



SMALL WORKS CONTRACT¹

General Conditions²

1 DEFINITIONS AND INTERPRETATION

1.1 In this Contract, the terms “**Contractor**”, “**Principal**” and “**Contract Sum**” and “**Date for PC**”, “**Commencement Date**” and “**Defects Liability Period**” have the meaning given in the Letter of Award or Schedule (as applicable) and, except where the context otherwise requires:

Contractor’s Cash Flow Forecast means a document **identifying** the Contractor’s estimate of payments across the duration of the Contract, based on dates of anticipated receipt of payments under the Contract, in such form and containing such information as the Principal may reasonably require. The Contractor’s Cash Flow Forecast Template can be downloaded from Business Opportunities (housing.wa.gov.au).

Contract means this contract between the Principal and the Contractor for the completion of the Works formed by the documents in Item 2 and including any annexure to the Contract;

Date of PC means the date certified in a PC Certificate as the date on which PC was achieved;

EOT means an extension of time to the Date for Practical Completion;

GST has the meaning given in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth);

GST Law has the meaning given in *A New Tax System (Goods and Services) Tax Act 1999* (Cth);

Insolvency Event means, in respect of a party:

- (a) a receiver, receiver and manager, administrator, liquidator, provisional liquidator or similar officer is appointed to the corporation or any of its assets or an application is made to a court for an order to appoint any such person;
- (b) the corporation enters into, or resolves to enter into a scheme of arrangement, compromise or composition with any class of creditors;
- (c) a resolution is passed or an application to, or order by, a court is made for the winding up, dissolution, official management or administration of the corporation;
- (d) the corporation is (or states that it is) insolvent for the purposes of section 95A of the *Corporations Act 2001* (Cth) or is financially unable to proceed with the Contract;
- (e) a person commits an act of bankruptcy, has a bankruptcy petition presented against him or

her, presents his or her own petition or is made bankrupt or makes a proposal for a scheme of arrangement or a composition, or has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtors petition or has a sequestration order made under the *Bankruptcy Act 1966* (Cth).

IP Rights means a patent, registered design, trade mark or name, copyright or other protected intellectual property right.

Law includes Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and Western Australia, standards, orders, codes and guidelines applicable to the Works and certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works and fees and charges payable in connection with the foregoing;

PC is that stage of the Works when all required tests have been carried out and passed, all documents and information essential for the use, operation and maintenance of the Works (including completed as-built drawings) have been supplied to the Principal and the Works are complete except for minor omissions and minor defects:

- (a) which the Contractor has reasonable grounds for not promptly rectifying; and
- (b) which do not prevent the Works from being reasonably capable of being used for their intended purpose and can be rectified without prejudicing the convenient use of the Works;

PC Certificate means a certificate issued by the Principal confirming the Date of PC;

Principal’s Representative means the person appointed by the Principal under clause 3.1;

Principal’s Personnel means the Principal’s employees, contractors, consultants and agents, other than the Contractor.

Request means the request for quotation sent by the Principal to the Contractor.

Schedule means the schedule attached to the Request;

Site means the lands and places made available by the Principal to the Contractor for the purpose of this Contract as further described in the Formal Instrument;

¹ GUIDANCE NOTE

This form is suited to small construct only arrangements, but may be adapted for simple demolition works if the appropriate special condition is selected. As a guide, it is intended for projects of low complexity and risk valued at under \$50,000. Refer to the Minor Works Contract template for higher value works, as it includes terms for higher value or risk minor works, including relevant Procurement Conditions and security requirements. If the use of retention amounts or provisional sums will be involved in the project, use the Minor Works Contract template.

² GUIDANCE NOTE

The Schedule and Special Conditions are attached to the Request for Quotation

Tax Invoice means a tax invoice that complies with the requirements in the GST Law; and

Works means the work which the Contractor is or may be required to execute under this Contract and includes variations, rectification work, constructional plant and temporary works.

- 1.2 If a word or phrase is defined, other grammatical forms have a corresponding meaning.
- 1.3 The singular includes the plural and vice versa and "includes" and similar words are not words of limitation.
- 1.4 A reference to a clause, schedule or attachment is to a clause, schedule or attachment to this Contract and to an Item is to an item in the Schedule.
- 1.5 A reference to a document includes a variation or replacement of it and to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- 1.6 A reference to person includes an individual, body corporate, trust, partnership, joint venture, unincorporated body or other entity, whether or not it is a separate legal entity and the person's assigns and personal representatives or successors.
- 1.7 An agreement, representation or term of this Contract in favour of or on the part of two or more people, benefits or binds them jointly and severally.
- 1.8 A reference to "\$" is to Australian currency and to time is to Perth, Western Australia time.
- 1.9 A reference to a day is to the period which starts at midnight and ends 24 hours later and a period of time running from a date, act or event, is calculated exclusive of the date, act or event.

