prices shown are GST exclusive.
- (c) The Contract Price shall be the full inclusive cost of the Works described and of the obligations set out in this Contract.
- (d) The Contract Price is deemed to include the cost of the whole of the Works described in this Contract including services and other incidentals associated with, or necessary for, the execution of the Works described, and the performance of the obligations of the Contractor under this Contract (whether specifically mentioned or not within this Schedule).
- (e) The descriptions of the Works are intended only as descriptions sufficient for identification and are not exhaustive.
- (f) The Contract Price is not subject to adjustment for rise and fall in costs unless specifically stipulated in this Schedule.

2. Contract Price for Works

The Contract Price payable for the Works is set out below:

Doc No: 23092-RFT-001 Returnable Schedule

DTL **Tyson Knight**
 Director
 0419 996 957
 Tyson@downtheline.net.au

Lump Sum Prices

No.	DESCRIPTION	Qty	Unit of Measure (UOM)	\$ Rate / UOM	Total Cost	Comments
1.0	Project Management & Preliminaries				\$269,157.00	
1.1	Project Management, Supervision , Admin & On-going Operational Costs	1	Lump Sum	EA	\$243,432.00	
1.2	Site Facilities	1	Lump Sum	EA	\$25,725.00	Site Hub Powered by Renewable Energy
2.0	Supply				\$1,062,859.37	
2.1	Contractor Supply as per SOW	1	Lump Sum		\$1,001,335.37	
2.2	Stand Pipe Option 1 316SS sch 40	2	Each	18,582.00	\$37,164.00	
2.3	Stand Pipe Off Take Tee 560-110	2	Each	8,390.00	\$16,780.00	
2.4	Additional Drain Off Take 560-355	1	Each	7,580.00	\$7,580.00	

3.0	Mobilisation / Setup / Demobilisation				\$201,942.44	
3.1	Mobilisation	1	Lump Sum	1.00	\$76,510.72	
3.2	Demobilisation	1	Lump Sum	1.00	\$54,367.72	
3.3	Freight of Equipment Return	1	Lump Sum	1.00	\$71,064.00	
4.0	Site Installation Works				\$789,912.90	
4.1	Unloading of Pipe 58 trucks	1	Days	24.00	\$85,176.00	
4.2	3000m of 560 PN8 PE100 SDR21	1	Days	6.00	\$49,826.70	
4.3	14,800m of 560 PN6.3 PE100 SDR26.	1	Days	26.00	\$276,849.30	
4.4	750m of 355 PN8 PE100 SDR17.	1	Days	2.00	\$9,147.60	
4.5	Road Crossings	1	Days	16.00	\$108,595.20	
4.6	ARV Tie In's 560	1	Days	12.0	\$62,130.70	
4.7	Flush Water Tie In	1	Days	1.5	\$6,293.70	
4.8	Earth Mounding	1	Days	10.0	\$55,692.00	
4.9	Flow meters/Actuated Valve/Scour Drain Tee	1	Days	7	\$39,138.75	
5.0	Install 2 x Standpipe	1	day	5	\$21,404.25	
6.0	Other				\$465,132.80	
6.1	Cost associated with pre contract legal	1	ea	1	\$20,000	
6.2	Survey	1	Days	7.00	\$28,576.80	
6.3	Freight of Pipe	1	Lump Sum	60.00	\$416,556.00	
6.4	Weather Standdown Personnel & Equipment	2	Standdown	16,830.58		\$33,661.15
Totals					\$2,789,004.51	

All rates, prices, and costs shall be priced in Australian Dollars (AUD) and shall be exclusive of GST.

Bitterns Recycling Field Piping Installation

Doc No: 23092-RFT-001 Returnable Schedule



Tyson Knight
Director
0419 996 957
Tyson@downtheline.net.au

Schedule - Dayworks Labour Rates

No.	LABOUR DESCRIPTION	Day Shift Hourly Rate	Standby Hourly Rate	Comments
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2.1	Operator	\$125.00	N/A	
2.2	Trades Assistant	\$115.00	N/A	
2.3	Poly Welder	\$125.00	N/A	
2.4	Supervisor	\$135.00	N/A	
2.5	Project Manager	\$160.00	N/A	
2.6	Administrator	\$85.00	N/A	
2.7	AIC Technician	\$130.00	N/A	

All rates, prices, and costs shall be priced in Australian Dollars (AUD) and shall be exclusive of GST.

