



SHIRE of WYNDHAM | EAST KIMBERLEY

GENERAL CONDITIONS OF CONTRACT

MINOR WORKS

MINOR WORKS CONTRACT CONDITIONS

Date of Contract:

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DATE: As stated on the applicable Order

PARTIES: Principal: The Shire of Wyndham East Kimberley (ABN: 35 647 145 756)
Contractor: the Party as nominated on the Order.

BACKGROUND

- (a) The Principal has engaged the Contractor to perform the Works.
- (b) This Document sets out the terms and conditions upon which the Contractor shall perform the Works.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Document, except where the context indicates otherwise:

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

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

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

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

Completion means that stage of the execution of the Works where the Works are complete and meet the requirements of the Contract, except for Minor Defects, and all certificates, documents, warranties, guarantees and other information required for the use, operation and maintenance of the Works have been provided to the Principal.

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

Confidential Information means:

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

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

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

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

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

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

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

Contract Price means:

- (a) the prices or rates specified in an Order as the amount to be paid by the Principal to the Contractor for executing the Works the subject of that Order in accordance with the Contract; or
- (b) the amount to be paid by the Principal to the Contractor for executing the Works, in accordance with the Contract, as otherwise set out in the Contract.

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

Date for Completion means the date for the completion of the Works specified in an Order or agreed by the Parties in writing. To avoid doubt, the Date for Completion may be set out in the Minor Works Contract Specifics.

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

Defects Liability Period means a period of 12 months from the Date of Completion, as extended as a result of any rectification works carried out during the Defects Liability Period.

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

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

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

Dispute Notice has the meaning given in clause 23.1.

Document means this document called 'Minor Works Contract Conditions'.

Extension Request has the meaning given in clause 9.3.

Force Majeure Event means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or
- (d) a change in any Law or any authority exercised by an authority or official by Law.

Force Majeure Event Termination Period means 120 consecutive days.

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

Insolvency Event means:

- (a) in relation to a corporation, where that corporation:
 - (i) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
 - (ii) is otherwise dissolved;

- (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
 - (iv) enters into any composition or scheme of arrangement with its creditors;
 - (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
 - (vi) is otherwise unable to pay all its debts as and when they fall due; and
- (b) in relation to a natural person, where that natural person:
- (i) commits an act of bankruptcy;
 - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
 - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
 - (iv) is otherwise unable to pay all its debts as and when they fall due.

Insurances means the insurances that the Contractor is required to obtain under clause 25.

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

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

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

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

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

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

Minor Works Contract Specifics means the contract information contained in Schedule 1 under the heading 'Minor Works Contract Specifics'.

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

Order means a purchase order or other written direction from the Principal to the Contractor which requires the execution of specified Works.

Parties means the Principal and the Contractor.

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

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

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

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

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

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

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

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

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

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

Site means the site at which the Works shall be executed.

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

- (a) provided by the Principal to the Contractor before the Contractor provides its Request Response; or
- (b) developed after the Contractor provided its Request Response or after the Contract came into effect and agreed to by the Parties; or
- (c) contained within Schedule 1.

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

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

Sustainability Objectives has the meaning given in clause 6.1.

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

Works means the works to be executed by the Contractor as set out in an Order, any Specification or any Minor Works Contract Specifics.

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

Works Variation means a variation to the scope of the Works or the nature of the execution of the Works.

1.2 In this Document, unless the context suggests otherwise:

- (a) a reference to the Contract means the Contract as novated or varied from time to time;
- (b) a reference to 'including' must be read as if it is followed by '(without limitation)';

- (c) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) words in the singular include the plural and vice-versa;
- (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a clause is a reference to a clause of this Document;
- (h) a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;
- (i) headings are for convenience only and do not affect interpretation of this Document; and
- (j) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it.

2 FORMATION OF CONTRACT AND TERM

- 2.1 Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document. To avoid doubt, any failure by the Parties to complete the Minor Works Contract Specifics does not affect the formation of the Contract.
- 2.2 Where this Document is not executed by the Parties:
 - (a) the Contract shall be formed, and shall commence, on the date of the Letter of Award or Order;
 - (b) the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract's existence; and
 - (c) any failure by the Parties to complete the Minor Works Contract Specifics does not affect the formation of the Contract.
- 2.3 The Contract shall terminate:
 - (a) by written agreement of the Parties;
 - (b) in accordance with clauses 20.6(b), 20.7 or 20.8(k); or
 - (c) upon the expiry of the Defects Liability Period.
- 2.4 Termination of the Contract shall not affect the rights and liabilities of a Party accrued prior to termination.
- 2.5 Clauses 0 (Definitions and interpretation), 2.4 (regarding accrued rights and liabilities), 2.5 (regarding survival), 8.3 (regarding re-possession of the Site and Works), 16 (Defects Liability Period), 19.6(b) (regarding return of Retention Sum or security), 21 (Termination), 22 (Liability), 23 (Settlement of Disputes), 27 (Confidentiality), 28 (Intellectual Property Rights), 29.4 (Notice) and 29.6 (Governing Law) shall survive termination of the Contract.