2 PERFORMANCE AND PAYMENT

- 2.1 The Contractor will execute and complete the Works in a proper and workmanlike manner in accordance with this Contract.
- 2.2 Unless expressly otherwise required, the Contractor will use new materials and provide all materials, labour, plant, equipment, tools and everything else (whether temporary or permanent) required for the performance of the Contractor's obligations.
- 2.3 The Principal will pay the Contractor the Contract Sum in accordance with this Contract. This Contract is not subject to rise and fall in costs.
- 2.4 The Contractor warrants that at all times:
 - (a) it and its employees and subcontractors are suitably qualified and experienced to execute and complete the Works and will exercise due skill, care and diligence in so doing;
 - (b) it has checked this Contract for any discrepancies or omissions within and between the Contract documents and between the Contract and applicable Law;
 - (c) it has satisfied itself as to the correctness and sufficiency of its allowance for the Works and that the Contract Sum covers the cost of complying with all its obligations under this Contract and all things necessary for the due and proper performance of the Contract; and
 - (d) it has informed itself of the nature of the work and materials necessary for execution and completion of the Works, the means of access to and the facilities at the Site, transport facilities for deliveries to and from the Site and the availability and cost of labour.

3 DOCUMENTS AND REPRESENTATIVES

- 3.1 In the event of any inconsistency between the Contract documents the order of precedence in Item 2 applies. Where a discrepancy exists between figured and scaled dimensions, the figured dimensions will prevail. A party must notify the other on discovering any ambiguity, discrepancy or inconsistency within this Contract and the Principal will direct the Contractor as to the interpretation to be followed.
- 3.2 The Principal may by notice to the Contractor appoint a representative to carry out the functions of the Principal under this Contract. Any direction given by the Principal's Representative to the Contractor will have the same effect as if given by the Principal, and the Contractor must comply with all reasonable instructions of the Principal's Representative.
- 3.3 The Contractor will superintend the works personally or through a competent Contractor representative. The Contractor must obtain approval of the Contractor's representative prior to the Commencement Date and prior to any change. Directions given to the Contractor's representative are deemed to be directions given to the Contractor. The Contractor must change its representative at the reasonable request of the Principal.

4 INTELLECTUAL PROPERTY

- 4.1 The Principal warrants that any design, documents or method of working specified in this Contract or directed by the Principal does not infringe any IP Rights and indemnifies the Contractor against any loss and liability suffered or incurred by the Contractor in connection with the Principal's breach of such warranty.
- 4.2 The Contractor must not, and warrants that it will not, infringe any IP Rights in connection with the execution of this Contract and indemnifies the Principal against any loss and liability suffered or incurred by the Principal in connection with the Contractor's breach of such warranty.

5 SUBCONTRACTING AND ASSIGNMENT

The Contractor must not subcontract or allow a subcontractor to subcontract work to a debarred supplier as defined in section 32 of the *Procurement Act 2020 (WA)*. The Contractor must not subcontract that part of the Works identified in Item 13 without prior written approval from the Principal. The Contractor must not assign or novate its rights and obligations under this Contract without the prior written approval of the Principal. The Principal must not unreasonably withhold any approvals under this clause. Any subcontracting does not relieve the Contractor of its liabilities and obligations under this Contract.

6 COMPLIANCE WITH LAWS

- 6.1 The Contractor will comply with all Laws in the execution and completion of the Works and obtain all approvals, consents, permits and licenses required to carry out the Works, other than those in Item 5. The Contractor must pay, and the Contract Sum is deemed to include, the costs and fees of such approvals, consents, permits and licences. The Contractor must notify the Principal if a condition of an approval, permit, consent or licence is inconsistent with this Contract.
- 6.2 The Contractor is subject to the Western Australian Building and Construction Industry Code of Conduct 2016 and must comply with each obligation in the Code for the term of this Contract. The Parties are

required to comply with the National Code of Practice for the Construction Industry and the Implementation Guidelines for the Code published from time to time.

7 MATERIALS AND DEFECTIVE WORK

7.1 If the Principal discovers material or work provided by the Contractor which is not in accordance with the Contract, the Principal may direct the Contractor to remove the material or rectify the work within a specified timeframe or may accept the material or work in which case the Contract Sum will be adjusted by the decrease in value of the Works, if any.

7.2 If the Contractor fails to comply with a direction under clause 7.1, the Principal may have the material removed or the work rectified and the cost incurred by the Principal will be a debt immediately due and payable by the Contractor to the Principal.

8 PROTECTION OF PEOPLE AND PROPERTY AND CARE OF THE WORKS

8.1 The Contractor will provide all things and take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unreasonable noise and disturbance.

8.2 If the Contractor damages property, the Contractor will promptly rectify the damage and will be liable to pay any compensation under Law. If the Principal takes action to protect people or property as a result of the Contractor's failure to do so, any costs properly incurred by the Principal will be a debt immediately due and payable by the Contractor to the Principal.

8.3 The Contractor will, until 5pm on the Date of PC, be responsible for the care of the Works, including unfixed items that the Contractor has been paid for and items of unfixed plant or material provided by the Principal. After the Date of PC the Contractor remains responsible for the care of outstanding work and items to be performed by the Contractor.

8.4 The Contractor is liable for any loss or damage to the Works described in clause 8.3 and will rectify such loss or damage unless it is caused by:

- (a) a negligent act or omission of the Principal and others for whom the Principal is responsible;
- (b) risks expressly excluded in this Contract;
- (c) war, invasion, revolution and other such activity;
- (d) nuclear radiation or contamination; or
- (e) design defects for design aspects not provided, nor required to be provided, by the Contractor.

9 INSURANCE

9.1 Unless otherwise agreed by the Principal in writing, the Contractor must, prior to the Commencement Date and before commencing the Works, effect and maintain the insurances in clauses 9.2 to 9.5 with reputable and solvent insurers, and on terms, reasonably acceptable to the Principal.