Bitterns Recycling Field Piping Installation



Tyson Knight
Director
0419 996 957
Tyson@downtheline.net.au

Doc No: 23092-RFT-001 Returnable Schedule

Dayworks Plant & Equipment Rates

No.	PLANT/EQUIPMENT DESCRIPTION	Size/ Capacity	Operating Hourly Rate (exc operator)	Standby Hourly Rate (exc operator)	Owned/ Hired	Comments
3.1	Light 4WD Vehicle - D/Cab Ute		\$20.00	\$16.00	Owned	
3.2	IT Loader		\$85.00	\$68.00	Hired	
3.3	35t Excavator		\$95.00	\$76.00	Owned	
3.4	2000l fire fighting Trailer		\$17.00	\$13.00	Owned	
3.5	6x4 tip truck		\$70.00	\$56.00	Hired	
3.6	Plate compactor		\$25.00	\$15.00	Owned	
3.7	TracStar 900 Polywelding Machine c/w dies		\$95.00	\$76.00	Hired	
3.8	HF350 Polywelding Machine c/w dies		\$20.00	\$16.00	Owned	
3.9	HF630 Polywelding Machine c/w dies		\$40.00	\$32.00	Owned	
4.0	1500l fuel Trailer		\$20.00	\$16.00	Owned	
4.1	Shindawa 15kVa Diesel Genset/Welder		\$10.00	\$8.00	Owned	
4.2	Weather Standdown					

All rates, prices, and costs shall be priced in Australian Dollars (AUD) and shall be exclusive of GST.

Bitterns Recycling Field Piping Installation



Tyson Knight
Director
0419 996 957
Tyson@downtheline.net.au

Doc No: 23092-RFT-001 Returnable Schedule

Various

No.	DESCRIPTION	Qty	Comments
A4.1	Total Man Nights Required (Accommodation & Messing)	434	63 nights per person + 14 nights per person for hydro testing 4 persons
A4.2	Peak contractor manning per day	6-10	stable at 6 will increase through Hydrotesting
A4.3	Other	3;1	Propose 3;1 drive in drive out Rolling roster

SCHEDULE 4

Work Plan

The Contractor must plan, manage and execute the Works in accordance with an approved Work Plan. The Work Plan must clearly describe how the Contractor proposes to deliver the Works safely, in compliance with the Contract and the Scope of Work, and within the agreed schedule. All documents forming part of the Work Plan must be prepared by the Contractor and submitted to the Principle for review and approval within the timeframes specified in the Scope of Work or as otherwise directed by the Principal.

Contractor Deliverables as required by the Scope of Work

The Contractor is required to prepare and submit the following documents:

Pre mobilisation

- Project Execution Plan (PEP) including methodology, schedule, manning, commercial program, EH&S management, risk register and traffic management)
- Health and Safety Management Plan
- Risk Register
- Construction Risk Assessment Workshop (CRAW) documentation
- Quality Management Plan
- Inspection and Test Plans (ITPs)
- Detailed project schedule

During the Works

- Weekly progress reports
- Updated risk register (as required)
- Updated project schedule (as required)
- Quality and inspection records in accordance with the approved ITPs

Completion Deliverables

- Survey and as-built survey data
- Manufactures Data Report (MDR)
- As-built documentation
- Operation and Maintenance manuals

SCHEDULE 5

Principal Supplied Items

The Principal Supplied Items (or "PSI") to which this Schedule 5 applies are in Table 1:

Table 1 – List of Principal Supplied Items

Item	Quantity	Time/Period of Supply
DN350 actuated valve	As per 23092-REG-034 Actuated valve list	Duration of site works as per approved construction schedule 23092-SCH-040r1
Air / Vacuum Release Valves	As per 23092-REG-042 Manual valve list	Duration of site works as per approved construction schedule 23092-SCH-040r1
DN560 PN8 white coex HDPE (21m lengths)	4600m	Duration of site works as per approved construction schedule 23092-SCH-040rJ
DN560 PN6.3 white coex HDPE (21m lengths)	16100m	Duration of site works as per approved construction schedule 23092-SCH-040rJ
DN355 PN8 white coex HDPE (21m lengths)	750m	Duration of site works as per approved construction schedule 23092-SCH-040rJ
Sweep bend DN560 white codex HDPE PN / SDR 12.5 / 13.6	6 lengths	Duration of site works as per approved construction schedule 23092-SCH-040rJ
Sweep bend DN355 white codex HDPE PN / SDR 10	17 x 1m lengths	Duration of site works as per approved construction schedule 23092-SCH-040rJ
DN350 Flow meters	3	Duration of site works as per approved construction schedule 23092-SCH-040r1
Construction diesel for mobile plant & equipment including LVs	As required	Duration of site works as per approved construction schedule 23092-SCH-040r1
Fill and facing materials (site supply) *The contractor shall allow for excavation, processing, loading and transport on Site of the free issued material.	As required	Duration of site works as per approved construction schedule 23092-SCH-040r1
Accommodation and messing	63 man nights	As per schedule 3 total man nights required.

1. Definitions

In this Schedule 5:

Dilapidation Report means the report specified in paragraph 2.2(b).

Dilapidation Survey means the inspection of Principal Supplied Items that the Contractor is required to perform under paragraph 2.2(a) of this Schedule 5.

Professional Contractor means a contractor with skill and experience in, and the expertise and resources necessary to undertake and complete works of a similar size, scope and complexity to the Works complying with standards and obligations the same as, or similar to, those that apply under this Contract.

PSI Defect means any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup in an Principal Supplied Item.

PSI Latent Defect means any PSI Defect that:

- (a) could not have been identified; or
- (b) relates to defects in material, its composition, its properties, existing weld characteristics or paint characteristics that could not reasonably have been identified through a visual inspection or chemical analysis (as appropriate) by a qualified engineer,

exercising the level of skill, care and diligence reasonably expected of a qualified engineer with the skill and experience of a Professional Contractor at the time when the Dilapidation Survey was procured under paragraph 2.2(a) of this Schedule 5 in respect of that Principal Supplied Item and which was not actually identified in the Dilapidation Survey procured under paragraph 2.2(a) of this Schedule 5.

2. Principal Supplied Items

2.1 Contractor Warranties

The Contractor warrants that it has examined any Principal Supplied Items, and subject to paragraphs 2.2 and 2.3 is satisfied:

- (a) of their sufficiency for the purpose of complying with its obligations under this Contract; and
- (b) that the Works, once completed, will be Fit for Purpose.

2.2 Principal Supplied Items

- (a) The Contractor must, promptly following receipt of any Principal Supplied Items at the nominated delivery point:
 - (i) carefully inspect those Principal Supplied Items; and
 - (ii) do all other things which a Professional Contractor would reasonably be expected to do in respect of those Principal Supplied Items (including testing),in each case, to identify all PSI Defects (**Dilapidation Survey**).
- (b) Within five days of receipt of the Principal Supplied Items, the Contractor must submit to the Principal a report which:
 - (i) describes the condition of the relevant Principal Supplied Items and addresses the items set out in Table 1; and
 - (ii) lists any Principal Supplied Items inspected which the Contractor considers contain PSI Defects and provide details of those PSI Defects (including a detailed estimate of the cost of rectification of the PSI Defects),(a **Dilapidation Report**).

- (c) If the Contractor identifies any PSI Defects in the Dilapidation Report submitted under paragraph 2.2(b), the Principal must, within 10 Business Days after receiving that report, give the Contractor a notice setting out:
 - (i) those Principal Supplied Items for which the Principal agrees with the Contractor's assessment that there are PSI Defects, in which case paragraph 2.2(d) applies; and
 - (ii) those Principal Supplied Items for which the Principal disagrees with the Contractor's assessment that there are PSI Defects, in which case paragraph 2.2(e) applies.
- (d) In respect of those Principal Supplied Items for which the Principal has agreed there are PSI Defects under paragraph 2.2(c)(i), the Principal must issue a Variation direction directing the Contractor to rectify the PSI Defect.
- (e) Subject to paragraph 2.3, if:
 - (i) the Principal disagrees with the Contractor's assessment that there are PSI Defects under paragraph 2.2(c)(ii);
 - (ii) the Contractor fails to identify an PSI Defect (other than a PSI Latent Defect); or
 - (iii) a PSI Defect arises after the date of the Dilapidation Report provided by the Contractor pursuant to paragraph 2.2(b) (other than a PSI Latent Defect),

the Contractor will not be entitled to any extension of time, any additional costs or any adjustment to the Contract Price and must use those Principal Supplied Items for the completion of the Works.
- (f) Nothing in this paragraph 2.2 entitles the Contractor to payment of any amount in respect of demurrage paid by the Contractor on account of Principal Supplied Items.

