



**GENERAL CONDITIONS OF CONTRACT  
FOR MINOR WORKS (QUOTATIONS)**

## Minor Works Contract General Conditions

### 1 Definitions and Interpretation

1.1 Subject to clause 1.2, in this Minor Works Contract unless the contrary intention appears:

**Annexure** means an annexure to this Minor Works Contract.

**Approvals** means all licences, permits, consents, determinations and approvals necessary to complete the Works.

**Authorised Representative** means any person appointed by a party from time to time to act as an authorised representative for the purposes of this Minor Works Contract and includes the Contractor's Representative in the case of the Contractor and the Principal's Representative in the case of the Principal.

**Best Industry Practices** means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by the best skilled and experienced operators engaged in the same type of undertaking, under the same or similar circumstances and conditions.

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

**Certificate of Practical Completion** has the meaning in clause 28.16.

**Civil Liability Act** means *Civil Liability Act 2002 (WA)*.

**Commencement Date** means the date on which this Minor Works Contract is signed by the last party to do so.

**Consequential Loss** means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of loss arising from an interruption to a business or activity.

**Contamination** has the same meaning given to "contaminated" under the *Contaminated Sites Act 2003 (WA)*.

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

**Construction Plant** means appliances and things used in the carrying out of WUC but not forming part of the Works.

**Construction Program** means the program prepared by the Contractor and approved (or otherwise) by the Principal under clause 22 and, where updated and approved in writing by the Principal's Representative in accordance with clause 22.5, the latest updated Construction Program.

**Contract Period** means the period specified in the Contract Specifics, subject to any extension under clause 3.3.

**Contract Specifics** means the section of this Minor Works Contract headed "Contract Specifics".

**Contract Sum** means:

- (a) where the Principal accepted a lump sum, the lump sum;
- (b) where the Principal accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Schedule of Rates; or

- (c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including Provisional Sums but excluding any additions or deductions which may be required to be made under this Minor Works Contract.

**Contractor** means the Contractor specified in the Contract Specifics and includes the Contractor's directors, officers, employees, agents, representatives and any Related Body Corporate together with the executors, administrators, substitutes, successors and permitted assigns of the Contractor.

**Contractor Background IP** means Intellectual Property Rights owned by or licensed to the Contractor (including know-how and technical information) which exist prior to the date of this Minor Works Contract or are developed or acquired by the Contractor independently of this Minor Works Contract, which are used by the Contractor in the performance of the WUC or otherwise made available to the Principal under or in connection with this Minor Works Contract, but does not include the Project IP.

**Contractor's Design Obligations** means all tasks necessary to design and specify the WUC required by this Minor Works Contract.

**Contractor's Personnel** means the Contractor and its Workers including subcontractors and the directors, officers, employees, representatives, volunteers and agents of each of them.

**Contractor's Representative** means, as at the date of this Minor Works Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Contractor in accordance with clause 4.2.

**Controller** has the meaning it has in the Corporations Act.

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

**Date for Practical Completion** means:

- (a) where the Contract Specifics provides a date for Practical Completion, that date; or
- (b) where the Contract Specifics provides a period of time for practical completion, the last day of the period,

but if any EOT for Practical Completion is Directed by the Principal's Representative or allowed in any arbitration or litigation, it means the date resulting therefrom.

**Date of Practical Completion** means:

- (a) the date evidenced in a Certificate of Practical Completion as the date upon which Practical Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date.

**Defect** means:

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

**Defects Liability Period** means, subject to clauses 1.2, 6 and 31, the period of time beginning on the Date of Practical Completion and ending on the expiry of the time period stated in the Contract Specifics.

**Design Documents** means the plans, designs, drawings, engineering information, data, specifications, reports, accounts and other design documents required by this Minor Works Contract and created (or, where the context requires, to be created) by the Contractor for the performance of the WUC.

**Direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**Dispute** means any dispute, difference of opinion or disagreement whatsoever between the parties arising under, out of or in connection with the performance of WUC and/or this Minor Works Contract.

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

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

**EOT** has the meaning in clause 28.2.

**Event of Force Majeure** means an event or circumstance which is beyond the control and without the fault or negligence of the party affected by the event or circumstance and which by the exercise of reasonable diligence the party affected is unable to prevent, provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;
- (e) strikes at a national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, but excluding any industrial dispute which is specific to the performance of this Minor Works Contract; and
- (f) maritime disasters.

**Excluded Information** means Principal's Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this Minor Works Contract or an obligation of confidence owed to the Principal or the Principal's Personnel;
- (b) the Contractor can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal or the Principal's Personnel (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Contractor acquires from a source other than the Principal or any of the Principal's Personnel where such source is entitled to disclose it.

**Expert** means an independent person appointed in accordance with clause 44.2 to determine a Dispute between the parties.

**Final Certificate** has the meaning in clause 15.9.

**Final Payment** has the meaning given in clause 15.10.

**Final Payment Claim** means the final payment claim referred to in clause 15.9.

**First Option Period** means the period (if any) specified in the Contract Specifics.

**Freedom of Information Act** means the *Freedom of Information Act 1992 (WA)*.

**General Conditions** means the general conditions comprising clauses 1 to 55 of this Minor Works Contract.

**General Conditions of Tendering** means the general conditions of tendering issued by the Principal in relation to the performance of the Works the subject of this Minor Works Contract.

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST** means a goods and services or similar tax imposed in Australia.

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

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in

each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the financier reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due;
- (h) in the case of a natural person, it commits an act of bankruptcy or an order is made for the sequestration in bankruptcy of the estate of the Contractor, or the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
- (h) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction.

**Insurances** means the insurances which the Contractor is required to obtain under clause 32 and the Contract Specifics.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Intended Purpose** means the intended purpose of the Works as stated in this Minor Works Contract or as could be reasonably inferred from this Minor Works Contract by a Professional Contractor.

**Law** means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Agency, whether currently in force or coming into force on or after the date of this Minor Works Contract.

**Licences** means all licences, qualifications, registrations and other statutory requirements necessary for the performance of WUC under this Minor Works Contract.

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

**Minor Works Contract** means this contract for the provision of the Works comprising the Contract Specifics, the Special Conditions (if any), the General Conditions, the Schedules and the Annexures. If this is a Framework Agreement, then each Order issued under this Minor Works Contract constitutes an individual Minor Works Contract (comprising this document and that Order).

**Notifiable WHS Incident** means:

- (a) a “notifiable incident”, “serious injury or illness” or “dangerous incident” as defined in Part 3 of the *Work Health and Safety Act 2020* (WA) or any associated regulations; and/or
- (b) any other safety incident that must be reported to a WHS Regulator or other third-party.

**Order** means a purchase order from the Principal to the Contractor which requires performance of specific WUC, where this Minor Works Contract is a Framework Agreement.

**Other Warranties** means the other warranties in relation to the Works.

**party** means the Contractor or the Principal as the context requires.

**parties** means both the Contractor and the Principal.

**Payment Certificate** means the certificate issued by the Principal under clause 15.4.

**Pollution** includes any solid, liquid gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by human beings or animals;
- (b) degraded in its capacity to support plant life;
- (c) Contaminated; or
- (d) otherwise environmentally degraded.

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

**Practical Completion** means that stage in the carrying out and completion of the WUC when:

- (a) the Works are complete except for Minor Defects:
  - (i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;
  - (ii) which the Contractor's Representative determines the Contractor has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of the Works;
- (b) those Tests which are required by this Minor Works Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (c) all documents and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied to the Principal.

**Principal Information** means all information supplied to the Contractor by or on behalf of the Principal, regardless of its material form, for the purposes of this Minor Works Contract.

**Principal's Background IP** means Intellectual Property Rights owned by or licensed to the Principal (including know-how and technical information) which exist prior to the date of this Minor Works Contract or are developed or acquired by the Principal independently of this Minor Works Contract, which are made available to the Contractor under or in connection with this Minor Works Contract, but does not include the Project IP.

**Principal's Confidential Information** means all information disclosed to the Contractor or any of the Contractor's Personnel, under or in connection with this Minor Works Contract, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal or any of the Principal's Personnel;
- (b) information derived or produced partly or wholly from the information referred to in (a) including any calculation, conclusion, summary or computer modelling; and
- (c) information which is capable of protection at law or equity as confidential information, whether the information was disclosed:
  - (d) orally, in writing or in electronic or machine readable form;
  - (e) before, on or after the date of this Minor Works Contract; or
  - (f) by the Principal or any of the Principal's Personnel or by any third person.

**Principal's Personnel** means the officers, employees, representatives, agents and contractors (other than the Contractor and the Contractor's Personnel) of the Principal.

**Principal's Representative** means, as at the date of this Minor Works Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Principal in accordance with clause 4.4.

**Professional Contractor** means a contractor with skill and experience in, and the expertise and resources necessary, to carry out and complete works of a similar nature to the Works.

**Progress Claim** has the meaning given in clause 15.3 of this Minor Works Contract.

**Project IP** means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of, or in connection with, the provision of WUC in accordance with this Minor Works Contract, but does not include the Contractor Background IP or the Principal Background IP.

**Provisional Sum** has the meaning given in clause 2.5 and includes monetary sum, contingency sum and prime cost item.

**Qualifying Cause of Delay** has the meaning given in clause 28.5.

**Regulations** means the *Local Government (Functions and General) Regulations 1996 (WA)*.

**Related Works** means any works and any operation or maintenance service performed or undertaken or to be performed or undertaken by:

- (a) the Principal;
- (b) contractors, consultants or suppliers (other than the Contractor or the Contractor's Personnel) on behalf of the Principal; or

- (c) public or private utilities or a statutory or other relevant authorities, either concurrently or sequentially with WUC;
- (d) at, on, over or adjacent to the Site; or
- (e) which may be connected to, associated with, ancillary to or otherwise related or relevant to WUC.

**Schedule** means each of the schedules to this Minor Works Contract.

**Schedule of Rates** means the schedule of rates (if any).

**Second Option Period** means the period (if any) specified in the Contract Specifics.

**Security** means the security specified in the Contract Specifics.

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business in Western Australia;
- (e) an approved unconditional undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the Security.

**Site** means the site where WUC are to be performed as specified in the Contract Specifics.

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

**Special Conditions** means the special conditions set out in the Invitation to Quote.

**Specifications** means the specifications in relation to the Works as set out.

**Standards** means all industry standards and government regulations applicable to WUC.

**Subcontractor** means any person engaged by the Contractor in connection with WUC and includes consultants, subcontractors, suppliers and other contractors.