3 EXECUTION OF THE WORKS

- 3.1 The Contractor must execute the Works in accordance with the Contract, including any Specification, and in accordance with the approved Works Program, to the Principal's reasonable satisfaction.
- 3.2 The Contractor warrants that it has the skills, experience, expertise and resources necessary to competently execute the Works.

4 COMPLIANCE WITH LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND AGREEMENTS

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

5 SAFETY OBLIGATIONS

- 5.1 The Contractor must:
- (a) do all things reasonably necessary to ensure that the Works are executed in a manner that is safe and not likely to cause injury or illness to any person; and
 - (b) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under OSH Laws.
- 5.2 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:
- (a) as soon as practicable, but in any event within 24 hours, notify the Principal in writing of that injury, property damage, accident or incident; and
 - (b) provide the Principal with any further information requested by the Principal.
- 5.3 The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter premises under the control of the Principal they must comply with the Principal's occupational health and safety policies and procedures.
- 5.4 Without limiting clause 20, the Principal may suspend the whole or part of the performance of the Parties' obligations under the Contract following any breach by the Contractor of OSH Laws or this clause which gives rise to circumstances which:
- (a) present actual or potential risk of life or serious injury; or
 - (b) are otherwise required to be notified under OSH Laws.

6 SUSTAINABLE PROCUREMENT

- 6.1 The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by clause 6.2 (**Sustainability Objectives**) and acknowledges that its support of the Sustainability Objectives assists the Member in meeting its own Sustainability Objectives.
- 6.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply the Works in a manner which seeks to support the Sustainability Objectives, which endeavours may include:

- (a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;
- (b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:
 - (i) using recycled materials and products;
 - (ii) reducing emissions;
 - (iii) adopting greener energy solutions;
 - (iv) adopting environmentally sustainable design; and
 - (v) reducing wastage;
- (c) providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);
- (d) sponsoring and supporting local community groups and local community development initiatives;
- (e) promoting fair workplace practices;
- (f) promoting workplace health;
- (g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and
- (h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.
- (i) To act in accordance with the Principals' [Statement of Business Ethics](#)

6.3 The Contractor agrees to provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.

6.4 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Works to the Principal are supplied from sustainable sources.

7 WORKS PROGRAM

7.1 Within 10 Business Days of the Commencement Date, the Contractor must prepare and submit to the Principal a draft Works Program for approval by the Principal.

7.2 Unless otherwise advised in writing by the Principal, the Works Program must:

- (a) be consistent with the Contract;
- (b) show key dates and constraints;
- (c) arrange activities and tasks on a week-by-week basis with each week starting on a Monday;
- (d) arrange activities and tasks in sequential logical order and on a timeline accurately representing the Contractor's proposed timeline and method for executing the Works; and
- (e) take into account any requirements and constraints set out in the Specification (if any).

7.3 If the Principal approves the Works Program without proposing any amendments, the Principal must give the Contractor written notice of such approval as soon as practicable.

7.4 If the Principal suggests amendments or provides other written comments on the draft Works Program, the Contractor must take such amendments or comments into account and, where applicable, provide a revised draft Works Program to the Principal for approval.

- 7.5 Following approval of the draft Works Program by the Principal, the Contractor must provide to the Principal:
- (a) a final version of the Works Program; and
 - (b) a weekly written report regarding compliance with the Works Program.

8 SITE POSSESSION

- 8.1 On and from the Start Date, the Principal shall give the Contractor sufficient possession of the Site for the commencement and execution of the Works. To avoid doubt, possession of the Site shall confer on the Contractor a right to use and control the Site only as necessary to enable the Contractor to carry out the Works and does not constitute a right of exclusive possession of the Site.
- 8.2 While the Contractor is in possession of the Site, the Contractor:
- (a) is liable for the care of the Works, any temporary works, materials, plant and equipment on the Site until the Principal issues a Completion Certificate; and
 - (b) must promptly rectify any loss or damage to the Works, unless caused by the Wilful Misconduct or gross negligence of the Principal or the Principal's Personnel.
- 8.3 Upon issue of the Completion Certificate or termination of the Contract, whichever comes first, the Contractor shall give possession of the Site and the Works to the Principal, but the Principal is not liable for any items of Contractor's property or Sub-contractor's property remaining on the Site, and the Contractor must remove, or ensure the removal of, such items as soon as possible.