2.3 PSI Latent Defects

If during the course of completing the Works, the Contractor discovers (or it otherwise becomes apparent that there is) a PSI Latent Defect and the Principal does not give the Contractor notice under paragraph 2.2(c) of this Schedule 5 that it requires the Contractor to rectify the relevant PSI Latent Defect as a Variation:

- (a) the Contractor must continue to undertake and complete the Works in accordance with this Contract; and
- (b) the Contractor will not be liable for any loss, damage or expense suffered or incurred by the Principal, or for any breach of any provision of this Contract, to the extent caused by that PSI Latent Defect.

3. Title and Risk

- (a) The Contractor will bear the risk of loss of, or damage to, any Principal Supplied Item that occurs at any time during the period commencing on the date it is delivered by the Principal to the nominated delivery point and ending on the date it is incorporated into the Works or, if it is surplus, the date it is returned to the Principal at the nominated delivery point, except to the extent that the loss of or damage is caused by a negligent act or omission of the Principal.
- (b) The Contractor must provide adequate cover, storage and protection so as to preserve and avoid wear and tear of any Principal Supplied Items.

SCHEDULE 6

Cancellation Costs

- (a) Where this Contract is terminated by the Principal pursuant to clause 32.3, the Principal must pay to the Contractor costs calculated in accordance with this Schedule 6.
- (b) The amount payable under this Schedule 6 is the sole and exclusive remedy for any termination by the Principal pursuant to clause 32.3.
- (c) The Contractor is not entitled to loss of profit, loss of opportunity, head office overheads, consequential or indirect loss.
- (d) Where this Contract is terminated by the Principal pursuant to clause 32.3, the Principal must pay to the Contractor:
 - (i) any amount due and payable to the Contractor under this Contract as at the date of termination;
 - (ii) the direct and reasonable costs:
 - (A) incurred up until the date of termination in the manufacture of any partly completed, but not delivered, portion of the Works;
 - (B) of appliances, components, materials and parts properly ordered in respect of the Works as at the date of termination, including the cost of such appliances, components, materials and parts already on-hand or the delivery of which cannot be stopped without cost to the Contractor and, if required, in writing, by the Principal, the Contractor must deliver to the Principal and transfer sole legal and the entire beneficial interest in any such appliance, component, material or part; and
 - (C) of the Contractor's de-mobilisation,

in each case as follows or up the limit as follows:

[Contractor to complete by reference to delivery and ordering logistics for scope. Table may require variation depending on actual specifics]

Item	Month*	Cancellation Cost	Item Cost or Cap**

*specify calendar month and year or number of months after execution of contract

** specify if overall cap or cost for item (if the later, set out basis)

SCHEDULE 7

Maintenance Services

This Schedule only applies if "Maintenance Services" are identified in Item 7 of the Contract Particulars as applicable. If this Schedule applies, please insert the Contractor's proposed Maintenance Services and the pricing regime for those services in this Schedule.

[Schedule 8 – Forms and Templates is provided as a separate file to reduce page count and file size]

EXECUTED as an agreement

Executed by Shark Bay Resources Pty Ltd ABN: 88 079 088 636 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of director

Kenta Yamaoka

Name of director (print)

Date: 13/07/2026



Signature of ~~director~~/company secretary
(Please delete as applicable)

Norihiko Hasegawa

Name of ~~director~~/company secretary (print)

Executed by DTL (WA) Pty Ltd ABN: 45 677 646 454 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of director

Rhys Scholz.