**Taxes** means all present and future sales, use, personal property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on the Principal's income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable, but does not include GST.

**Temporary Works** means work used in carrying out and completing WUC, but not forming part of the Works;

**Tender** means the offer submitted by the Contractor in accordance with the General Conditions of Tendering following an invitation of the Principal to perform the Works under this Minor Works Contract and includes associated documentation.

**Term** has the meaning given in clause 3.

**Test** has the meaning in clause 25.

**Trust** means the trust established under the Trust Deed of which the Contractor is trustee.

**Trust Deed** means the deed of trust by which the Trust is established, a copy of which is set out in Annexure A.

**Variation** has the meaning given in clause 27.

**Variation Direction** means a written direction by the Principal to carry out a Variation in accordance with clause 27.2.

**Variation Proposal** has the meaning given in clause 27.3.

**WHS** means work health and safety.

**WHS Legislation** means all WHS legislation that applies to the Works, including but not limited to the *Work Health and Safety Act 2020* (WA) and any associated regulations.

**WHS Regulator** means the Western Australian Department of Mines, Industry Regulation and Safety, WorkSafe Western Australia, or any other statutory authority or department with power to investigate and/or regulate WHS matters under WHS Legislation.

**WHS Requirements** means the WHS Legislation and WHS guidance material that applies to the Works from time to time, including but not limited to:

- (a) any relevant Australian Standards;
- (b) any relevant Codes of Practice or guidance material published by the Western Australian Department of Mines, Industry Regulation and Safety, or other relevant WHS Regulator or authority; and
- (c) any licences, terms or conditions imposed by any government, relevant WHS Regulator or authority.

**work** includes the provision of materials.

**Worker** has the same meaning as defined in the *Work Health and Safety Act 2020* (WA).

**Works** means the whole of the work to be carried out and completed in accordance with this Minor Works Contract, including Variations provided for by this Minor Works Contract, which by this Minor Works Contract is to be handed over to the Principal.

**WUC** means the work which the Contractor is or may be required to carry out and complete under this Minor Works Contract and includes Variations.

1.2 Notwithstanding clause 1.1, if this Minor Works Contract is identified as a Framework Agreement in the Contract Specifics then the following words have the following meanings in this Minor Works Contract:

- (a) “**Contract Sum**” means the price for the relevant WUC the subject of the Order as agreed under clause 6.5 or determined under clause 6.6;
- (b) “**Date for Practical Completion**” means:
  - (i) where an Order provides a date for Practical Completion, that date; or
  - (ii) where an Order provides a period for Practical Completion, the last day of that period, but if any EOT for Practical Completion is directed by the Principal’s Representative or allowed in any dispute resolution process provided for in this Minor Works Contract or litigation, it means the date resulting therefrom;
- (c) “**Defects Liability Period**” means, subject to clause 6, the period specified in an Order relating to the relevant WUC;
- (d) “**Final Certificate**” means the final certificate issued under clause 15.10 in relation to WUC the subject of an Order; and
- (e) “**Schedule of Rates**” means any schedule included in an Order which, in respect of any section or item of work to be carried out, shows the rate of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices.

1.3 In this Minor Works Contract unless the contrary intention appears:

- (a) a reference to this Minor Works Contract or another instrument includes any variation or replacement of either of them;
- (b) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (g) a reference to a clause is a reference to a clause in this Minor Works Contract;
- (h) a reference to a schedule is a reference to a schedule to this Minor Works Contract;
- (i) a reference to a third person or a third party is a reference to a person who is not a party to this Minor Works Contract and excludes the Contractor’s Personnel;

- (j) a reference to “dollar” or “\$” is a reference to Australian dollars; and
- (k) the words “including” and “include” are a reference to “including, but not limited to”.

1.4 Headings are inserted for convenience only and do not affect the interpretation of this Minor Works Contract.

## **2 Nature of contract**

2.1 The Contractor must carry out and complete the WUC (including the Contractor’s Design Obligations) in accordance with this Minor Works Contract and Directions authorised by this Minor Works Contract.

2.2 Subject to the performance by the Contractor of its obligations under this Minor Works Contract and to the satisfaction of any conditions precedent to the Contractor’s right to receive payment on account of the Contract Sum, the Principal must pay the Contractor the Contract Sum adjusted by any additions or deductions made pursuant to this Minor Works Contract.

2.3 Quantities in a Schedule of Rates are estimated quantities only.

2.4 The Schedule of Rates (if applicable) is only relevant for the purposes of assessing a Progress Claim and assessing the value of Variations.

2.5 A Provisional Sum included in this Minor Works Contract will not itself be payable by the Principal but where, pursuant to a Direction, the work or item to which the Provisional Sum relates is carried out or supplied by the Contractor, the work or item must be priced by the Principal’s Representative, and the difference added to or deducted from the Contract Sum.

2.6 Where any part of such work or item referred to in clause 2.5 is carried out or supplied by a Subcontractor, the Principal’s Representative will allow the amount payable by the Contractor to the Subcontractor for the work or item, disregarding:

- (a) any damages payable by the Contractor to the Subcontractor or vice versa; and
- (b) any deduction of cash discount for prompt payment.

2.7 The Contractor shall be deemed to have:

- (a) examined carefully this Minor Works Contract and any other information made available by the Principal to the Contractor in connection with the Tender or this Minor Works Contract;
- (b) examined the Site and its surroundings (if applicable);
- (c) satisfied itself as to the correctness and sufficiency of its Tender and that the Contract Sum covers the entire cost of complying with all of its obligations under this Minor Works Contract and of all matters and things necessary for the due and punctual performance and completion of this Minor Works Contract; and
- (d) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender and which was provided or obtainable by the making of reasonable enquiries.

2.8 Failure by the Contractor to do all or any of the things it is deemed to have done under clause 2.2 shall not relieve the Contractor of its obligation to perform and complete this Minor Works Contract in accordance with its terms.

## **3 Term**

3.1 Where this Minor Works Contract is not identified in the Contract Specifics as being a Framework Agreement, the term of this Minor Works Contract will commence on the Commencement Date and will continue until each party has fulfilled its obligations under this Minor Works Contract, unless it is terminated earlier in accordance with its terms.

3.2 Where this Minor Works Contract is identified in the Contract Specifics as being a Framework Agreement, the term of this Minor Works Contract will commence on the Commencement Date and will continue until the later of the expiry of the Contract Period and the date on which each party has fulfilled its obligations under this Minor Works Contract, unless it is terminated earlier in accordance with its terms.

3.3 Where this Contract is identified in the Contract Specifics as being a Framework Agreement, the Principal may:

- (a) extend the Contract Period by the First Option Period by advising the Contractor in writing not less than three months prior to the end of the then current term; and

- (b) if the Principal exercises the option in clause 3.3(a), further extend the Contract Period by the Second Option Period by advising the Contractor in writing not less than three months prior to the end of the then current term.

#### **4 Representatives**

- 4.1 The person nominated by the Contractor as such in the Contract Specifics will be the Contractor's Representative. Subject to clause 4.5, the Contractor's Representative has authority to issue notices to the Principal and receive notices from the Principal and to perform any other functions specifically identified as being its responsibility or within its authority under this Minor Works Contract.
- 4.2 The Contractor may change the Contractor's Representative at any time by notice in writing to the Principal and the Contractor is responsible for all acts and omissions of the Contractor's Representative.
- 4.3 The person nominated as such by the Principal in the Contract Specifics is the Principal's Representative. Subject to clause 4.5, the Principal's Representative has authority to issue directions, notices and certificates to the Contractor and to receive notices from the Contractor and to perform any other functions specifically identified as being its responsibility or within its authority under this Minor Works Contract.
- 4.4 The Principal may at any time change the Principal's Representative by notice to the Contractor.
- 4.5 The Contractor's Representative does not have authority to give notices on behalf of the Contractor, and the Principal's Representative does not have authority to give notices on behalf of the Principal, under clauses 38, 39, 43 or 44.

#### **5 Contractor as trustee**

- 5.1 If the Contractor enters into this Minor Works Contract in its capacity as the trustee of a trust, the following provisions of this clause 5 apply.
- 5.2 The Contractor represents and warrants to the Principal that:
  - (a) the Contractor is the only trustee of the Trust;
  - (b) no action has been taken or proposed to remove it as trustee of the Trust;
  - (c) the copy of the Trust Deed delivered to the Principal prior to the execution of this Minor Works Contract as set out in Annexure A discloses all the terms of the Trust and there has been no other amending deed, instrument of appointment, vesting deed or other instrument of any description whatsoever that affects the terms of the Trust;
  - (d) the Contractor has power under the Trust Deed to enter into and observe its obligations under this Minor Works Contract and it has entered into this Minor Works Contract in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
  - (e) the Contractor has the right to be fully indemnified out of the property or fund of the Trust in respect of obligations incurred by it under this Minor Works Contract without any impairment and without any set off on account of any liability owed by it to the beneficiaries of the Trust in respect of any breach of trust or otherwise;
  - (f) the property and fund of the Trust is sufficient to satisfy the right of indemnity referred to in clause 5.2(e) and all other obligations in respect of which the Contractor has a right to be indemnified out of the property and fund of the Trust;
  - (g) the Contractor is not in default under the Trust Deed; and
  - (h) the Contractor has in full force and effect the authorisations necessary to make and enter into this Minor Works Contract, perform obligations under it and allow it to be enforced (including, without limitation, under the Trust Deed and the Contractor's constituent documents).
- 5.3 The Contractor acknowledges that it enters into this Minor Works Contract both in its own capacity and in its capacity as trustee of the Trust.
- 5.4 At the request of the Principal, the Contractor agrees to exercise its right of indemnity from the property and fund of the Trust and to the beneficiaries of the Trust in respect of obligations incurred by the Contractor under this Minor Works Contract.
- 5.5 The Contractor agrees to observe its obligations as trustee of the Trust.
- 5.6 The Contractor must not, without the consent of the Principal, do anything that:
  - (a) effects or facilitates the retirement, removal or replacement of the Contractor as trustee of the Trust;

- (b) could restrict the Contractor's right of indemnity from the property and fund of the Trust in respect of obligations incurred by the Contractor under this Minor Works Contract; or
- (c) effects or facilitates the termination of the Trust, the variation of the Trust Deed or the resettlement of the property and fund of the Trust.