9 COMMENCEMENT AND COMPLETION OF THE WORKS

- 9.1 Unless otherwise agreed in writing by the Parties, the Contractor must commence the Works on the Start Date and complete the Works before the Date for Completion.
- 9.2 The Contractor is entitled to an extension to the Start Date or Date for Completion if a delay in the commencement or execution of the Works is due to:
- (a) a breach by the Principal of the Contract;
 - (b) delay or disruption caused by the Principal, except where such delay or disruption is caused by the Principal acting in accordance with the Contract;
 - (c) a Force Majeure Event occurring before the Start Date or Date for Completion, as applicable;
 - (d) suspension of the Contract under clause 20 where the suspension is the result of a breach by the Principal; or
 - (e) a Works Variation being agreed.
- 9.3 To obtain an extension to the Start Date or Date for Completion, the Contractor must make a written request to the Principal within 10 Business Days after the cause of delay has arisen, or within any other period agreed in writing by the Parties, setting out the facts on which the request is based (**Extension Request**).
- 9.4 The Principal, acting reasonably, must notify the Contractor in writing within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether the Extension Request is granted and any relevant period of extension.
- 9.5 The Contractor must give the Principal at least 15 Business Days' notice in writing of the date on which the Contractor anticipates that Completion shall occur.
- 9.6 When the Principal is satisfied that Completion has occurred, the Principal must issue a Completion Certificate to the Contractor.
- 9.7 As soon as possible after the Date of Completion, the Contractor must clear away and remove from the Site all plant, surplus material, rubbish and temporary works of any kind and fill and consolidate and level off all excavations (other than those forming part of the

Works) made by the Contractor on the Site, and ensure that the Site is clean and tidy, to the Principal's satisfaction.

10 LATENT CONDITIONS

- 10.1 The Contractor warrants that, before entering into the Contract, the Contractor had access to, and inspected, the Site, and has carried out its own enquiries to establish, understand and satisfy itself as to the state of the Site and all risks and contingencies associated with the Site existing as at the Commencement Date.
- 10.2 If the Contractor discovers physical conditions on the Site or its surroundings, excluding weather conditions, which could not reasonably have been anticipated at the time of entering the Contract even where the Contractor had:
- (a) examined all information made available in writing by the Principal to the Contractor for the purpose of preparing a Request Response in respect of the Works;
 - (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Request Response and obtainable by the making of reasonable enquiries; and
 - (c) inspected the Site and its surroundings,
- the Contractor shall immediately notify the Principal in writing and may request that a Works Variation be directed and/or may make an Extension Request, and the Principal must not unreasonably withhold its agreement to a Works Variation and/or Extension Request.

11 LIQUIDATED DAMAGES

- 11.1 This clause 11 applies if the Parties have executed this Document and have stated that this clause 11 applies in the Minor Works Contract Specifics.
- 11.2 If the Contractor fails to achieve Completion by the Date for Completion, the Contractor must pay the Principal liquidated damages calculated in accordance with the Minor Works Contract Specifics for such default for every day by which Completion of the Works is delayed beyond the Date for Completion. To avoid doubt, the Principal may recover liquidated damages from the Contractor either on demand from the Contractor or by deducting such amount from any amount owed by the Principal to the Contractor.
- 11.3 To claim liquidated damages, the Principal must provide written notice to the Contractor stating the date on which the Contractor's liability to pay liquidated damages commenced as soon as practicable after the Contractor's liability to pay liquidated damages arose.
- 11.4 The Contractor acknowledges and agrees that all sums payable by the Contractor to the Principal as liquidated damages represent the Principal's genuine pre-estimate of the damages likely to be suffered if Completion is not achieved by the Date for Completion and such sums shall not be construed as a penalty.
- 11.5 If an Extension Request in relation to the Date for Completion is granted after the Contractor has paid, or the Principal has set-off, the liquidated damages payable under clause 11.2, the Principal must repay to the Contractor the amount of such liquidated damages as represents the length of the extension to the Date for Completion.
- 11.6 To avoid doubt, the payment of liquidated damages under this clause 11 does not relieve the Contractor from any of its obligations or liabilities under the Contract.