9.2 **Contract Works insurance** covering loss of or damage to the Works and items listed in clause 8.3 until the Contractor ceases to be responsible under clause 8.3 for not less than the sum in Item 6, which must extend to cover subcontractors, items off Site and items in transit to Site.

9.3 **Public and Products Liability insurance** covering legal liability of the Contractor, its employees and agents arising out of the Works provided in connection with this Contract for not less than the amount in Item 7 for any one occurrence and unlimited as to the number of occurrences in any one period of

insurance, which must extend to indemnify the Principal to the extent of its vicarious liability arising out of the negligent acts or omissions of the Contractor, its employees or agents in their performance or non-performance of the Works.

9.4 **Workers Compensation and Employer's Liability insurance** covering all claims and liabilities in respect of any statute including cover for common law liability for the duration of performance of its obligations under this Contract, for not less than \$50,000,000 for any one occurrence for death of or injury to any person employed by, or who is deemed to be a worker of, the Contractor under any statute relating to workers compensation arising directly or indirectly out of the performance of this Contract, including off Site. If the Contractor is a private company and is required to take out insurance under the *Workers Compensation & Injury Management Act 1981 (WA)* the Contractor must procure that its working directors are covered under its workers' compensation and employers' liability insurance.

9.5 **Home Indemnity insurance** where required at law, a policy with respect to the Works which complies with the requirements of section 25D of the *Home Building Contracts Act 1991 (WA)* (regardless of whether Part 3A of that Act requires it).

9.6 The Contractor must provide sufficient evidence of insurances required under this clause 9 to the Principal prior to the Commencement Date and on request. This includes, if requested by the Principal or Principal's Representative, providing certificates of currency and copies of policy wording and schedules. Where the Contractor fails to provide evidence as required under this clause, the Principal may at its discretion effect the insurance and the cost incurred is a debt immediately due and payable by the Contractor to the Principal.

10 DAMAGE TO PERSONS AND PROPERTY

The Contractor indemnifies the Principal, Principal's Representative and Principal's Personnel against:

- (a) any loss or damage to any property (including plant, equipment and vehicles and the Principal's property); and
- (b) any claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property, real or personal,

arising out of or as a consequence of the carrying out of the Works by the Contractor, provided that the Contractor's liability to indemnify the Principal will be reduced proportionately to the extent any act or omission of the Principal contributed to the loss, damage, death or injury.

11 SITE, SURVEYS AND LATENT CONDITIONS

11.1 The Principal will give the Contractor sufficient, non-exclusive access to the Site to enable the Contractor to execute the Works. A failure or delay in providing such access will not constitute a breach of this Contract but may, subject to the terms of this Contract, entitle the Contractor to an EOT.

11.2 The Principal, Principal's Representative and Principal's Personnel may, on reasonable notice to the Contractor, attend the Site for any purpose. The Principal will take reasonable steps to ensure the Contractor is not delayed or impeded by the presence of others on Site. The Contractor warrants that it has allowed for the impact of others accessing and

conducting works on Site on its ability to complete the Works by the Date for PC and for the Contract Sum.

- 11.3 Where required by this Contract (including Item 8), the Contractor will carry out a comprehensive survey of identified properties before commencing work. The survey must accurately show the condition of the properties (including photographic evidence) and a copy of the report must be provided to the Principal prior to commencement of any Works.
- 11.4 Where required by this Contract (including Item 9), the Contractor will engage a licensed surveyor to identify the Site, certify all boundaries and position necessary marker pegs, so that the set out of the works is wholly within the titled boundary. The Contractor must immediately notify the Principal of any discrepancy between the certified survey and other drawings.
- 11.5 The Contractor must keep the Site clean and tidy and regularly remove rubbish and surplus material. If the Contractor fails to do so within a reasonable time of receipt of notice from the Principal, the Principal may have the cleaning carried out by others and the cost incurred by the Principal will be a debt immediately due and payable by the Contractor.
- 11.6 If the Contractor becomes aware of any physical conditions on the Site which differ materially from the conditions which should reasonably have been anticipated at the time of execution of this Contract by a competent contractor who inspected the Site and its surroundings and examined all information available to the Contractor or obtainable by the making of reasonable enquiries, the Contractor must promptly, and in any event within 10 days, notify the Principal of such condition, the process to address the condition and its time and cost impact.
- 11.7 If the Principal determines that a latent condition described in clause 11.6 exists and the Contractor has given notice in accordance with clause 11.6, the Contractor may be entitled to an EOT under clause 13 and extra costs reasonably incurred due to the requirement to carry out additional or varied work under clause 17.3, provided that any entitlement is reduced proportionally to the extent the Contractor fails to take all reasonable steps to mitigate the costs and any delay in connection with such condition.

12 PROGRESS AND SUSPENSION OF THE WORK

- 12.1 The Contractor will commence carrying out the Works on the Commencement Date or otherwise as directed by the Principal and proceed with the Works with due expedition and without delay in accordance with any approved program.
- 12.2 If requested by the Principal, the Contractor must submit for approval a program showing the dates by which the parts of the Works will be completed, including each activity in the critical path. The Contractor must submit an updated program when:
- (a) the Principal grants an EOT under clause 13; or
 - (b) the Principal provides notice that it considers, acting reasonably, that there is or will be a significant deviation between the actual and anticipated progress of the Works.
- 12.3 If the Principal considers that suspension of the whole or part of the Works is necessary due to:
- (a) an act or omission of the Principal, Principal's Representative or Principal's Personnel; or
 - (b) an act or omission of the Contractor or its employees, contractors, consultants or agents,

the Principal will direct the Contractor to suspend the progress of the whole or part of the Works as the Principal deems necessary and the Contractor will bear the reasonable costs of any suspension of the Works pursuant to clause 12.3(b).