## **6 Orders**

- 6.1 If this Minor Works Contract is identified as a Framework Agreement in the Contract Specifics, this clause 6 applies.
- 6.2 The Principal may require the Contractor to perform works from time to time during the Term by giving the Contractor an Order provided that such work is of a character and extent contemplated by, and capable of being carried out under, the provisions of this Minor Works Contract.
- 6.3 The Order must detail the following in relation to WUC to be performed by the Contractor pursuant to the Order:
- (a) the scope of the work;
  - (b) Contract Sum;
  - (c) Security (including the date for provision of the Security and those other matters detailed in the Contract Specifics);
  - (d) Date for Practical Completion;
  - (e) liquidated damages for delay; and
  - (f) Defects Liability Period.
- 6.4 Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:
- (a) disagrees with any of the information and/or requirements contained in the Order, and must include in the notice details of the aspects with which it disagrees; or
  - (b) recommends any change to any of the information and/or requirements contained in the Order and must include in the notice the Contractor's reasons for the recommendation.
- 6.5 If the Contractor:
- (a) gives notice under clause 6.4, the parties must attempt to agree on the matters the subject of the notice and if such agreement is reached, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Minor Works Contract; or
  - (b) does not give notice pursuant to clause 6.4, the Contractor must perform its obligations under the Order in accordance with this Minor Works Contract.
- 6.6 If, within 15 Business Days of a notice issued under clause 6.4, the parties have been unable to agree on the matters the subject of the notice, the Principal acting reasonably (and having regard to any Schedule of Rates to the extent applicable), may determine the matters set out in clause 6.3 for the purpose of the Order and the Contractor must perform its obligations under the Order in accordance with this Minor Works Contract.
- 6.7 The Principal is not obliged to issue Orders or otherwise request works under this Minor Works Contract.
- 6.8 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, however the Principal must pay for any works performed by the Contractor in accordance with this Minor Works Contract prior to the date the cancellation is notified to the Contractor, with such payment to be calculated in accordance with clause 39.2.

## **7 Quality and description of the Works**

- 7.1 Unless otherwise provided the Contractor must use suitable new materials and proper and tradesmanlike workmanship in performing the WUC, with such materials to be of merchantable quality and all materials and workmanship to comply with all relevant legislative requirements and Australian Standards.
- 7.2 If this Minor Works Contract elsewhere requires further quality assurance, the Contractor must:
- (a) plan, establish and maintain a conforming quality system; and
  - (b) ensure that the Principal's Representative has access to the quality system of the Contractor and subcontractors so as to enable monitoring and quality auditing.

- 7.3 Any quality system under clause 7.2 is to be used only as an aid to achieving compliance with this Minor Works Contract and to document such compliance and does not discharge the Contractor's other obligations under this Minor Works Contract.
- 7.4 If the Principal's Representative becomes aware of work done (including material provided) by the Contractor which does not comply with this Minor Works Contract, the Principal's Representative must as soon as practicable give the Contractor written details of such non-compliance.
- 7.5 If the work referred to in clause 7.4 has not been rectified, the Principal's Representative may Direct the Contractor to do any one or more of the following (including times for commencement and completion):
- (a) remove the material from the Site;
  - (b) demolish the work;
  - (c) reconstruct, replace or correct the work; and
  - (d) not deliver material to the Site.
- 7.6 If the Contractor fails to comply with a Direction under clause 7.5 and that failure has not been made good within 8 days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work rectified by others, the Principal may have that work so rectified and the Principal's Representative must certify the cost incurred as moneys due from the Contractor to the Principal.
- 7.7 Instead of a Direction pursuant to clause 7.5, the Principal's Representative may Direct the Contractor that the Principal elects to accept the subject work, whereupon there shall be a deemed Variation.
- 7.8 The Principal's Representative may give a Direction pursuant to this clause 7 at any time before the expiry of the last Defects Liability Period.

## **8 Inspection and information**

- 8.1 The Contractor must provide to the Principal at its request:
- (a) copies of all Design Documents relating to the WUC which are to be provided under this Minor Works Contract;
  - (b) a Construction Program for the WUC which are to be provided under this Minor Works Contract;
  - (c) progress reports setting out in such detail as the Principal requires the status of the design, construction and performance of the WUC which are to be provided under this Minor Works Contract; and
  - (d) any other information and assistance required to identify, evaluate, implement and report on any matter required by Law, in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Minor Works Contract.
- 8.2 At all reasonable times, the Principal has the right to inspect, examine and test the WUC.
- 8.3 The Contractor must ensure that the Principal and the Principal's Personnel are provided with access to the Site to allow them to review, examine and witness performance of the WUC.
- 8.4 If, as a result of the Principal's review, inspection, examination or testing, the Principal is not satisfied that the Works will comply in all respects with this Minor Works Contract and the Principal informs the Contractor in writing of its dissatisfaction, the Contractor agrees to take such steps (at the Contractor's sole cost and expense) as are necessary to ensure compliance with this Minor Works Contract.
- 8.5 Any review, inspection, examination or testing that the Principal undertakes does not relieve the Contractor of its responsibilities under this Minor Works Contract.
- 8.6 The Contractor must ensure that the Principal's rights set out in this clause 8 are included in any subcontract entered into by the Contractor in respect of the performance of the WUC.

## **9 Site**

- 9.1 The Contractor represents and warrants that before the Commencement Date, the Contractor has:
- (a) had access to the Site;
  - (b) carried out its own inspections of the Site and the Environment;
  - (c) carried out all necessary tests; and
  - (d) conducted its own enquiries,

in order to establish, understand and satisfy itself as to the nature and status of:

- (e) the Site and the Environment; and
- (f) all risks and contingencies associated with the Site and the Environment,

including but not limited to:

- (i) the condition and position of, and possible affectation to, adjacent buildings and adjacent sites; and
- (ii) the surface and subsurface conditions and characteristics of both the Site and those adjacent buildings and sites.

- 9.2 If the Contractor has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, then the Contractor acknowledges that there will be no adjustment to the Contract Sum or Date for Practical Completion, except as expressly stated in this Minor Works Contract.
- 9.3 The Contractor accepts sole responsibility for, and assumes the risk of, all loss, delay and disruption arising out of the physical conditions and characteristics of the Site and the Environment.
- 9.4 Without limiting clauses 9.1, 9.2 and 9.3, the Contractor accepts sole responsibility for, and assumes the risk of, all loss, delay and disruption arising out of or in connection with all Contamination in, under or around the Site and the Environment which came into existence after the Commencement Date.
- 9.5 From the Commencement Date until the Date of Practical Completion, the Principal must provide the Contractor with non-exclusive access to or possession of the Site, which shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out the WUC.
- 9.6 The Contractor must, in performing the WUC, comply with the Principal's rules, procedures and practices, including the:
- (a) Site Standards and Procedures;
  - (b) Specifications;
  - (c) safety requirements set out in this Minor Works Contract;
  - (d) Environmental requirements set out in this Minor Works Contract and the Environmental Laws; and
  - (e) any other policies set out in the Contract Specifics.
- 9.7 Except and only to the extent permitted by the relevant municipal, public or statutory authority, the Contractor must not cause Pollution to occur or obstruct or damage the Environment.
- 9.8 The Contractor must immediately remove and make good any Pollution to the Environment caused by the Contractor or the Contractor's Personnel or as a consequence of, or incidental to, the performance of the WUC.
- 9.9 If the Contractor fails to comply with its obligations under clause 9.8:
- (a) the Principal may have the remedial work carried out by third parties and the cost of doing so shall be a debt due and payable on demand by the Contractor to the Principal; and
  - (b) the Contractor indemnifies the Principal against any loss, cost, damage or expense (including any fine or penalty imposed by any statutory authority) which the Principal may incur as a consequence of that failure, with the amount of such loss, cost, damage or expense to be a debt due and payable on demand by the Contractor to the Principal.
- 9.10 In addition to any other provision in this Minor Works Contract, the Contractor acknowledges that it is fully responsible for and must bear all costs associated with the removal and disposal of any Pollution including any hazardous material encountered in the execution of the WUC.

## **10 Latent conditions**

10.1 The following words have the following meanings in this clause 10:

**"Latent conditions"** means physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the Tender if the Contractor had inspected:

- (a) all written information made available by the Principal to the Contractor for the purpose of tendering;

- (b) all information influencing the risk allocation in the Tender and reasonably obtainable by the making of reasonable enquiries;
- (c) the Site Information; and
- (d) the Site and its near surrounds.

**“Site Information”** means any information relevant to the physical conditions of the Site and its near surrounds which is supplied or made available to the Contractor by or on behalf of the Principal whether or not the information comprises part of this Minor Works Contract.

10.2 For the purposes of this clause 10:

- (a) the Contractor is deemed to have (prior to entering into this Minor Works Contract):
  - (i) examined the Site and its surroundings and to have taken all necessary tests and made all necessary inquiries to satisfy itself as to the nature of the physical conditions and characteristics of the Site, including but not limited to the condition and position of, and possible affectation to, adjacent buildings and adjacent sites and the surface and subsurface conditions and characteristics of both the Site and those adjacent buildings and adjacent sites; and
  - (ii) reviewed the Site Information; and
- (b) the Contractor acknowledges and agrees that the:
  - (i) Principal makes no warranties and gives no guarantee as to the sufficiency or accuracy of the Site Information; and
  - (ii) provision of the Site Information will not give rise to any entitlement even if the Site Information proves to be inaccurate, incomplete or inadequate for any reason.

10.3 The Contractor, upon becoming aware of a Latent Condition while carrying out WUC, must promptly (and in any event within 2 Business Days), and where possible before the Latent Condition is disturbed, give the Principal's Representative written notice of the general nature of the Latent Condition.

10.4 If required by the Principal's Representative, promptly after receiving the notice referred to in clause 10.3, the Contractor must, as soon as practicable (and in any event within 5 Business Days), give the Principal's Representative a written statement of:

- (a) the Latent Condition encountered and the respects in which it differs materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the Tender;
- (b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition; and
- (c) other details reasonably required by the Principal's Representative.