12 PLANT AND EQUIPMENT

The Contractor must:

- (a) provide all materials, labour, plant, equipment, tools and other resources necessary for executing the Works, unless otherwise agreed in writing by the Parties or set out in any Minor Works Contract Specifics; and

- (b) ensure that all such items used or supplied in connection with the Works comply with Legal Requirements and are fit for their usual and intended purpose.

13 MATERIALS

- 13.1 All materials used in the execution of the Works must be consistent with the nature and character of the Works, be of a kind that is suitable for their purpose, and be in compliance with the Contract and any relevant Australian standards, unless otherwise agreed by the Principal.
- 13.2 The Contractor must give the Principal full particulars in writing of the mode, place of manufacture, source of supply and the performance capacities of materials, or other information, about the materials used in executing the Works, where the Principal makes a request in writing (acting reasonably) for such particulars or information.
- 13.3 At any time prior to the issue of the Completion Certificate, the Principal may reject any material that is not in compliance with clause 13.1 and may direct its replacement, correction or removal at the Contractor's cost.

14 WORKS VARIATION

- 14.1 The Principal may direct a Works Variation by providing written notice of the Works Variation, including details of the Works Variation, to the Contractor and the Contractor must comply with such a direction.
- 14.2 Within 10 Business Days of receipt of the notice under clause 14.1, the Contractor must submit to the Principal in writing a detailed, itemised price for executing the Works Variation.
- 14.3 The Works Variation shall be valued by agreement of the Parties to be recorded in writing or, failing agreement within 10 Business Days (or such other time as is agreed in writing by the Parties) after receipt of the notice under clause 14.1, by the Principal, and the Contract Price shall be adjusted accordingly.

15 TESTING

- 15.1 Prior to the Date of Completion, the materials and Works shall be subject to such tests as:
 - (a) set out in any Minor Works Contract Specifics; or
 - (b) may be reasonably directed in writing by the Principal,to establish the compliance of materials, workmanship and the Works with the Contract.
- 15.2 Tests conducted under clause 15.1 shall be conducted at the Contractor's cost unless otherwise agreed in writing by the Parties.

16 DEFECTS LIABILITY PERIOD

- 16.1 The Contractor must rectify any Defects notified to the Contractor by the Principal in writing during the Defects Liability Period within a reasonable time, but no later than 30 days from the date that notice of the Defect was given by the Principal, at the Contractor's expense.
- 16.2 If the Contractor fails to rectify a Defect in accordance with clause 16.1, the Principal may rectify the Defect and the costs of it doing so shall be a debt due from the Contractor to the Principal. To avoid doubt, the Principal may recover such amounts from the Contractor either on demand from the Contractor or by deducting such amount from any amount owed by the Principal to the Contractor.

17 PAYMENT

- 17.1 As soon as reasonably practicable following the end of each month or at another time or frequency agreed in writing by the Parties, including as set out in any Minor Works Contract

Specifics, the Contractor must give the Principal a detailed, itemised Payment Claim specifying:

- (a) the amount due to the Contractor for any part of the Works carried out up to the date of the Payment Claim, including a breakdown of such amounts and description of the Works carried out;
- (b) any other amounts owed by the Principal to the Contractor at the date of the Payment Claim; and
- (c) any other information reasonably required by any Minor Works Contract Specifics or directed in writing by the Principal.

17.2 Subject to the deduction of:

- (a) any Retention Moneys; or
- (b) other amount which the Principal may be entitled to deduct or which is due and payable by the Contractor to the Principal,

the Principal must pay the balance of a valid Payment Claim within 20 Business Days of the date of issue of the Payment Claim or the time for payment otherwise agreed in writing by the Parties, including as set out in any Minor Works Contract Specifics. To avoid doubt, nothing in the Contract obliges the Principal to pay for Works that are not in accordance with the Contract or for plant or materials not incorporated in the Works on Site.

17.3 If the moneys deducted by the Principal under clause 17.2(b) are insufficient to discharge the payment liability of the Contractor to the Principal, the Principal may have recourse to Retention Moneys or any security provided under the Contract.

17.4 The payment of moneys to the Contractor by the Principal shall not be evidence of the value of work done or an admission of liability or evidence that any Works have been executed satisfactorily but shall be a payment on account only. To avoid doubt, the Principal may correct an error in a previous payment in a later payment.

17.5 Unless otherwise agreed in writing by the Parties, the Contract Price shall not be subject to adjustment for rise and fall in costs.

17.6 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing. To avoid doubt, the Principal must not unreasonably withhold its consent to any reasonable Disbursements.