12A CASH FLOW FORECAST

- 12A.1 The Contractor must provide an initial (non-binding) Cash Flow Forecast within 21 days of the Date of Contract or prior to commencement of works on Site, whichever is the earlier.
- 12A.2 The Contractor's Cash Flow Forecast must align with the program.
- 12A.3 An updated Contractor's Cash Flow Forecast must be submitted with each payment claim, adjusted to reflect actual progress of the Works.
- 12A.4 The Contractor must provide an updated Contractor's Cash Flow Forecast within 7 days of any reasonable request from the Superintendent (which may include but is not limited to, for example, where there has been an extension of time granted pursuant to Contract).

13 EXTENSIONS OF TIME AND DELAY COSTS

- 13.1 The Contractor must promptly, and in any event within 10 days, notify the Principal on becoming aware that anything may delay the Works, detailing the possible delay and cause, even if the delay is ongoing.
- 13.2 If the Contractor has given notice in accordance with clause 13.1 in respect of a delay caused by:
- (a) rain or abnormal climate conditions occurring on or before the Date for PC which make it unreasonable or unsafe to continue working on the Site whilst conditions prevail; or
 - (b) industrial action (unless limited to the Site or specifically directed at the Contractor or any of its subcontractors) occurring on or before the Date for PC; or
- any of the following events whenever occurring:
- (c) an act or omission of the Principal, Principal's Representative or Principal's Personnel; or
 - (d) variations or any other delay or cause expressly stated in this Contract to be grounds for an EOT;
- and the Contractor is or will be delayed in reaching PC by that event, the Contractor may, within 10 days of the delay ceasing, request an EOT by detailed notice to the Principal.
- 13.3 Within 21 days of receipt of a valid EOT request, the Principal will, acting reasonably, assess the request and direct the revised Date for PC. If such notice is not issued, the EOT claim is deemed to be rejected.
- 13.4 If more than one event delays the Works and the cause of at least one of those events is not specified in clause 13.2(a) to 13.2(d), to the extent that the delays are concurrent, the Contractor is not entitled to any EOT. A failure to grant an EOT does not cause time to be at large.
- 13.5 The Principal may in its absolute discretion extend the time for PC for any reason by notice to the Contractor. The Principal is not obliged to exercise the discretion for the benefit of the Contractor.
- 13.6 If the Contractor has been granted an EOT for an event in clause 13.2(c) and claims delay damages within 14 days of the EOT being granted, the Principal will pay the Contractor the reasonable additional costs necessarily incurred by the Contractor by reason of the delay. In any other case, the Principal is not liable

for, and the Contractor is not entitled to, any cost due to delay or disruption for any reason.

14 PRACTICAL COMPLETION

14.1 The Contractor must execute the Works and achieve PC by the Date for PC. The Contractor will notify the Principal when it considers PC has been reached and, within 14 days of such notice, the Principal will either issue a PC Certificate to the Contractor or give reasons why it considers the Works have not reached PC. This clause 14.1 continues until PC is achieved.

14.2 The Principal may issue a PC Certificate without receiving a notice from the Contractor.

15 DAMAGES (LIQUIDATED OR OTHERWISE)

15.1 If the Contractor fails to reach PC by the Date for PC, the Contractor must pay liquidated damages at the rate specified in Item 10 until the earlier of the Date of PC and termination of this Contract. If Item 10 is not completed, the Principal may claim general damages for delay.

15.2 The Principal is entitled to deduct and set-off any liquidated damages owed pursuant to this clause against any amount due to the Contractor under this Contract, or to have recourse to Retention.

15.3 Where the Date for PC is adjusted after the Contractor has paid liquidated damages, the Principal will repay any liquidated damages in excess of its entitlement.

16 DEFECTS LIABILITY PERIOD

16.1 The Contractor will rectify any defects existing at the Date of PC as soon as practicable after the Date of PC. The Contractor will carry out all rectification work at times and in a manner which causes minimal inconvenience to users of the Works.

16.2 At any time during the Defects Liability Period and for 14 days after the expiry of the Defects Liability Period, the Principal may direct the Contractor to rectify, at the Contractor's expense, any omission or defect in the Works identified or apparent during the Defects Liability Period. Such direction may state a date by which the Contractor must commence and/or complete the rectification.

16.3 If the rectification under clauses 16.1 or 16.2 is not commenced or completed by the required date (or if no date is stated, within a reasonable period) the Principal may have the rectification carried out by others and the costs of the rectification incurred by the Principal will be a debt immediately due and payable by the Contractor to the Principal.

16.4 Nothing in this clause prejudices any other rights that the Principal may have with respect to omissions from or defects in the Works.

17 VARIATIONS

17.1 The Contractor must not vary the Works without a written direction from the Principal expressly authorising the variation. If the Contractor considers that any other direction varies the Works, the Contractor must notify the Principal and seek the Principal's confirmation before proceeding. The Contractor must strictly comply with this clause to be entitled to payment in connection with a variation.