10.5 Subject to the Contractor having given the notice required by clause 10.3 and any statement required by the Principal's Representative under clause 10.4 (if applicable), the effect of the Latent Condition shall be a deemed Variation, priced having no regard to additional cost incurred more than 14 days before the date on which the Contractor gave the notice required by clause 10.3 but so as to include the Contractor's other costs for each compliance with clause 10.3 and 10.4.

## **11 Setting out the Works**

- 11.1 The Principal must ensure that the Principal's Representative gives the Contractor the data, survey marks and like information necessary for the Contractor to set out the Works, together with any survey marks specified in this Minor Works Contract.
- 11.2 Subject to clause 11.1, the Contractor shall set out the Works in accordance with this Minor Works Contract.
- 11.3 The Contractor must rectify every error in the position, level, dimensions or alignment of any WUC after promptly notifying the Principal's Representative and unless the Principal's Representative within 3 days Directs otherwise.
- 11.4 If the error referred to in clause 11.3 was caused by incorrect data, survey marks or information given by the Principal's Representative, the cost incurred by the Contractor in rectifying the error must be assessed by the Principal's Representative and added to the Contract Sum.

- 11.5 The Contractor shall keep in their true positions all survey marks supplied by the Principal's Representative.
- 11.6 The Contractor must reinstate any survey mark disturbed, after promptly notifying the Principal's Representative and unless the Principal's Representative within 3 days directs otherwise.
- 11.7 If the disturbance referred to in clause 11.6 was caused by the Principal's Representative or a person referred to in clause 24.5 other than the Contractor or the Contractor's Personnel, the cost incurred by the Contractor in reinstating the survey mark shall be assessed by the Principal's Representative and added to the Contract Sum.

## **12 Cleaning up**

- 12.1 The Contractor must keep the Site and WUC clean and tidy and regularly remove rubbish and surplus material.
- 12.2 Within 14 days after the Date of Practical Completion (or such longer period as the Principal's Representative allow), the Contractor must remove Temporary Works and Construction Plant.
- 12.3 If the Contractor fails to comply with the obligations in clause 12.1 or 12.2, the Contractor's Representative may Direct the Contractor to rectify the non compliance and the time for such rectification.
- 12.4 If:
- (a) the Contractor fails to comply with a Direction under clause 12.3; and
  - (b) that failure has not been made good within 5 days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work carried out by others,
- the Principal may have that work so carried out and the Principal's Representative must certify the cost incurred as moneys due from the Contractor to the Principal.
- 12.5 The rights given by clause 12.4 are additional to any other rights and remedies.

## **13 Plant and equipment**

- 13.1 Unless otherwise provided in this Minor Works Contract, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or any other property and items the Contractor requires to comply with its obligations under this Minor Works Contract.
- 13.2 Any plant, equipment, tools, appliances or any other property and items listed in the Contract Specifics which the Principal provides to the Contractor to enable the Contractor to perform its obligations under this Minor Works Contract will remain the Principal's property and must only be used by the Contractor for the purpose of complying with its obligations under this Minor Works Contract.
- 13.3 The Contractor must keep the Principal's property in good order and condition.
- 13.4 All plant, machinery and equipment used in connection with the performance of the WUC must be maintained in a fully serviced and safe condition in accordance with all relevant Laws and the Principal's requirements. The Contractor must remove immediately from the Site and repair, replace or improve at its own expense any vehicle or piece of plant, machinery or equipment which in the opinion of the Principal's Representative does not meet the requirements of this clause 13.4 or is unroadworthy or otherwise incapable of satisfactorily performing the WUC.

## **14 Price**

- 14.1 The Principal agrees to pay the Contractor the Contract Sum for the Works in accordance with clause 15.
- 14.2 Except as otherwise expressly provided in this Minor Works Contract, the Contract Sum is inclusive of all direct and indirect costs incurred by the Contractor in complying with its obligations under this Minor Works Contract, including:
- (a) all charges for packaging, packing and delivery;
  - (b) fees and levies;
  - (c) labour, machines and materials;
  - (d) mobilisation, demobilisation and establishment charges;
  - (e) office costs;

- (f) transportation, travel, vehicles and equipment;
- (g) costs of insurances and other securities; and
- (h) all Taxes.

## **15 Invoicing and payment**

- 15.1 The Contractor must claim payment progressively in accordance with the Contract Specifics.
- 15.2 An early Progress Claim will be deemed to have been made on the date for making that claim.
- 15.3 Each claim for payment under this clause 15 (“**Progress Claim**”) must be given in writing to the Principal’s Representative and must include details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to provisions of this Minor Works Contract.
- 15.4 Within 10 Business Days of receipt of a Progress Claim under clause 15.1, the Principal’s Representative must assess the claim and issue to the Contractor a payment certificate (“**Payment Certificate**”) stating the amount of the payment which, in the Principal’s Representative’s opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal (as applicable). The Principal’s Representative must set out in the Payment Certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor in its Progress Claim, the reasons for the difference. The Principal’s Representative must also set out, as applicable, in any Payment Certificate issued pursuant to this clause 15.4, the allowances made for:
  - (a) the value of work carried out by the Contractor in the performance of this Minor Works Contract to the date of the Progress Claim;
  - (b) amounts otherwise due from:
    - (i) the Principal to the Contractor; and
    - (ii) the Contractor to the Principal;arising from any circumstances prior to the date of the Payment Certificate; and
  - (c) amounts paid previously under this Minor Works Contract, arising out of the Minor Works Contract, resulting in there being an amount due to the Contractor or the Principal, as the case may be.
- 15.5 If the Contractor fails to make a Progress Claim under clause 15.1, the Principal’s Representative may nevertheless issue a Payment Certificate and the Principal or the Contractor, as the case may be, must pay the amount so certified within 10 Business Days of the issue of that Payment Certificate.
- 15.6 The Principal’s Representative may at any time issue a Payment Certificate (including for the purposes of correcting any error in a previous Payment Certificate) whether or not at a time otherwise provided for the issuing of Payment Certificates under this Minor Works Contract and the Principal or the Contractor, as the case may be, must pay the amount so certified within the agreed payment terms.
- 15.7 Subject to the provisions of this Minor Works Contract, within 10 Business Days of issue by the Principal’s Representative of a Payment Certificate, the Principal must pay to the Contractor or the Contractor must pay to the Principal, as the case may be, an amount not less than the amount shown in such Payment Certificate as due to the Contractor or to the Principal, as the case may be. A payment made pursuant to this clause 15.7 will not prejudice the right of either party to dispute under clause 43 whether the amount so paid is the amount properly due and payable and on determination (whether under clause 43 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.
- 15.8 Neither a Payment Certificate nor a payment of moneys will be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under clause 15.10.
- 15.9 Within 28 days after the last to occur of the expiry of the last Defects Liability Period or the rectification by the Contractor of all Defects in accordance with clause 31, the Contractor must give the Principal’s Representative a written Final Payment Claim endorsed ‘Final Payment Claim’ being a Progress Claim together with all other claims whatsoever in connection with the subject matter of this Minor Works Contract.
- 15.10 Within 20 days after receipt of the Final Payment Claim, the Principal’s Representative must issue to both the Contractor and the Principal a Final Certificate evidencing the moneys finally due and payable

between the Contractor and the Principal on any account whatsoever in connection with the subject matter of this Minor Works Contract. If the Contractor fails to lodge a Final Payment Claim within the 28 day period referred to in this clause 15.10, the Principal's Representative may, in his or her discretion, issue a Final Certificate in accordance with this clause 15.10.

- 15.11 Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 7 days after the debtor receives the Final Certificate ("**Final Payment**").
- 15.12 The Final Certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of this Minor Works Contract except for:
- (a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the Final Certificate;
  - (b) any Defect or omission in the Works or any part thereof which was not known by the Principal at the time of the issue of the Final Certificate;
  - (c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
  - (d) unresolved issues the subject of any notice of dispute pursuant to clause 43.1, served before the 7th day after the issue of the Final Certificate.
- 15.13 Interest as specified in the Contract Specifics will be due and payable after the date of default in payment.
- 15.14 The Principal may deduct from any moneys otherwise due to the Contractor:
- (a) any debt or other moneys due from the Contractor to the Principal; and
  - (b) any claim to money which the Principal may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,
- under this Minor Works Contract, and if the moneys due to the Contractor are insufficient to discharge the debt or claim, the Principal may have recourse to any Security provided by the Contractor.
- 15.15 The rights given to the Principal under clause 15.14 are in addition to and do not limit or affect any other rights of the Principal under this Minor Works Contract or at law and nothing in this clause 15.15 affects the right of the Principal to recover from the Contractor the whole of the debt or claim in question or any balance that remains owing.
- 15.16 Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under clause 15.14 will not prejudice the Principal's right to subsequently exercise its right of deduction under clause 15.14.
- 15.17 Clauses 15.14 to 15.17 will survive any termination of this Minor Works Contract.

## **16 Payment of workers and subcontractors**

- 16.1 The Contractor must give in respect of a Progress Claim, documentary evidence satisfactory to the Principal's Representative of the payment of moneys due and payable to the Contractor's Personnel in respect of the WUC the subject of that claim.
- 16.2 Subject to clause 16.2, the Principal may withhold moneys certified due and payable in respect of a Progress Claim until the Contractor complies with clause 16.1.
- 16.3 The Principal must not withhold payment of moneys referred to in clause 16.2 in excess of the moneys evidenced pursuant to subclause 16.1 as due and payable to workers and subcontractors.
- 16.4 Before Final Payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Act) may pay unpaid moneys the subject of subclause 16.1 directly to a worker or a subcontractor where:
- (a) permitted by Law;
  - (b) given a court order in favour of the worker or subcontractor; or
  - (c) requested in writing by the Contractor,

and such payment and a payment made to a worker or subcontractor in compliance with a legislative requirement will be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to clause 15.4 or 15.10, as the case may be.

## 17 GST

- 17.1 Unless expressly stated otherwise, the consideration specified in this Minor Works Contract does not include any amount for GST.
- 17.2 If a supply under this Minor Works Contract is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.
- 17.3 The additional amount referred to in clause 17.2 is payable at the same time as the consideration for the supply is payable or to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice for the supply.
- 17.4 If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.
- 17.5 If a party is entitled to be reimbursed or indemnified under this Minor Works Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- 17.6 In this clause 17 the following words have the following meanings:
- “Amount of the Consideration”** means:
- (a) the amount of any payment in connection with a supply; and
  - (b) in relation to non-monetary consideration in connection with a Supply, the GST Exclusive Market Value of that consideration as reasonably determined by the supplier.
- “GST Exclusive Value”, “Input Tax Credit”, “recipient”, “supply”, and “Tax Invoice”** have the meanings given to them in the GST Act.
- “supplier”** means the person making a supply.