17.7 All payments due to the Contractor for works, supplies or services provided under this Contract will be made by Electronic Funds Transfer (EFT).

Within 14 days of award of the Contract, the Contractor shall submit the following details to the Superintendent:

- a) name and address of a financial institution participating in the Direct Entry System to which payment is to be made;
- b) relevant Bank State Branch code or participating financial institution number (BSB);
- c) Australian Business Number (ABN) / Australian Company Number (ACN);
- d) account name;
- e) account number;
- f) email address to be used by the Shire to send remittance advices to the Contractor for payments made.

The Contractor shall within seven days of any change to the above details inform the Superintendent in writing of that change. The Principal will not be responsible for any delay in transmission of funds arising from incorrect or out-of-date information supplied by the Contractor.

17.8 Payments to the Contractor shall be deemed to have been made by the Principal within 24 hours from the date the Principal has:

- a) correctly entered all necessary information; and
 - b) sent; and
 - c) had processed under a processing date;
- all relevant debits online into the Electronic Funds Transfer System.

17.9 The Principal will not be responsible for any delays or failures in transmission of funds arising from or relating to system failure, temporary system constraints or other functional transfer problems in the EFT direct entry system.

18 INTEREST ON OVERDUE PAYMENTS

18.1 This clause 18 applies if the Parties have executed this Document and have stated that this clause 18 applies in the Minor Works Contract Specifics.

18.2 Interest at the rate set out in the Minor Works Contract Specifics is payable on so much of an amount that is payable under the Contract by a Party to the other Party on or before a certain date but which is unpaid 20 Business Days after that date.

18.3 The interest is to be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.

18.4 To avoid doubt, if the Party who owes the other Party an amount under the Contract pays to the other Party that amount before the expiry of 20 Business Days from the date on which the amount fell due, no interest is payable.

19 RETENTION MONEYS AND SECURITY

19.1 This clause 19 applies if the Parties have executed this Document and have stated that this clause 19 applies in the Minor Works Contract Specifics.

19.2 Subject to clause 19.3, the Principal may deduct as Retention Moneys a percentage set out in any Minor Works Contract Specifics of the balance of each Payment Claim (**Retention Percentage**) as security for the performance of the Contractor's obligations under the Contract.

19.3 The Principal may deduct Retention Moneys under clause 19.2 until the Principal has retained an amount equalling the Retention Sum.

19.4 If required by the Minor Works Contract Specifics, the Contractor must provide security equal to the value of the Contract Price or part thereof in lieu of Retention Moneys in the form of an unconditional and irrevocable bank undertaking in a form, and from a financial institution, approved by the Principal, or another form of security, as set out in the Minor Works Contract Specifics.

19.5 The Principal may have recourse to any Retention Moneys or security at any time it may be entitled to recover from, or be paid by, the Contractor an amount under the Contract or otherwise.

19.6 The Principal must return to the Contractor the Retention Sum or any security provided under clause 19.4 after deduction of any amounts the Principal is owed under the Contract or otherwise:

- (a) within the period of time specified in any Minor Works Contract Specifics following the Date of Completion; or
- (b) where the Contract is terminated before the Date of Completion, within the period of time specified in any Minor Works Contract Specifics following termination.

20 DEFAULT, SUSPENSION AND TERMINATION FOR BREACH

Default

20.1 Without limiting the Principal's rights under clause 20.8, if a Party breaches a provision of the Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:

- (a) identifying the nature of the alleged breach;
 - (b) requiring the Party to comply with the relevant provision of the Contract; and
 - (c) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice;
- 20.2 If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages or exercise any other right under the Contract or under any applicable Legal Requirement.

Suspension

- 20.3 Without limiting the Principal's rights under clause 20.8, if a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 20.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party's reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of the Contract is no longer suspended (in each case the non-defaulting Party shall give written notice to the defaulting Party of the cessation of the suspension) at which point the Parties must promptly recommence the performance of their obligations.
- 20.4 The Contractor must bear any cost it incurs as a result of a suspension under clauses 20.3 or 5.4 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor to the Principal under this clause become a debt due to the Principal by the Contractor.
- 20.5 To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clauses 20.3 or 5.4, the Date for Completion shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

Termination for breach

- 20.6 Subject to clause 20.7, without limiting the other circumstances in which the Contract may be terminated, if a Party breaches a provision of the Contract and fails to comply with a notice issued under clause 20.1, then the other Party:
- (a) may give a further notice to the defaulting Party of its intention to terminate the Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and
 - (b) by a further and final notice in writing to the defaulting Party, may immediately terminate the Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 20.6(a); and
- 20.7 If a Party breaches a material provision of the Contract and that default is incapable of remedy or rectification, the non-defaulting Party may immediately terminate the Contract by written notice to the defaulting Party.