17.2 The Contractor must comply with any direction to increase, decrease, omit or change any part of the Works issued by the Principal prior to the Date of PC which is expressed to be a variation. The Principal will, acting reasonably, value a variation at the prior agreed amount or if there is no prior agreement:

(a) where the varied works relate (or are similar or analogous) to work the subject of tendered rates or prices, then at those rates;

(b) where clause 17.2(a) does not apply, at prevailing industry market rates; or

(c) where clauses 17.2(a) and 17.2(b) do not apply, on a fair and reasonable basis,

and such amount (including a reasonable amount for profit and overheads) will be added to or deducted from the Contract Sum.

17.3 If an EOT has been granted for a directed variation, the amount under clause 17.2 is deemed to cover all extra costs incurred by the Contractor and no further claim for extra costs will be accepted by the Principal (including costs under clause 13.6).

18 PAYMENT CLAIMS AND CERTIFICATES

18.1 The Contractor may submit payment claims at the intervals in Item 12 detailing the value of work carried out for which payment is claimed and any other amounts claimed, excluding any plant, equipment and materials not incorporated into the Works.

18.2 Within 14 days after receipt of a payment claim, the Principal will issue a payment certificate to the Contractor certifying the amount which the Principal considers due to the Contractor, detailing retention money and, where the amount certified is different to that claimed, providing reasons for the difference. On receipt of the payment certificate, the Contractor will issue a Tax Invoice to the Principal for the amount certified for payment in the certificate.

18.3 Subject to clause 18.4 and the Contractor providing all information reasonably required by the Principal, the Principal will pay the amount certified in the payment certificate within 14 days of the later of the issue of the payment certificate and receipt of the Contractor's Tax Invoice.

18.4 The Principal may set off or deduct from any payment certificate amount any amount that is due and payable to it by the Contractor arising out of or in connection with this Contract.

18.5 Within 28 days of the later of expiration of the Defects Liability Period and completion of any defects notified under clause 16, the Contractor will provide the Principal with a payment claim- headed "final payment claim" which must include all claims the Contractor makes against the Principal for payment in connection with this Contract. If the Contractor does not make a final payment claim within such time, the Contractor is deemed to have irrevocably waived any entitlement to bring further claims (other than claims the subject of a clause 21 notice issued prior to expiry of the 28 day period for submission of the claim).

18.6 Within 14 days of receipt of a final payment claim, the Principal will issue a final certificate certifying the amount which, in the Principal's reasonable opinion, is finally due from the Principal to the Contractor, or the Contractor to the Principal arising out of this Contract. A party must pay the amount certified in the final certificate as payable by that party within 14 days of issue of the final certificate, subject to receiving a Tax Invoice for that amount.

18.7 If the Principal fails to issue a payment certificate or final certificate within the prescribed period, the related payment claim is deemed rejected.

18.8 The payment of monies to the Contractor does not evidence the value of work, admission of liability or evidence that the work has been executed

satisfactorily, but is payment on account only. The issue of any certificate by the Principal does not constitute approval of any Works or other matter and does not prejudice any claim by the Principal.

19 WORKERS AND SUBCONTRACTORS

19.1 The Contractor must, on request, provide a statutory declaration declaring that all workers, subcontractors and suppliers have been paid any amounts due and payable to them as at the date of the payment claim (or final payment claim) and documentary evidence to support the declarations. The Principal is not obliged to pay any amount until the Contractor has complied with its obligations under this clause.

19.2 The Principal may, at its discretion, make a payment directly to a worker, subcontractor or supplier and any such payment will be deemed to be a payment to the Contractor in satisfaction of the Principal's payment obligations under this Contract.

20 TERMINATION

20.1 The Principal may, except to the extent that the right is stayed by the operation of the *Corporations Act 2001* (Cth), by notice terminate this Contract if the Contractor suffers an Insolvency Event or commits a substantial breach of this Contract, and the Contractor fails to show reasonable cause why the Principal should not exercise its right to terminate within 7 days of the Principal's notice. A substantial breach includes, but is not limited to the Contractor

- (a) becoming a debarred supplier (or having been a debarred supplier as the commencement of the Contract) as defined in section 32 of the *Procurement Act 2020* (WA);
- (b) subcontracting, or allowing a subcontractor to subcontract, with a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA); or
- (c) failing to terminate a subcontract, or ensure that a subcontractor terminates a subcontract, with a party that has become a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA).

20.2 If the Principal fails to make a payment when due and payable by it under this Contract or fails to issue a PC Certificate without providing reasons, and fails to show reasonable cause within 7 days of receipt of a notice from the Contractor detailing the failure, the Contractor may by notice to the Principal suspend performance of its obligations under this Contract. If the Principal's breach continues for over 28 days following such suspension, the Contractor may by notice to the Principal terminate this Contract.

20.3 The Principal may, for its convenience and in its absolute discretion, terminate this Contract in whole or in part with 10 days' notice to the Contractor and the Contractor will be entitled to:

- (a) payment for work carried out prior to the date of termination;
- (b) the cost of goods or materials reasonably ordered for the Works which the Contractor is legally bound to pay for, provided that the value of the items is not included in the amount payable under clause 20.3(a) and title to the items will vest in the Principal on payment; and
- (c) reasonable direct costs of removing labour, plant, equipment and work from the Site,

provided that the Contractor takes all steps possible to mitigate the costs in clause 20.3(c). The Principal's liability to the Contractor arising out of, or in connection with, termination under this clause 20.3 is limited to the amount specified above.