Name of director (print)

Date:



Signature of director/company secretary
(Please delete as applicable)

Tyson Knight

Name of director/company secretary (print)

SBS10627 - Draft Supply Install Contract RevB.docx

Final Audit Report

2026-07-13

Created:	2026-07-10
By:	Andrew Cole (Andrew.Cole@salt.com.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAILVzGiA8hrvnkVvwmCRITKRSJvFJbZZe

"SBS10627 - Draft Supply Install Contract RevB.docx" History

-  Document created by Andrew Cole (Andrew.Cole@salt.com.au)
2026-07-10 - 9:41:33 AM GMT
-  Document emailed to Norihiko Hasegawa (Norihiko.Hasegawa@salt.com.au) for signature
2026-07-10 - 9:41:46 AM GMT
-  Email viewed by Norihiko Hasegawa (Norihiko.Hasegawa@salt.com.au)
2026-07-10 - 10:36:15 AM GMT
-  Document e-signed by Norihiko Hasegawa (Norihiko.Hasegawa@salt.com.au)
Signature Date: 2026-07-10 - 10:36:42 AM GMT - Time Source: server - Signature Appearance Selected: IMAGE
-  Document emailed to Kenta Yamaoka (kenta.yamaoka@salt.com.au) for signature
2026-07-10 - 10:36:44 AM GMT
-  Email viewed by Kenta Yamaoka (kenta.yamaoka@salt.com.au)
2026-07-13 - 1:25:32 AM GMT
-  Document e-signed by Kenta Yamaoka (kenta.yamaoka@salt.com.au)
Signature Date: 2026-07-13 - 1:26:04 AM GMT - Time Source: server - Signature Appearance Selected: IMAGE
-  Agreement completed.
2026-07-13 - 1:26:04 AM GMT

Variation Notice

Agreement SBS10627 – Variation 1 – Correction of Schedule 3

TO: DTL (WA) Pty Ltd (the **Contractor**)

FROM: Shark Bay Resources Pty Ltd (the **Principal**)

Variation Notice

Pursuant to clause 24.2 of the Construct Only Contract between the Contractor and the Principal dated on or around 14 July 2026 (the **Construct Only Contract**), the Principal hereby gives notice, in writing, to the Contractor of the following Variation.

1. Schedule 3 is deleted and replaced in its entirety with Annexure 1 of this Variation Notice. In all other respects the Construct Only Contract is unchanged.

Terms defined in the Construct Only Contract that are used in this Variation Notice have the meaning given to them in the Construct Only Contract.

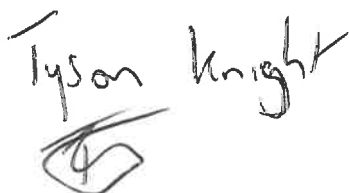


Andrew Cole

Commercial and Procurement Manager

Shark Bay Resources Pty Ltd

Date 14/7/2026



14/7/2026

Annexure 1 – Corrected Schedule 3

Schedule 3

Contract Price and Rates

1. General Provisions

- (a) The Contract Price is a fixed lump sum.
- (b) All prices shown are GST exclusive.
- (c) The Contract Price shall be the full inclusive cost of the Works described and of the obligations set out in this Contract.
- (d) The Contract Price is deemed to include the cost of the whole of the Works described in this Contract including services and other incidentals associated with, or necessary for, the execution of the Works described, and the performance of the obligations of the Contractor under this Contract (whether specifically mentioned or not within this Schedule).
- (e) The descriptions of the Works are intended only as descriptions sufficient for identification and are not exhaustive.
- (f) The Contract Price is not subject to adjustment for rise and fall in costs unless specifically stipulated in this Schedule.

2. Contract Price for Works

The Contract Price payable for the Works is set out below:

Doc No: 23092-RFT-001 Returnable Schedule

DTL Tyson Knight
 Director
 0419 996 957
 Tyson@downtheline.net.au
DOWN THE LINE

Lump Sum Prices

No.	DESCRIPTION	Qty	Unit of Measure (UOM)	\$ Rate / UOM	Total Cost	Comments
1.0	Project Management & Preliminaries				\$269,157.00	
1.1	Project Management, Supervision , Admin & On-going Operational Costs	1	Lump Sum	EA	\$243,432.00	
1.2	Site Facilities	1	Lump Sum	EA	\$25,725.00	Site Hub Powered by Renewable Energy
2.0	Supply				\$1,062,859.37	
2.1	Contractor Supply as per SOW	1	Lump Sum		\$1,001,335.37	
2.2	Stand Pipe Option 1 316SS sch 40	2	Each	18,582.00	\$37,164.00	
2.3	Stand Pipe Off Take Tee 560-110	2	Each	8,390.00	\$16,780.00	