'Show cause' procedure

- 20.8 At any time, irrespective of whether the Principal has followed the steps in clauses 20.1 to 20.7 (inclusive), the Principal may by written notice to the Contractor require the Contractor to show cause, by a date specified in the notice, why the Principal should not terminate the Contract or suspend payment and take the Works remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at Law if the Contractor:
- (a) fails to commence the Works by the Start Date;
 - (b) fails to proceed with the Works at a reasonable rate of progress;
 - (c) commits a material breach of the Contract;
 - (d) fails to comply with a Legal Requirement relating to the execution of the Works;
 - (e) fails to maintain the Insurances;

(f) assigns or sub-contracts the Contract or the Works or any part thereof without any prior written consent of the Principal required by the Contract; or

(g) commits an Insolvency Event,

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

(h) the Principal may complete the whole or any part of those Works itself or by means of other persons;

(i) the Principal may take possession of the Site, the Works and, except where the Contract is terminated, the plant and other things on or in the vicinity of the Site as are owned by the Contractor;

(j) if the costs incurred by the Principal in completing the Works is greater than the amount which would have been paid to the Contractor if the Contractor had completed the Works, the difference shall be a debt due from the Contractor to the Principal, otherwise any difference shall be a debt due from the Principal to the Contractor; and

(k) the Principal may terminate the Contract by written notice to the Contractor.

21 TERMINATION

21.1 If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to execute all or part of the Works.

21.2 Where the Principal terminates the Contract under clauses 20.6(b), 20.7 or 20.8(k), the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.

21.3 When the Contract is terminated, the Contractor must:

(a) promptly return to the Principal any of the Principal's property or Principal's Documents; and

(b) if requested by the Principal, co-operate with and assist the Principal to transition the execution of the Works to the Principal or to another person engaged by the Principal.

22 LIABILITY

22.1 Subject to clause 22.2, the Contractor shall indemnify the Principal and the Principal's Personnel against any Loss suffered or incurred in connection with any act or omission of the Contractor or the Contractor's Personnel in connection with the execution of the Works and the performance of the Contract, except to the extent that the Loss is caused by the Wilful Misconduct or gross negligence of the Principal or the Principal's Personnel.

22.2 Notwithstanding any other clause of the Contract, neither Party will be liable to the other Party for any Consequential Loss unless:

(a) the Law provides otherwise;

(b) the Parties agree in writing that a Party will be liable for that Consequential Loss; or

(c) the Consequential Loss is specified in or otherwise covered by an Insurance.

22.3 Each Party agrees that Part 1F of the *Civil Liability Act 2002* (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with the Contract and any of the Contractor's Sub-contractors or such Sub-contractors' personnel.

23 SETTLEMENT OF DISPUTES

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

24 CONSTRUCTION CONTRACTS ACT

- 24.1 The Contractor must promptly and without delay give the Principal a copy of any notice, application or document filed or served on the Contractor or any of its Sub-contractors under the Construction Contracts Act relating to any sub-contract in respect of the Works.
- 24.2 If the Principal becomes aware that a Sub-contractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Sub-contractor such money that may be owing to the Sub-contractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.
- 24.3 The Contractor must ensure that none of its sub-contracts contain terms prohibited by the Construction Contracts Act.

25 INSURANCE AND RISK MANAGEMENT

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

- (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or
- (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;
- (k) ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the performance of the Works;
- (l) upon the Principal's written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;
- (m) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor;
- (n) disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the performance of the Works by the Contractor or a claim in connection with the Contract;
- (o) pay all premiums and deductibles applicable to any of the Insurances when due;
- (p) promptly reinstate any Insurance required if it lapses or cover is exhausted;
- (q) give the Principal at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and
- (r) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

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

- (a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and
- (b) where the Principal is entitled to cover under the Insurance:
 - (i) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
 - (ii) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
 - (iii) except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);
 - (iv) provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and
 - (v) provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