20.4 If this Contract is terminated under clause 20.1 or 20.2, the rights and liabilities of the parties will be the same as they would have been at common law had the defaulting party repudiated this Contract and the other party elected to treat this Contract as at an end and recover damages and, if under clause 20.1, any costs incurred by the Principal in engaging another contractor to complete the Works may be recovered as a debt due and payable by the Contractor.

20.5 If this Contract is terminated under clause 20.1 or 20.3, the Contractor must immediately assign to the Principal its rights under agreements in connection with the performance of the Works.

21 DISPUTE RESOLUTION

If a dispute or difference arises between the parties in connection with this Contract, either party may give notice to the other providing details of the dispute. Within 7 days of such notice representatives of each party with authority to settle the dispute must confer to resolve the dispute. If the dispute is not settled within a further 14 days of conferral, either party may by further notice, refer the dispute to litigation.

22 GENERAL

22.1 (**GST**) For the purposes of this clause "supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Law. Where the supply of the works under this Contract or any part thereof is a taxable supply under the GST Law:

- (a) The Contract Sum is inclusive of all applicable GST.
- (b) The Principal will issue a Recipient Created Tax Invoice ("RCTI") in respect of GST payable on each instalment of the Contract Sum and will provide a copy of the RCTI to the Contractor. The RCTI will contain all information required for a tax invoice under the GST Law and bear the ABN of the Contractor.
- (c) The Principal will issue an adjustment to the Contractor in relation to any adjustment events as they occur.

22.2 (**Notices**) A notice must be in writing, in English and sent to the address of the other party listed in Item 14, or such other address as notified by that party. A notice takes effect at the time stated in the notice, but if no time is stated or the time stated is before receipt, then a notice takes effect on receipt. A notice sent:

- (a) by post, is received 3 days after posting if within Australia or 7 days after posting if posted to or from a place outside Australia; and
- (b) by email, is received at the time that the email reaches the addressee's email address and at the receiver's postal address for notices,

unless a notice is received on a day that is not a Business Day or after 5pm, in which case the notice is received at 9am on the next Business Day.

22.3 (**Records**) The Contractor will create, receive and maintain records in accordance with the *State Records Act 2000* (WA) in a format required by the Principal. Except to the extent the Contractor is required by Law to retain a record, on expiry or termination of this Contract, the Contractor must

return all records to the Principal. The Principal and the Auditor-General may maintain, reproduce, destroy and transfer all records in accordance with Law.

- 22.4 (**Disclosure**) The Principal may make the Contract award information publicly available and may at any time disclose this Contract and documents and information relevant to this Contract to any Minister, the Parliament of Western Australia, the Auditor-General and in accordance with any Law, including under the *Freedom of Information Act 1992* (WA).
- 22.5 (**Governing Law and Jurisdiction**) This Contract is governed by, takes effect and will be construed in accordance with the laws in force in the State of Western Australia. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings in connection with this Contract.
- 22.6 (**Severability**) To the extent that a clause or part of a clause is invalid, illegal or unenforceable, that clause or part is severed and ignored in the interpretation of this Contract and the remaining clauses remain in full force and effect.
- 22.7 (**Waiver**) A waiver is only effective if in writing and then only in respect of the specific obligation or breach, and occasion, for which the waiver is given.
- 22.8 (**Promotions**) The Contractor may erect on site, or permit to be erected on site, only those signs required by Law, specified in this Contract or to identify the Contractor's premises.
- 22.9 (**Survival**) All provisions of this Contract which expressly or by implication from their nature are intended to survive termination or expiry of this Contract will survive such termination or expiry, including clauses 18.5, 20.3 and 20.4 and any provision in connection with the Principal's right to set off or recover money and any indemnity.

Schedule

Item								
1.	Commencement Date <i>(if nothing stated, 14 days after the date the Contract is fully executed)</i>						
2.	Contract documents ³ (list in order of precedence)	1. Letter of Award 2. Principal's Specifications / Preliminary Design / Project Requirements 3. Schedule 4. Special Conditions 5. General Conditions 6. Contractor Specifications (if applicable), Drawings 7.						
3.	Date for PC OR commencing <i>(insert specific date) (insert period) (insert date period commences)</i>						
4.	Defects Liability Period commencing 5pm on Date of PC <i>(if nothing stated, 12 months)</i>						
5.	Principal obtained approvals						
6.	Contract Works insurance <i>(if nothing stated, 120% of the Contract Sum)</i>						
7.	Public and Product Liability insurance <i>(if nothing stated, \$20,000,000)</i>						
8.	Property Survey Report ⁴ <i>(If blank, unless expressly stated elsewhere in this Contract, no property survey report is required)</i>						
9.	Site Survey/Set Out <i>(If blank, unless expressly stated elsewhere in this Contract, no Site survey is required)</i>						
10.	Liquidated Damages ⁵	\$.....per						
11.	Provisional Sum Allowances	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: left;">Amount (excl GST)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> </tr> <tr> <td>2.</td> <td></td> </tr> </tbody> </table>	Item	Amount (excl GST)	1.		2.	
	Item	Amount (excl GST)						
1.								
2.								
	Rate for Profit and Overhead						
12.	Payment claim intervals	On issue of a PC Certificate and <i>(if nothing stated, last Business Day of the calendar month)</i>						
13.	Subcontracting restrictions							
14.	Notices to the Principal	By post: Street Address: 5 Newman Court, Fremantle WA 6160 Postal Address: Locked Bag 5000, Fremantle WA 6959 Attn: Email:						

³ Any additional contract documents not included here should be listed in order of precedence and attached to the Contract.