## 18 Appointment of Principal Contractor (Where applicable)

- 18.1 The Contractor acknowledges that it is authorised to be and is appointed as the Principal Contractor for the purposes of the WHS Legislation.
- 18.2 The Contractor acknowledges that it is authorised by the Principal to have management and control of the Site and discharge the duties of a Principal Contractor under WHS Legislation.

## 19 Work Health and Safety

- 19.1 The Contractor acknowledges that the Principal is relying on the Contractor’s skill and experience in the WUC and the Works to perform the Contract safely and in accordance with the WHS Requirements.
- 19.2 The Contractor must ensure that the Contractor’s Personnel:
- (a) are competent and have the necessary skills, qualifications, licences and experience to perform their work safely;
  - (b) understand and will comply with the WHS Requirements when providing the WUC and the Works.
- 19.3 The Contractor must ensure that it has adequate oversight of the Contractor’s Personnel to monitor if they are working safely and in accordance with the WHS Requirements when providing the WUC and the Works.
- 19.4 The Contractor warrants that it:
- (a) has, or will within 30 days of the date of this Contract develop, a health and safety management plan specific to the provision of the WUC and the Works (HSMP) that complies with the WHS Requirements;
  - (b) will maintain and update the HSMP to ensure it is, and remains, fit for purpose over the life of the Contract; and
  - (c) will ensure WHS when providing the WUC and the Works is managed in accordance with the HSMP and WHS Requirements.
- 19.5 The Contractor must immediately notify the Principal of:
- (a) each Notifiable WHS Incident; and/or
  - (b) any investigation or enforcement action taken by a WHS Regulator or other third-party, including:

- (i) the issue of any improvement, prohibition or any other statutory notice related to WHS; and/or
  - (ii) proceedings under WHS Legislation;
- 19.6 The Contractor must give the Principal a copy of any notification sent to a WHS Regulator or other third-party because of a Notifiable WHS Incident within 24 hours of sending the notification to the WHS Regulator.
- 19.7 If requested by the Principal, the Contractor must give the Principal a copy of:
- (a) all documents the Contractor is required to provide to a WHS Regulator or other third-party in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party;
  - (b) all documents a WHS Regulator or other third party sends to the Contractor in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party; and
  - (c) any other document in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third-party.
- 19.8 The Principal may, but is not required to:
- (a) investigate any Notifiable WHS Incident; and/or
  - (b) participate in an investigation of a Notifiable WHS Incident conducted by the Contractor.
- 19.9 The Contractor must cooperate with the Principal and help facilitate the Principal's investigation, if the Principal chooses to independently investigate any Notifiable WHS Incident. This includes but is not limited to, providing the Principal with full access to conduct the investigation, including access to any premises, plant, equipment or records.
- 19.10 The Principal may, but is not required to, request the Contractor to provide evidence that the Contractor is complying with its WHS obligations, and to assist the Principal to comply with its WHS obligations, including:
- (a) providing the Principal with a copy of the HSMP or any WHS plan, procedure, incident report, Safe Work Method Statement, investigation or other document, data or report; and
  - (b) allowing the Principal to audit the WUC and the Works; and
  - (c) providing, at the Contractor's expense, an independent audit or review of WHS management in relation to the WUC and the Works.
- 19.11 The Principal may, but is not required to, give directions to the Contractor about WHS matters, including a direction to stop providing the WUC and the Works if the Principal reasonably believes the provision of the WUC and the Works is unsafe or in breach of the WHS Requirements, and the Contractor and the Contractor's Personnel must comply with those directions.

## **20 Construction Contracts Act**

- 20.1 This clause 20 applies where this Minor Works Contract is subject to the Construction Contracts Act.
- 20.2 The Contractor must:
- (a) promptly give the Principal and the Principal's Representative a copy of any notice the Contractor receives from a Subcontractor under section 26, 27 or 42 of the Construction Contracts Act; and
  - (b) ensure that each Subcontractor promptly gives the Principal and the Principal's Representative a copy of any notice that the Subcontractor receives from any other person under any of sections 26, 27 or 42 of the Construction Contracts Act.
- 20.3 If the Contractor becomes aware that a Subcontractor is entitled to suspend work under section 42 of the Construction Contracts Act, the Principal may pay the Subcontractor such money that is, or may be, owing to the Subcontractor for work forming part of the performance of the WUC, and any amount paid by the Principal is recoverable from the Contractor as a debt due and payable by the Contractor to the Principal on demand.
- 20.4 Any loss, cost, damage, liability or expense of any nature (including legal costs) suffered or incurred by the Principal arising out of or in connection with:
- (a) a suspension by a Subcontractor of work which forms part of the performance of WUC under section 42 of the Construction Contracts Act; or
  - (b) failure by the Contractor to comply with this clause 20,

will be recoverable from the Contractor as a debt due and payable by the Contractor to the Principal on demand.

20.5 Where this Minor Works Contract is subject to the Construction Contracts Act, the appointor for the purposes of the Construction Contracts Act is The Institute of Arbitrators & Mediators Australia.

## 21 Performance of the Works

21.1 The Contractor must commence WUC on the Works Start Date.

21.2 The Contractor must perform WUC:

- (a) exercising due care, skill and judgment and using its best endeavours;
- (b) in accordance with Best Industry Practices;
- (c) in an efficient, professional and cost effective manner in accordance with all applicable Standards (including the Site Standards and Particulars); and
- (d) in accordance with this Minor Works Contract and all guidelines, procedures and directions made by the Principal under this Minor Works Contract.

21.3 The Contractor must perform the Works with due diligence so as to complete WUC by the Date for Practical Completion.

21.4 The Contractor must and must procure that the Contractor's Personnel, comply with all applicable Laws and the requirements of any Government Agency and must ensure that the Contractor's Personnel possess all relevant authorisations, permits and Licences to perform the obligations on them under this Minor Works Contract.

21.5 Without limiting clauses **Error! Reference source not found.** and 21.4, the Contractor must comply with:

- (a) all applicable WHS and environmental laws, guidelines and codes of practice including, without limitation, WHS Legislation.
- (b) all WHS and environmental guidelines, rules and procedures provided to the Contractor by the Principal, including under clause **Error! Reference source not found.**;
- (c) any performance instructions set out in the Contract Specifics; and
- (d) the Specifications including all WHS and environmental guidelines, rules and procedures set out in the Specifications.

21.6 If a Law is at variance with a term of this Minor Works Contract, the Contractor must notify the Principal in writing. If such Law necessitates a change to the Works and/or the way in which they must be provided, the Principal may Direct the Contractor as to how the inconsistency must be addressed. Such inconsistency will be at the Contractor's risk and the Direction will not entitle the Contractor to any adjustment of the Contract Sum or to make any other claim for relief.

21.7 The Contractor must promptly comply with any Directions given by the Principal's Representative, including Directions with respect to the Site, security and Environment.

21.8 The Principal may, at any time, request the Contractor to provide the Principal with evidence of compliance with its obligations under clauses 21.4 and 21.5 and the Contractor must comply with such request as soon as reasonably practical after receipt.

21.9 If the Contractor is unable or fails (for whatever reason) to perform the WUC in accordance with this Minor Works Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Contract Sum which relates to the relevant WUC), procure the performance of such works from a third party ("**Alternative Performance**").

21.10 If the Principal exercises its rights under clause 21.9 to procure Alternative Performance, the Contractor is responsible for any incremental costs to the Principal associated with sourcing the Alternative Performance, except where the reason for the inability to perform the WUC was:

- (a) due to an Event of Force Majeure; or
- (b) as a direct result of any default of the Principal.

21.11 The Contractor represents and warrants to the Principal that the Contractor will:

- (a) at all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Contractor in the performance and completion of the Works (including all design);
- (b) engage and retain the Contractor's Personnel who are suitably qualified and experienced in works of a similar nature to the Works;
- (c) develop and complete the Design Documents so that they are accurate, suitable, appropriate and adequate for the Intended Purpose, taking into account the Site and the Environment; and
- (d) perform and complete WUC in accordance with the Design Documents so that when completed, the Works will be fit for the Intended Purpose and be in accordance with this Minor Works Contract and all Laws.

## **22 Construction Program**

- 22.1 The Contractor must prepare and submit to the Principal's Representative its proposed Construction Program in a form acceptable to the Principal for approval by the Principal within 10 Business Days following the Commencement Date (or where this Minor Works Contract is identified as a Framework Agreement in the Contract Specifics, within 5 Business Days of an Order).
- 22.2 The Construction Program must be drawn as a critical path network in the form of a time scaled bar chart:
  - (a) showing key dates; and
  - (b) on a weekly basis with each week ending on the Sunday evening.
- 22.3 The critical path network must consist of appropriate activities or tasks numbered in a sequential logical order and of sufficiently small duration to represent accurately the Contractor's proposed method of completing the WUC, and must clearly mark the critical path.
- 22.4 The Construction Program must take into account the requirements and any program constraints set out in the Specifications.
- 22.5 Once approved by the Principal's Representative, the Contractor must comply with the Construction Program. If the Contractor considers an amendment to the Construction Program is required, the Contractor must submit an updated Construction Program to the Principal's Representative and, once approved, the updated Construction Program is the Construction Program for the purposes of this Minor Works Contract.
- 22.6 The Principal's Representative may Direct in what order and at what time the various stages or portions of the WUC shall be carried out. If the Contractor can reasonably comply with the Direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must give the Principal's Representative written notice of the reasons within 5 days of the Direction. If compliance with any such Direction under this clause 22.6, except those pursuant to the Contractor's default, causes the Contractor to incur more or less cost than would otherwise have been incurred had the Contractor not been given the Direction, then the difference must be assessed by the Principal's Representative and added to or deducted from the Contract Sum.
- 22.7 Each week, or as otherwise Directed by the Principal's Representative, the Principal's Representative and the Contractor must meet at the Site (at a time and date advised by the Principal's Representative) to review the progress of the WUC.
- 22.8 At each meeting referred to in clause 22.7, the Contractor must provide to the Principal's Representative a report in the form advised by the Principal from time to time.