25.3 The Contractor must procure and maintain public liability insurance and product liability insurance which:

- (a) is for an amount not less than \$20 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;
 - (b) covers the liability of the Contractor, its Personnel and the Principal in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),

arising out of or in connection with the Contractor's performance of the Contract;
and
 - (c) covers the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the Contract and sudden and accidental pollution.
- 25.4 Where the Contractor shall be using its own vehicles, plant and equipment in performing the Works, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (**Contractor's Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), which must:
- (a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;
 - (b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;
 - (c) be unlimited in the number of occurrences; and
 - (d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Principal.
- 25.5 Unless otherwise agreed in writing by the Principal, the Contractor must procure and maintain workers' compensation insurance as follows:
- (a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than \$50 million or such amount as is specified in a Principal Request in respect of any one event; or
 - (b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.
- 25.6 Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:
- (a) be for not less than \$5 million or such other amount as is specified in the Principal Request or otherwise reasonably requested by the Principal in respect of any one claim;
 - (b) be for an amount not less than the amount specified in the Principal Request in the aggregate for all claims arising in any one 12 month period of insurance (if any is so specified);
 - (c) include one full automatic reinstatement of the limit of liability;
 - (d) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under the Contract; and

- (e) cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.
- 25.7 Notwithstanding any other provision of this clause 25, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:
- (a) it is lawful for the Contractor to do so;
 - (b) the Contractor identifies in writing to the Principal which of the risks required to be insured are being self-insured; and
 - (c) if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Principal's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.
- 25.8 The Parties acknowledge and agree that:
- (a) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under the Contract;
 - (b) the Insurances are primary, and not secondary, to the indemnities referred to in this Document and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
 - (c) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
 - (d) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance;
 - (e) nothing in this clause 25 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and
 - (f) where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.
- 25.9 The Contractor, at the discretion of the Principal, may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.

26 ASSIGNMENT AND SUB-CONTRACTING

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

27 CONFIDENTIALITY

- 27.1 In this clause 27, the following terms have the following meanings:
- (a) '**Disclosing Party**' means the Party which has disclosed Confidential Information that is confidential to that Party; and
 - (b) '**Receiving Party**' means the Party to whom Confidential Information is disclosed by the Disclosing Party.
- 27.2 Subject to clause 27.3, the Parties must not:

- (a) disclose Confidential Information to any other person; or
 - (b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.
- 27.3 Subject to clause 27.4, a Party may disclose Confidential Information to a third party:
- (a) with the prior consent of the Disclosing Party;
 - (b) to the extent required by any Law or applicable securities regulation or rule;
 - (c) in connection with any dispute or litigation concerning the Contract or its subject matter;
 - (d) to the extent required by any authority having jurisdiction over the Receiving Party; or
 - (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.
- 27.4 Before making a disclosure to a person under clause 27.3, the Receiving Party must:
- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under the Contract, except where clause 27.3(b) applies;
 - (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
 - (c) where clause 27.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

28 INTELLECTUAL PROPERTY RIGHTS

- 28.1 The Contractor warrants that its execution of the Works and any designs, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.
- 28.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the execution of the Works or from any designs, documents or methods of working provided by it to the Principal.
- 28.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.
- 28.4 The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of the Contract.
- 28.5 The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal's Background Intellectual Property Rights to the extent necessary for the Contractor to execute the Works.
- 28.6 All Intellectual Property Rights (other than the Contractor's Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor's cost or as otherwise agreed by the Parties.
- 28.7 The Contractor must ensure that:

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

28.8 A Party must not:

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

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

29 GENERAL

29.1 Force Majeure Event

- (a) A Party must:
 - (i) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under the Contract (**Affected Obligations**); and
 - (ii) if it gives such a notice, either:
 - (A) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
 - (B) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.
- (b) The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- (c) The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.
- (d) If a Force Majeure Event continues to affect the performance of the Works for the duration of the Force Majeure Event Termination Period, the Principal may terminate the Contract by serving written notice on the Contractor.

29.2 Relationship of the Parties

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

29.3 Representatives

- (a) Each Party may appoint a Representative, and give them authority, to act on its behalf for the purpose of the Contract within delegation limits advised in writing to the other Party.
- (b) If the Parties execute this Document and specify the details of the Parties' Representatives in the Minor Works Contract Specifics, the Parties' Representatives are those persons set out in the Minor Works Contract Specifics as at the date of executing this Document.

29.4 **Notice**

- (a) Any notice under the Contract shall be in English, in legible writing and signed by hand or by electronic signature, and shall be given or served by:
 - (i) hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or the Minor Works Contract Specifics, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified address; or
 - (ii) email to the email address of the receiving Party specified in the Request Response, Letter of Award or the Minor Works Contract Specifics, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified email address.
- (b) Any notice is regarded as being given by the notifying Party and received by the receiving Party:
 - (i) if by delivery in person, when delivered to the address of the recipient;
 - (ii) if by post, 5 Business Days from and including the date of postage; and
 - (iii) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

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

29.5 **GST**

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

29.6 **Governing law**

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

29.7 **Waiver**

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

29.8 Variation

Without limiting clause 14, the terms of the Contract shall not be varied except by the written agreement of the Parties.