⁴ Insert details of property to be surveyed (e.g. adjoining or property on the site) and specific requirements other than photos.

⁵ This figure needs to represent a genuine pre-estimate of potential damages the Housing Authority will suffer if completion of the works is delayed. Ideally a methodology for calculation of this figure should be retained on the file.

Item		
	Notices to the Contractor	By post: Attn: Email:

Special Conditions Schedule

Where indicated below, the identified special conditions apply to this Contract and take precedence over the General Conditions to the extent of any inconsistency.

A.	Special Condition (Demolition) If "Applicable", the conditions below apply.	<input type="checkbox"/> Applicable <i>If not completed, special condition A does not apply</i>	<input type="checkbox"/> Not applicable	
	<ol style="list-style-type: none"> 1. Either the Contractor's insurance under clause 9.4 must extend to include liabilities arising from Asbestos as described in a form and to an extent satisfactory to the Principal, or the Contractor must effect an additional Asbestos Liability insurance policy covering the legal liability of the Contractor, its employees and agents arising out of or in connection with any Asbestos and abatement Works or services specified in this Contract (including stripping, encapsulations, removal, transport, sudden and accidental pollution and clean-up costs) for an amount not less than \$1,000,000. If such insurance is on a "claims made and notified" basis, the Contractor must maintain the insurance policy until at least 6 years after termination or expiration of this Contract or effect run-off cover under the insurance policy for a period of at least 6 years for an amount not less than \$1,000,000 for any one claim and \$1,000,000 for all claims in the aggregate during any one 12 month period of insurance. 2. If this Contract is solely for demolition works, clause 9.2 of the General Conditions does not apply. 3. Before commencing any demolition or works, the Contractor must: <ol style="list-style-type: none"> (a) carry out a survey in accordance with clause 11.3 of the General Conditions of adjoining and any other properties notified by the Principal which, where possible, must be carried out in the presence of the property owners (or their representatives). The Contractor must record the survey by suitable means to accurately show the condition of the properties at the time immediately prior to the commencement of work on the Site. The Contractor must permit the Principal, on request, to attend the survey and lodge with the Principal copies of the survey documents endorsed by the owners of such properties. The survey does not relieve the Contractor of its responsibilities or liabilities for damage to properties adjacent to the Site; and (b) engage a licensed surveyor in accordance with clause 11.4 of the General Conditions and immediately report any discrepancies between the certified survey and the drawings to the Principal, with work not to proceed until the Principal provides instructions. The survey drawing must include locations to all services and connection points and general features. On PC, the Contractor must submit to the Principal a certificate signed by a licensed surveyor certifying levels to the titled boundary. 4. The Contractor must comply with and carry out the Works in accordance with any applicable Hazardous Substances Management Plan (as defined by Australian Standard AS 2601-2001). 			
B.	Special Condition (Other) If "Applicable", the conditions below apply.	<input type="checkbox"/> Applicable <i>If not completed, special condition B does not apply</i>	<input type="checkbox"/> Not applicable	
	[## if "applicable" insert any special conditions here (see examples below) or delete text if "not applicable".] <ol style="list-style-type: none"> 1. Reporting: The Contractor must provide the following reports to the Principal at the following times: [provide sufficient detail as to what reports are required and when, or refer to a pro forma template to be attached to the Contract] 2. Warranties and Manuals: The Contractor must, within 14 days of issue of the PC Certificate, provide the Principal with copies of all warranties and manuals that would reasonably be provided for a project of this nature and [specify any specific warranties or manuals]. 3. [other] 			
C.	Special Condition (Covid-19) If "Applicable", the conditions below apply.	<input type="checkbox"/> Applicable <i>If not completed, special condition C does not apply</i>	<input type="checkbox"/> Not applicable	
	In these special conditions the following definitions apply: 1 DEFINITIONS (a) Change in COVID-19 Law means a COVID-19 Law which: <ol style="list-style-type: none"> (i) comes into effect, or ceases to be in effect, after the Relevant Date but does not include an extension of a declaration or other subordinate legislation in effect on the Relevant Date on the same or substantially the same terms; (ii) necessitates, or results in, a change in the Works or the Contractor's method of working; and 			

- (iii) directly results in an increase or decrease in the Costs incurred by the Contractor in carrying out the Works.
- (b) **Costs** means costs necessarily incurred (excluding corporate overhead and profit of the Contractor or a Related Entity of the Contractor).
- (c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and includes any variant or mutated strain of COVID-19 as such may arise.
- (d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.
- (e) **COVID-19 Law** means in relation to Western Australia or the Commonwealth of Australia:
 - (i) an act of parliament or statute; and
 - (ii) any subordinate legislation, rules, regulations, declarations, directions or by-laws, made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and
 - (iii) any document or policy issued under such legislation or subordinate legislation which is made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Contractor is legally required to comply.
- (f) **COVID-19 Relief Event** means:
 - (i) a Change in COVID-19 Law;
 - (ii) a suspension by the Principal under clause 3; or
 - (iii) a delay arising after the Relevant Date caused as a direct result of COVID-19 which:
 - (A) has an adverse effect on the supply of labour, equipment or materials required for the Works; and
 - (B) is not related to a COVID-19 Law.
- (g) **Related Entity** has the same meaning as in the *Corporations Act 2001* (Cth).
- (h) **Relevant Date** means the day being 14 days prior to the Contract Date.
- (i) **Works** means the works to be carried out under the Contract, including temporary works.