2.4	Additional Drain Off Take 560-355	1	Each	7,580.00	\$7,580.00	
3.0	Mobilisation / Setup / Demobilisation				\$201,942.44	
3.1	Mobilisation	1	Lump Sum	1.00	\$76,510.72	
3.2	Demobilisation	1	Lump Sum	1.00	\$54,367.72	
3.3	Freight of Equipment Return	1	Lump Sum	1.00	\$71,064.00	
4.0	Site Installation Works				\$789,912.90	
4.1	Unloading of Pipe 58 trucks	1	Days	24.00	\$85,176.00	
4.2	3000m of 560 PN8 PE100 SDR21	1	Days	6.00	\$49,826.70	
5.0	3200m of 560 PN10 PE100 SDR21	1	Days	6.00	\$54,362.70	
4.3	14,800m of 560 PN6.3 PE100 SDR26.	1	Days	28.00	\$298,145.40	
4.4	750m of 355 PN8 PE100 SDR17.	1	Days	2.00	\$9,147.60	
4.5	Road Crossings	1	Days	16.00	\$108,595.20	
4.6	ARV Tie In's 560	1	Days	12.0	\$62,130.60	
4.7	Flush Water Tie In	1	Days	1.5	\$6,293.70	
4.8	Earth Mounding	1	Days	10.0	\$55,692.00	
4.9	Flow meters/Actuated Valve/Scour Drain Tee	1	Days	7	\$39,138.75	
5.1	Install 2 x Standpipe	1	day	5	\$21,404.25	
6.0	Other				\$465,132.80	
6.1	Cost associated with pre contract legal	1	ea	1	\$20,000	
6.2	Survey	1	Days	7.00	\$28,576.80	
6.3	Freight of Pipe 58 trailers	1	Lump Sum	58.00	\$416,556.00	
6.4	Weather Standdown Personnel & Equipment	2	Standdown	16,830.58		\$33,661.15
Totals					\$2,789,004.51	

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Bitterns Recycling Field Piping Installation



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Doc No: 23092-RFT-001 Returnable Schedule

Schedule - Dayworks Labour Rates

No.	LABOUR DESCRIPTION	Day Shift Hourly Rate	Standby Hourly Rate	Comments
2.1	Operator	\$125.00	N/A	
2.2	Trades Assistant	\$115.00	N/A	
2.3	Poly Welder	\$125.00	N/A	
2.4	Supervisor	\$135.00	N/A	
2.5	Project Manager	\$160.00	N/A	
2.6	Administrator	\$85.00	N/A	
2.7	AIC Technician	\$130.00	N/A	

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Bitterns Recycling Field Piping Installation



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Tyson@downtheline.net.au

Doc No: 23092-RFT-001 Returnable Schedule

Dayworks Plant & Equipment Rates

No.	PLANT/EQUIPMENT DESCRIPTION	Size/ Capacity	Operating Hourly Rate (exc operator)	Standby Hourly Rate (exc operator)	Owned/ Hired	Comments
3.1	Light 4WD Vehicle - D/Cab Ute		\$20.00	\$16.00	Owned	
3.2	IT Loader		\$85.00	\$68.00	Hired	
3.3	35t Excavator		\$95.00	\$76.00	Owned	
3.4	2000l fire fighting Trailer		\$17.00	\$13.00	Owned	
3.5	6x4 tip truck		\$70.00	\$56.00	Hired	
3.6	Plate compactor		\$25.00	\$15.00	Owned	
3.7	TracStar 900 Polywelding Machine c/w dies		\$95.00	\$76.00	Hired	

3.8	HF350 Polywelding Machine c/w dies		\$20.00	\$16.00	Owned	
3.9	HF630 Polywelding Machine c/w dies		\$40.00	\$32.00	Owned	
4.0	1500l fuel Trailer		\$20.00	\$16.00	Owned	
4.1	Shindawa 15kVa Diesel Genset/Welder		\$10.00	\$8.00	Owned	
4.2	Weather Standdown					

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Bitterns Recycling Field Piping Installation

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