## **23 Contractor's Personnel**

- 23.1 The Principal may Direct the Contractor to replace any Personnel on the Site, if that personnel is:
  - (a) guilty of misconduct or lack of care or diligence;
  - (b) incompetent to carry out its duties or is negligent;
  - (c) fails to conform with any of the provisions of this Minor Works Contract; or
  - (d) persists in any conduct which is contrary to the Principal's WHS and environmental management requirements.

## **24 Cooperation**

- 24.1 The Contractor acknowledges that all contractual communications between the Contractor and those third parties responsible for carrying out any Related Works must be directed through the Principal.
- 24.2 In performing the WUC, the Contractor must:
- (a) take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the WUC (including the work of any Subcontractors) with the Related Works; and
  - (b) not carry out the WUC in a manner which may cause damage to, or inconvenience the execution of, the Related Works, and at all times take all necessary steps to protect the WUC from accidental damage caused by the Related Works.
- 24.3 The Contractor accepts that it has an obligation to ensure the accuracy of information provided by the Contractor to those responsible for carrying out the Related Works and to act in accordance with detailed information provided by those responsible for carrying out the Related Works.
- 24.4 If the Contractor fails to comply with this clause 24 and additional work or any alterations or remedial work to either the WUC or the Related Works becomes necessary as a result, the additional costs, if any, will be a debt due and payable on demand from the Contractor to the Principal.
- 24.5 The Contractor must permit the Principal, the Principal's Representative and the Principal's Personnel to carry out any work on the Site (other than the WUC) and must cooperate with them.

## **25 Examination and testing**

- 25.1 At any time before the expiry of the last Defects Liability Period, the Principal's Representative may direct that any WUC be tested and the Contractor must give such assistance and samples and make accessible such parts of the WUC as may be Directed by the Principal's Representative.
- 25.2 The Principal's Representative may Direct that any part of the WUC must not be covered up or made inaccessible without the Principal's Representative's prior written direction.
- 25.3 Tests must be conducted as provided elsewhere in this Minor Works Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.
- 25.4 The Principal's Representative or the Contractor (whichever is to conduct the Test) must give reasonable written notice to the other of the date, time and place of the Test. If the other does not attend, the Test may nevertheless proceed.
- 25.5 Without prejudice to any other right, if the Contractor or the Principal's Representative delays in conducting a Test, the other, after giving reasonable written notice of intention to do so, may conduct the Test.
- 25.6 On completion of the Tests, the Contractor must make good WUC so that the WUC fully comply with this Minor Works Contract.
- 25.7 Results of Tests must be promptly made available by each party to the other and to the Principal's Representative.
- 25.8 Costs in connection with testing pursuant to this clause will be borne by the Principal except where this Minor Works Contract otherwise provides or the Test is consequent upon, or reveals a failure of the Contractor to comply with this Minor Works Contract (including this clause).

## **26 Damage and protection**

- 26.1 Insofar as compliance with this Minor Works Contract permits, the Contractor must in performance of the WUC:
- (a) take measures necessary to protect people and property;
  - (b) avoid unnecessary interference with the passage of people and vehicles; and
  - (c) prevent nuisance and unreasonable noise and disturbance.
- 26.2 If the Contractor or the Contractor's Personnel damage any property, including property on or adjacent to the Site in performance of the WUC, the Contractor must promptly:
- (a) make good the damage; and

- (b) pay any compensation which the Contractor is required to pay under this Minor Works Contract or under any Law.
- 26.3 If the Contractor fails to comply with clause 26.2, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.
- 26.4 If urgent action is necessary to protect the WUC, other property or people and the Contractor fails to take such action, then in addition to any other remedies the Principal may have, the Principal or the Principal's Representative may take the necessary action and the reasonable costs incurred by the Principal or the Principal's Representative will be a debt due and payable immediately from the Contractor to the Principal.
- 26.5 Except as provided in clause 26.7, the Contractor will be responsible for care of:
- (a) the whole of the WUC, including without limitation unfixed items accounted for in Progress Claims and things entrusted to the Contractor by the Principal or brought onto the Site by Subcontractors, from and including the Commencement Date to 4.00 pm on the Date of Practical Completion, at which time responsibility will pass to the Principal; and
  - (b) outstanding WUC and items to be removed from the Site by the Contractor after 4.00 pm on the Date of Practical Completion until completion of any outstanding WUC.
- 26.6 If loss or damage, other than that specified under clause 26.7, occurs to WUC during the period of the Contractor's care, the Contractor shall rectify such loss or damage at its cost. If loss or damage is caused under clause 26.7, at the direction of the Principal's Representative the Contractor must rectify the loss or damage and such rectification will be deemed a Variation.
- 26.7 The risks causing loss or damage for which the Principal is liable are:
- (a) any negligent act or omission of the Principal, the Principal's Representative or the Principal's Personnel;
  - (b) any risk specifically excepted elsewhere in this Minor Works Contract;
  - (c) Events of Force Majeure not caused by the Contractor or the Contractor's Personnel;
  - (d) use or occupation of any part of the Works by the Principal or the Principal's Personnel; and
  - (e) defects in the design of the Works, other than design provided by the Contractor.

## **27 Variations**

- 27.1 The Contractor must not vary the WUC except as Directed by the Principal's Representative in accordance with this clause 27.
- 27.2 Subject always to Regulation 21A of the Regulations, the Principal's Representative may at any time before the Date of Practical Completion in its absolute discretion, Direct the Contractor to alter, amend, omit, add to or otherwise vary the WUC ("**Variation Direction**") and the Contractor must carry out and be bound by any such variations, subject to the terms of this clause 27 and provided that they are of a character and extent contemplated by, and capable of being carried out under, the provisions of this Minor Works Contract.
- 27.3 Within 5 Business Days of receipt of the Variation Direction, and before the Contractor carries out the Variation, the Contractor must provide to the Principal a variation proposal ("**Variation Proposal**"). The Variation Proposal must specify:
- (a) the effect the Contractor anticipates the proposed Variation will have on the Date for Practical Completion and the Contract Sum (if any); and
  - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 27.4 If the Contractor requests the Principal's Representative to Direct a Variation for the convenience of the Contractor, the Principal's Representative may do so and the Direction must be in writing and may be conditional. Unless the Direction provides otherwise, the Contractor will be entitled to neither an extension of time nor extra money.
- 27.5 The Principal's Representative may Direct the Contractor to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost, in which case the Contractor's costs for each compliance with such Direction will be certified by the Principal's Representative as moneys due to the Contractor.

- 27.6 The Principal's Representative is not obliged to Direct a Variation after receiving a Variation Proposal from the Contractor.
- 27.7 If the parties agree on the terms of the Variation Proposal, the Principal's Representative may Direct a Variation specifying the details of such Variation and this Minor Works Contract will be varied accordingly.
- 27.8 Any Variation which is the subject of a Variation Order must be included in the next Progress Claim after completion of all of the WUC the subject of that Variation Order, and paid in accordance with clause 15.
- 27.9 If the parties are unable to agree on:
- (a) the price for the Variation in a Variation Proposal within 10 Business Days of the Principal's receipt of the Variation Proposal, then the Variation must be valued by the Principal's Representative on the basis of the rates and prices (including any Schedule of Rates), or if there are no applicable rates or prices set out, using reasonable rates or prices having regard to all circumstances the Principal's Representative considers relevant; or
  - (b) the impact of the Variation on the Date for Practical Completion, then the Principal's Representative must determine such impact (if any) and any necessary amendment to the Date for Practical Completion,
- and the Principal must provide such determination by notice in writing to the Contractor, which notice will constitute a Variation to this Minor Works Contract (subject to clause 27.12).
- 27.10 No Variation issued in accordance with this clause 27 vitiates or invalidates this Minor Works Contract.
- 27.11 A Variation under this clause 27 may involve the omission of any part or parts of the WUC and the Contractor agrees that the Principal may engage others to supply or perform that part or parts so omitted. The Contractor acknowledges that any one or more omissions do not constitute a basis to allege that the Principal has repudiated this Minor Works Contract notwithstanding the extent or timing of the omission.
- 27.12 If the Contractor does not accept the determination of the Principal's Representative under clause 27.9, the Contractor may, by notice in writing to the Principal, raise this as a Dispute to be resolved in accordance with the process set out in clauses 43.2 to 43.5, or if the Dispute is not resolved by that process, in accordance with the Expert determination process in clause 44.
- 27.13 The Contractor acknowledges that the Principal is not liable for or in connection with any loss incurred by the Contractor arising out of or in connection with any Variation to the WUC. The Contractor is not entitled to any payment (pursuant to this Minor Works Contract or otherwise at common law, equity, statute or code) in relation to any Variation unless the Contractor has been Directed to carry out the Variation pursuant to clause 27.2.

## **28 Time and progress**

### **Progress**

- 28.1 The Contractor must ensure that WUC reach Practical Completion by the Date for Practical Completion.

### **Principal's Representative may extend**

- 28.2 The Principal's Representative may, at any time, from time to time and for any reason, by notice in writing to the Contractor, Direct an extension of time for carrying out the WUC (including reaching Practical Completion) ("**EOT**"). The Principal's Representative is under no obligation to exercise this discretion fairly, reasonably or for the benefit of the Contractor, including where the Contractor is delayed by any cause listed in clause 28.5 but has failed to satisfy the requirements of clause 28.4.

### **Claim**

- 28.3 Notwithstanding clause 28.2, the Contractor will be entitled to an extension to the time for Practical Completion only when:
- (a) it can demonstrate that it has been delayed in reaching Practical Completion by a Qualifying Cause of Delay; and
  - (b) it has given all the notices strictly in accordance with the requirements of clauses 28.4 to 28.10.
- 28.4 The Contractor will not be entitled to an EOT for a particular delay unless it has satisfied the requirements of clause 28.3 in relation to that delay.
- 28.5 Subject to clauses 28.6 and 28.7 the Qualifying Causes of Delay are:

- (a) an Event of Force Majeure;
- (b) a direction for a Variation where a direction has been given by the Principal's Representative under clause 27.2;
- (c) an order of a court which restrains the Contractor from or disrupts the Contractor in carrying out the WUC (except where the order arises as a consequence of a breach of a duty owed at law by the Contractor to any person);
- (d) any act or omission of the Principal's Representative, the Principal or any of the Principal's Personnel which is not in breach of this Minor Works Contract;
- (e) any act or omission of the Principal's Representative, the Principal or any of the Principal's Personnel is in breach of this Minor Works Contract;
- (f) a suspension under clause 41; or
- (g) any other cause which is expressly stated in this Minor Works Contract to justify an EOT.