2
2.1 COVID-19 EFFECTS
General

- (a) The parties acknowledge the potential for COVID-19 Effects and agree:
 - (i) the Contractor is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known or anticipated by a Contractor exercising best industry practice) as at the Relevant Date.
 - (ii) the Contractor's entitlement to:
 - (A) Costs under clause 2.3(a);
 - (B) an EOT under clause 2.4;
 - (C) Costs under clause 2.5;

is reduced to the extent the Contractor is deemed to have taken into account, and fully priced and programmed for, COVID-19 Effects under clause 2.1(a)(i).
- (b) The Contractor must:
 - (i) proactively monitor potential COVID-19 Effects;
 - (ii) use its reasonable endeavours to mitigate COVID-19 Effects;
 - (iii) give fortnightly reports to the Principal on the potential or actual COVID-19 Effects and the steps being taken by the Contractor to avoid or reduce those effects irrespective of whether the Contractor intends to make a claim;
 - (iv) where an entitlement to time or Costs arises under special condition 2 or 3, provide all supporting documentation reasonably requested by the Principal (including programming and costing information) on a fully open book and transparent basis; and
 - (v) include in all subcontracts relief for COVID-19 Effects that is equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subcontractors have been duly paid by the Contractor to the relevant subcontractors.

2.2 Notice

- (a) The Contractor must promptly give notice to the Principal if the Contractor becomes aware of any potential or actual COVID-19 Effects which may:
 - (i) delay or disrupt the Works;
 - (ii) increase or decrease the costs of carrying out the Works; or
 - (iii) otherwise have an adverse effect on the Contract,

including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.
- (b) To the extent the Contractor is entitled to relief under this special condition 2, relief applies only from the date notice is given by the Contractor under special condition 2.2(a) (other than relief for the period between the Relevant Date and the Contract Date).

2.3 Change in COVID-19 Law

- (a) If there is a Change in COVID-19 Law, the Principal must pay the Contractor, or the Contractor must pay the Principal, as the case may be, the amount of the increased or decreased Costs (as applicable) in carrying out the Works which directly resulted from the Change in COVID-19 Law.
- (b) The Contractor's entitlement to be paid increased Costs under special condition 2.3(a) is reduced by the extent to which:
 - (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under special condition 2.1(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (c) The Contractor shall have no entitlement to be paid increased Costs under clause 2.3(a) should the Change in COVID-19 Law occur after the Date for Practical Completion.
- (d) The Principal will determine the amount payable under special condition 2.3(a), acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this special condition 2.3.

2.4 Extension of Time

- (a) If:
 - (i) the Contractor is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;
 - (ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and
 - (iii) the Contractor gives the Principal a claim for an extension of time within 14 days of when the Contractor became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,
 the Contractor will be entitled to an extension of time for Practical Completion equal to the period of delay.
- (b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under special condition 2.4(a)(iii), the Contractor may submit further claims every 14 days.
- (c) The Contractor's entitlement to an extension of time is reduced by the extent to which the Contractor could have avoided or reduced the delay by taking reasonable steps under special condition 2.1(b)(ii).
- (d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.
- (e) The Principal will determine the period of the extension of time under this special condition 2.4, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this special condition 2.4.

2.5 Delay Costs

- (a) Subject to special condition 2.5(b), the Contractor will be entitled to the additional Costs that it has incurred in respect of the period of the extension of time granted under special condition 2.4.
- (b) If:
 - (i) the COVID-19 Relief Event giving rise to the extension of time occurred after the Date for Practical Completion, the Contractor shall have no entitlement to be paid additional Costs under clause 2.5(a); and
 - (ii) there is a suspension under clause 3 on or before the Date for Practical Completion, the Contractor will only be entitled to the Costs incurred in demobilising and remobilising the Contractor's personnel, subcontractors and equipment.
- (c) The Contractor's entitlement to be paid Costs under special condition 2.5(a) or special condition 2.5(b) is reduced by the extent to which:
 - (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under special condition 2.1(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (d) The Principal will determine the amount of Costs payable under this special condition 2.5, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this special condition 2.5.

3 SUSPENSION FOR COVID-19 EFFECTS

- (a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Contractor to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.
- (b) As soon as the reason for any suspension no longer exists, the Principal must notify the Contractor in writing.

- (c) Upon notice from the Principal, the Contractor must recommence performance of the Works as soon as reasonably possible.
- (d) The Contractor must ensure that its subcontracts contain a suspension clause on the same terms as this special condition 3.

4

LIMIT TO CONTRACTOR'S RIGHTS

- (a) The Contractor's entitlements under special conditions 2 and 3 are the Contractor's sole remedy in respect of COVID-19 Effects and under no circumstances will the Contractor be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any redundancies or any other economic loss.
- (b) Except for a breach of special condition 2 or 3 by the Principal, the Contractor is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Contractor against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID- 19 Effects.