29.9 Entire agreement

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

29.10 Rights are cumulative

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

29.11 Severability

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

- (a) read down, if possible, so as to be valid and enforceable; and
- (b) if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,

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

30 RECORD KEEPING REQUIREMENTS

30.1 All manuals, drawings, computer programs or any other records supplied by the Principals to the Contractor during the course of the Contract shall be returned to the Principal upon Termination or Completion of the Contract.

30.2 The Contractor shall ensure that all records relevant to or created in the course of this Contract are held in a safe and secure manner. In line with industry best practices.

30.3 The Principal shall be provided access to all records held by the Contractor associated with this Contract within twenty four (24) hours of a written request. Such requests will be in the support of Contract performance measuring general information resources for the Principal or to meet Freedom of Information legislation requirements.

EXECUTION

Acceptance of the Order by the Contractor will act as execution of the Contract.

The Order is the Shire's offer to the Contractor for the Contractor to complete the Works described in the Order and the Specification on the terms and conditions contained within this document. Acceptance of the Order by the Contractor shall constitute a binding contract between the Shire and the Contractor to complete the Works.

If the Contractor is unwilling or unable to accept the offer made by the Shire in the Order under the terms and conditions specified herein, the Contractor shall immediately contact the Shire and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by the Shire. If the Contractor proceeds with the Works without first requesting or receiving the Shire's written acceptance of variations proposed by the Contractor, then the Contractor is deemed to have accepted the terms and conditions contained herein and the terms of the Order. No addition to or modification of this Agreement will bind either of the parties unless it is made in writing and signed by both of them.

The Conditions of Contract are to be read in addition to any terms specified in the Order and/or any attachment to it that is attached to, or expressly incorporated in writing. Unless expressly agreed to in writing by the Shire, to the extent permitted by Law, no other terms or conditions, including the Contractor's own terms and conditions even where they have been provided to the Shire or signed by a representative of the Shire, will apply or have any legal effect in connection with the Works.

Schedule 1

Minor Works Contract Specifics and Specification

Part A - Minor Works Contract Specifics

<u>ITEM</u>	<u>CONTRACT SPECIFIC</u>	<u>DESCRIPTION</u>
1.	Works (clause 1.1)	As set out in the Specification
2.	Start Date (clauses 1.1 and 9.1)	As set out in the Specification
3.	Date for Completion (clauses 1.1 and 9.1)	As set out in the Specification
4.	Application of clause 10 regarding liquidated damages (clause 11)	Not to apply
5.	Liquidated damages formula or calculation (CLAUSE 11)	Not to apply
6.	Payment Claim – frequency (clause 17.1)	Upon completion or for works longer than a one month duration, monthly
7.	Payment Claim – information required (clause 17.1(c))	Order number
8.	Payment Claim – time for payment (clause 17.2)	At the end of the calendar month
9.	Application of clause 18 regarding interest (clause 18.1)	Not to apply
10.	Interest rate on overdue payments (clause 18.2)	Not to apply
11.	Application of clause 18 regarding Retention Moneys and security (clause 19.1)	Not to apply
12.	Retention Percentage (clauses 1.1 and 19.2)	Not to apply
13.	Retention Sum (clauses 1.1 and 19.3)	Not to apply
14.	Security requirements (clause 19.4)	Not to apply

<u>ITEM</u>	<u>CONTRACT SPECIFIC</u>	<u>DESCRIPTION</u>
15.	Time for return of Retention Moneys or security following Date of Completion (clause 19.6(a))	Not to apply
16.	Time for return of Retention Moneys or security following termination (clause 19.6(b))	Not to apply
17.	Plant and equipment that the Contractor does not need to provide (clause 12(a))	Nil
18.	Tests (clause 15.1)	As set out in the Specification
19.	Representatives – Contractor’s Representative (clause 29.3)	As nominated by the Contractor
20.	Representatives – Principal’s Representative (clause 29.3)	As specified on the Order
21.	Notice – Principal (clause 29.4)	Postal address: PO box 614, Kununurra WA 6743 Email: mail@swek.wa.gov.au
22.	Notice – Contractor (clause 29.4)	As specified on the Order

Part B – Specification for Minor Works Contract

As issued with the Request for Quotation document