28.6 The causes referred to in clause 28.5 will only be a Qualifying Cause of Delay when the:

- (a) cause was beyond the reasonable control of the Contractor;
- (b) Contractor did not contribute to the cause; and
- (c) Contractor has taken all reasonable steps to mitigate the effect of the delay.

28.7 Within 7 days of it becoming evident to the Contractor that it has been or might be delayed in reaching Practical Completion, the Contractor must give the Principal's Representative notice in writing which contains full details of the cause of the delay, the date the delay might commence (or, if the delay has already commenced, the date the delay commenced), the estimated period of the delay and whether the Contractor will be making a claim for an EOT in relation to that delay.

28.8 Where the Contractor wishes to make a claim for an EOT and it is delayed by one cause for a period of 10 days or more then the Contractor must give the Principal's Representative the following written notices:

- (a) every 14 days from the commencement of the delay, a notice which contains full details of all the facts and matters on which the claim is based, including the date the delay commenced, the cause of the delay, the period of the delay already suffered and the estimated period of the delay; and
- (b) within 7 days of the date that the delay ceases, a notice which contains details of the notices already provided by the Contractor in relation to that delay (by identifying number or date), and full details of all the facts and matters on which the claim is based, including the cause of the delay, the date that the delay commenced, the date that the delay ceased and the claimed period of the EOT.

28.9 Where the Contractor wishes to make a claim for an EOT for a delay which is for a period of less than 10 days, then within 14 days of the commencement of the delay the Contractor must give the Principal's Representative a written notice which contains full details of all the facts and matters on which the claim is based including details of the cause of the delay, the date the delay commenced, the date that the delay ceased and the claimed period of the EOT.

28.10 A delay by the Principal or the failure of the Principal's Representative to grant a reasonable EOT will not cause the Date for Practical Completion to be set at large but nothing in this clause will prejudice any right of the Contractor to damages.

### **Assessment**

28.11 When both non qualifying and Qualifying Causes of Delay overlap, the Principal's Representative must apportion the resulting delay to WUC according to the respective causes' contribution.

28.12 In assessing each EOT the Principal's Representative must disregard questions of whether:

- (a) the WUC can nevertheless reach Practical Completion without an EOT; or
- (b) the Contractor can accelerate,

but must have regard to what prevention and mitigation of the delay has not been effected by the Contractor.

### **Extension of time**

- 28.13 Within 28 days after receiving the Contractor's claim for an EOT in respect of which the Contractor has an entitlement under clause 28.3, the Principal's Representative must give to the Contractor and the Principal a written Direction evidencing the EOT so assessed.
- 28.14 Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Principal's Representative may at any time and from time to time before issuing the Final Certificate, Direct an EOT.

### **Practical Completion**

- 28.15 The Contractor must give the Principal's Representative at least 14 days written notice of the date upon which the Contractor anticipates that Practical Completion will be reached.
- 28.16 When the Contractor is of the opinion that Practical Completion has been reached, the Contractor must in writing request the Principal's Representative to issue a Certificate of Practical Completion. Within 14 days after receiving the request, the Principal's Representative must give the Contractor and the Principal either a Certificate of Practical Completion evidencing the date of Practical Completion or written reasons for not doing so.
- 28.17 If the Principal's Representative is of the opinion that Practical Completion has been reached, the Principal's Representative may issue a Certificate of Practical Completion even though no request has been made.

### **Liquidated damages**

- 28.18 If WUC does not reach Practical Completion by the Date for Practical Completion, the Principal's Representative must certify, as due and payable to the Principal, liquidated damages specified in the Contract Specifics for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of this Minor Works Contract or the Principal taking the WUC out of the hands of the Contractor up to the limit (if any) set out in the Contract Specifics.
- 28.19 If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal must forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.
- 28.20 The parties agree that the liquidated damages provided for in clause 28.18 are a fair and reasonable pre-estimate of the losses likely to be sustained by the Principal as a result of the WUC not reaching Practical Completion by the Date for Practical Completion.
- 28.21 If the Principal is entitled to be paid liquidated damages under clause 28.18, this does not limit the Principal's right to enforce any other remedy it may have against the Contractor or relieve the Contractor from its obligations under this Minor Works Contract.

### **Delay damages**

- 28.22 For every day the subject of an EOT for any act, default or omission of the Principal's Representative, the Principal or the Principal's Personnel and for which the Contractor gives the Principal's Representative a claim for delay damages pursuant to clause 42.1, damages certified by the Principal's Representative under clause 42.7 will be due and payable to the Contractor.

## **29 Independent contractor**

Nothing in this Minor Works Contract constitutes a joint venture, agency or partnership or other fiduciary relationship between the Principal and the Contractor. The Contractor acknowledges that it has no authority to bind the Principal. At all times during the performance of this Minor Works Contract, the Contractor is an independent contractor and not an employee or agent of the Principal.

## **30 Warranties**

- 30.1 The Contractor represents and warrants that:
- (a) the Works will:
    - (i) be performed in accordance with this Minor Works Contract;
    - (ii) be performed with appropriate skill and care and to a high quality consistent with Best Industry Practices;
    - (iii) be fit for purpose;
    - (iv) meet the Site Standards and the Specifications; and

- (v) comply with all applicable Laws, Australian standards and codes; and
- (b) the Contractor:
  - (i) is suitably qualified and experienced in works of a similar nature to the Works, and shall exercise care, skill and diligence in the execution and completion of WUC;
  - (ii) will ensure that the Contractor's Personnel suitably qualified and experienced in works of a similar nature to the Works;
  - (iii) has carefully considered the Principal's requirements for the Works;
  - (iv) will execute and complete the WUC so that, when completed, the Works are fit for the purpose which the Works are intended and comply with the requirements of this Minor Works Contract and all Laws.

30.2 The Contractor represents and warrants that it is not aware of any claim for infringement of Intellectual Property Rights, including in relation to the Design Documents, or for the breach of any obligations of confidence, arising out of the performance of the WUC.

30.3 The Contractor further gives each of the Other Warranties in respect of WUC performed by the Contractor under this Minor Works Contract.

30.4 The Contractor represents and warrants that all of the statements, representations, facts and information contained in its Tender were true and accurate and not misleading (including by way of omission) as at the date the Tender was submitted.

### **31 Defects Liability Period**

31.1 The Defects Liability Period stated in the Contract Specifics will commence on the Date of Practical Completion at 4:00 pm.

31.2 As soon as possible after the Date of Practical Completion, the Contractor must rectify all Defects existing at the Date of Practical Completion.

31.3 During the Defects Liability Period, the Principal's Representative may give the Contractor a Direction to rectify a Defect which:

- (a) must identify the Defect and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there will be a separate Defects Liability Period for the rectified Defect (not exceeding the period of the Defects Liability Period specified in the Contract Specifics, commencing at 4:00 pm on the date the rectification is completed and governed by this clause 31).

31.4 The Contractor must carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

31.5 If the rectification is not commenced or completed by the dates stated in the Direction referred to in clause 31.3, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred will be certified by the Principal's Representative as moneys due and payable to the Principal.

31.6 The remedies provided in this clause 31 do not exclude any other remedies provided by Law.

### **32 Insurance**

32.1 The Contractor must at its own cost and expense, as a minimum, effect and thereafter maintain the Insurances during the Term (and any additional period specified in this clause 32):

- (a) on the terms and conditions set out in this clause 32 and otherwise on terms acceptable to the Principal; and
- (b) from an insurer 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, and 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.

32.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance under clause 31.1.

32.3 Without limiting clause 32.1, the Contractor must:

- (a) pay all premiums and all deductibles applicable to the Insurance when due;
- (b) promptly reinstate any Insurance required under this clause 32 if it lapses or if cover is exhausted;
- (c) ensure that any party to whom work is subcontracted under this Minor Works Contract obtains and maintains insurances as required by this clause 32, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by that party, as if they were the Contractor; and
- (d) 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 Insurances.

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

- (a) 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;
- (b) provide, where the Principal is an insured under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance;
- (c) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under or relating to the Insurance; and
- (d) come into effect on or before the Commencement Date and be maintained throughout the Term, with the exception of the professional indemnity insurance required by clause 32.13 which shall extend for a period of seven (7) years after the Term.

32.5 If a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence.

32.6 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 this Minor Works Contract.

32.7 Where the Principal has arranged insurance, any such insurance does not:

- (a) limit, reduce or affect any liabilities and obligation that the Contractor has or may have under the Minor Works Contract; or
- (b) prevent the Contractor from taking out at its own cost any additional insurance it considers necessary.

Any insurance policies arranged by the Principal are subject to excesses and deductibles. Where a claim under such insurance policy is caused or contributed to by the Contractor and/or Contractor's Personnel, the Contractor is responsible for the payment of any excesses and deductibles.

32.8 The Contractor must effect and thereafter maintain insurance of the Works, which must:

- (a) cover against all loss and/or damage to the Works including any existing structures which are under the care, custody or control of the Contractor or the Contractor's Personnel;
- (b) be for an amount not less than the amount set out in the Contract Specifics;
- (c) be extended to include the Principal, the Principal's Personnel, the Contractor and the Contractor's Personnel employed from time to time in relation to the Works as joint insured; and
- (d) be maintained for the duration of this Minor Works Contract, including the Defects Liability Period.

32.9 The Contractor must effect and thereafter maintain comprehensive public and products liability insurance, which policy must:

- (a) be endorsed to note the Principal as joint insured in relation to this Minor Works Contract;
- (b) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and unlimited in the number of occurrences and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in relation to products liability during any one 12 month period of insurance;
- (c) include a cross liability endorsement;
- (d) cover the liability of the Contractor, the Contractor's Personnel, the Principal and the Principal's Personnel 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 Law to be insured under a workers compensation policy),

arising out of or in connection with the performance of this Minor Works Contract by the Contractor; and

- (e) be endorsed:
  - (i) to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Minor Works Contract;
  - (ii) to cover sudden and accidental pollution; and
  - (iii) to provide a waiver of subrogation in favour of the Principal in relation to this Minor Works Contract where the Principal is not a named insured.

32.10 In addition to any compulsory third party motor vehicle insurance required to be taken out by the Contractor under any Law, the Contractor must also effect and thereafter maintain vehicle and equipment insurance for the Contractor's vehicles, plant and equipment used in connection with this Minor Works Contract whether owned, hired or leased ("**Contractor's Vehicles**"), which policy must:

- (a) cover against all loss and/or damage to the Contractor's Vehicles, registered plant and equipment;
- (b) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles, registered plant and equipment;
- (c) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the number of occurrences;
- (d) other than compulsory third party motor vehicle insurance required by virtue of any Law, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal;
- (e) include a cross liability endorsement; and
- (f) be endorsed to note the Principal for its respective rights and interest in relation to this Minor Works Contract.

32.11 The Contractor must effect and thereafter maintain plant and equipment insurance, which insurance must cover against all loss and/or damage to the Contractor's owned and leased plant and equipment.

32.12 The Contractor must effect and thereafter maintain insurance against liability for death of or injury to persons employed by or deemed by a Law to be employed by, the Contractor, including liability by statute and at common law, which insurance cover must:

- (a) be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor, including a waiver of subrogation; and
- (b) be for not less than the amount set out in the Contract Specifics in respect of any one event.

In the event the Contractor is a sole trader and no workers compensation policy is in place, the Contractor must insure against loss of income for accident and illness by the purchase of an income protection or a salary continuance policy.

32.13 Unless the Principal agrees otherwise in writing, the Contractor must effect and thereafter maintain professional indemnity insurance, which policy must:

- (a) be for not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in any one 12 month period of insurance;
- (b) include one full automatic reinstatement of the limit of liability;
- (c) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Minor Works Contract; and
- (d) cover claims in respect of this Minor Works Contract under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in Western Australia insofar as they relate to the provision of professional advice under this Minor Works Contract.

- 32.14 The Contractor must, on or prior to the Commencement Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to effect and maintain under this Minor Works Contract is current by providing to the Principal certificates of insurance, to demonstrate compliance with this Minor Works Contract. Nothing in this clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- 32.15 If the Contractor fails to effect and maintain an Insurance in accordance with this Minor Works Contract, the Principal may, but is not obliged to, procure and maintain any such Insurance and the cost of doing so will be a debt due and payable on demand from the Contractor to the Principal.
- 32.16 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of an Insurance.
- 32.17 The Contractor must:
- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Minor Works Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
  - (b) where relevant, provide all such assistance to the Principal as may be required by the Principal for the preparation and negotiation of insurance claims.
- 32.18 The Insurances are primary, and not secondary, to the indemnities referred to in this Minor Works Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under any Insurance before enforcing any of its rights or remedies under the indemnities in this Minor Works Contract. In addition, the parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Minor Works Contract before the insurer considers or meets the relevant claim.

### **33 Liability and indemnities**

- 33.1 To the extent permitted by law, the Contractor is liable for and indemnifies the Principal against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty given by it in this Minor Works Contract or any of the other terms and conditions of this Minor Works Contract by the Contractor;
  - (b) the illness, injury or death of any of the Contractor's Personnel arising under, out of, or in connection with, this Minor Works Contract;
  - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property, or any other loss or damage of any kind whatsoever, caused or contributed to by:
    - (i) the WUC; or
    - (ii) the entry onto, and the activities undertaken on and in, the Site by the Contractor and/or the Contractor's Personnel;
  - (d) any negligence or wilful act or omission by the Contractor and/or any of the Contractor's Personnel in connection with this Minor Works Contract;
  - (e) any claim made against the Principal by any of the Contractor's Personnel in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
  - (f) any penalty imposed for breach of an applicable Law in connection with the performance of the WUC;
  - (g) any loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Contractor or the Contractor's Personnel and used in connection with this Minor Works Contract;
  - (h) any Contamination of the Site or the Environment; or
  - (i) any claim that the WUC or any part of the Works, anything the Contractor does in performing the WUC or any part of the Works, or the Principal's use of the Works or any part of the Works infringes, or allegedly infringes, the Intellectual Property Rights of any person.

- 33.2 The Contractor will not be liable to the extent that any loss or damage was caused by the wilful misconduct or gross negligence of the Principal or the Principal's Personnel.
- 33.3 Every exemption, limitation, defence, immunity or other benefit contained in this Minor Works Contract to which the Principal is entitled is also held by the Principal for the benefit of, and extends to protect, each of the Principal's Personnel.
- 33.4 Each indemnity in this Minor Works Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of this Minor Works Contract.
- 33.5 It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity conferred by this Minor Works Contract.
- 33.6 Subject to clause 33.8, neither party is liable to the other party for any Consequential Loss, whether based on contract, tort (including negligence) or otherwise, arising under, out of, or in connection with, this Minor Works Contract.
- 33.7 Subject to clause 33.8, the Contractor's total liability under this Minor Works Contract will not exceed the amount set out in the Contract Specifics (if applicable) as the Aggregate Limit of Liability, which amount will exclude the proceeds of any insurances required to be taken out by the Contractor under this Minor Works Contract.
- 33.8 Clauses 33.6 and 33.7 do not limit the Contractor's liability:
- (a) under clauses 28.18, 33.1(f) and 33.1(i);
  - (b) under any other provisions of this Minor Works Contract which expressly impose a greater liability;
  - (c) in cases of fraud, wilful misconduct or illegal or unlawful acts;
  - (d) if, but for clause 33.7 the Contractor would have insurance cover for that liability under an insurance policy that the Contractor is required to take out under this Minor Works Contract; or
  - (e) in cases of the Contractor's acts or omissions which are contrary to the most elementary rules of diligence which a conscientious contractor would have followed in similar circumstances.
- 33.9 Part 1F of the Civil Liability Act is excluded from operation with respect to any dispute, claim, action or any matter whatsoever arising out of or in connection with this Minor Works Contract.

#### **34 Intellectual property**

- 34.1 The Contractor warrants that any design, materials, documents and methods of working provided by the Contractor under or in connection with this Minor Works Contract, do not infringe any Intellectual Property Right.
- 34.2 The Contractor:
- (a) retains the Intellectual Property Rights in the Contractor Background IP; and
  - (b) grants to the Principal a non-exclusive, royalty free licence to use the Contractor Background IP for the sole purpose of exercising its rights with respect to the Works and this Minor Works Contract.
- 34.3 The Principal:
- (a) retains the Intellectual Property Rights in the Principal Background IP; and
  - (b) grants to the Contractor a non-exclusive, royalty free licence to use, reproduce, modify and adapt the Principal Background IP for the sole purpose of performing the Works and its other obligations under this Minor Works Contract.
- 34.4 The Principal acknowledges and agrees that all Project IP vests in and is owned by the Contractor on creation.
- 34.5 On creation the Contractor grants to the Principal an irrevocable, royalty-free licence to use the Project IP for any purpose for which the Works are provided under this Minor Works Contract.
- 34.6 The Contractor must not infringe any Intellectual Property Rights in performing the WUC, including the provision of the Design Documents.
- 34.7 The Principal must not infringe any Intellectual Property Rights in providing the Principal Information.
- 34.8 The Contractor must notify the Principal as soon as the Contractor becomes aware of any suspected, threatened or actual infringement of the:
- (a) Principal Background IP; or

- (b) Project IP.
- 34.9 The Contractor agrees to provide all reasonable assistance the Principal may request regarding any infringement or alleged infringement of the:
  - (a) Principal Background IP; or
  - (b) Project IP.
- 34.10 The Contractor shall make all payments and royalties to the appropriate party in respect of any Contractor Background IP and Project IP required to perform its obligations under this Minor Works Contract and such payments and royalties shall be included in the Price.
- 34.11 The obligations in this clause 34 continue after the termination of this Minor Works Contract.

### **35 Confidential information**

- 35.1 Subject to clause 35.4, no Principal's Confidential Information may be disclosed by the Contractor to any person except:
  - (a) to the Contractor's Personnel requiring the information for the purposes of this Minor Works Contract;
  - (b) with the written consent of the Principal;
  - (c) if the Contractor is required to do so by Law, a stock exchange or any regulatory authority; or
  - (d) if the Contractor is required to do so in connection with legal proceedings relating to this Minor Works Contract.
- 35.2 If the Contractor discloses Principal's Confidential Information under clause 35.1(a) or (b), the Contractor must use its reasonable endeavours to ensure that recipients of the Principal's Confidential Information do not disclose the Principal's Confidential Information except in the circumstances permitted in clause 35.1.
- 35.3 The Contractor must not use any Principal's Confidential Information, except for the purpose of performing its obligations under this Minor Works Contract or as otherwise required by operation of Law.
- 35.4 Clauses 35.1, 35.2 and 35.3 do not apply to the Excluded Information.
- 35.5 The obligations under this clause 35 survive termination or expiry of this Minor Works Contract.

### **36 Taxes**

- 36.1 The Contractor is responsible for any Taxes which are levied on, in respect of, or in connection with the performance of the WUC.
- 36.2 The Contractor must promptly on request provide the Principal with documentary evidence of the Contractor's payment of the Taxes referred to in clause 36.1.

### **37 Force Majeure**

- 37.1 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Minor Works Contract or is delayed in performing those obligations:
  - (a) the affected party must, at the first possible opportunity following the happening of the Event of Force Majeure, give notice to the other party setting out (to the extent practicable):
    - (i) full details of the Event of Force Majeure;
    - (ii) the obligations affected by the Event of Force Majeure; and
    - (iii) the manner in which the relevant obligations have been affected by the Event of Force Majeure;
  - (b) the affected obligations identified in the notice referred to in clause 37.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
  - (c) the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 37.2 During the period for which an obligation of the Contractor is suspended pursuant to clause 37.1(b), the Principal may (at the Principal's cost) make alternative arrangements for the performance of the suspended obligations (whether by another person or otherwise), without liability to the Contractor.

- 37.3 When the Event of Force Majeure no longer affects the performance of the obligations referred to in clause 37.1, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 37.4 Subject to clause 28, the Contractor has no entitlement and the Principal has no liability for:
- (a) any costs, losses, expenses, damages, or the payment of any fees incurred, due to an Event of Force Majeure; and
  - (b) any delay costs in any way incurred by the Contractor due to an Event of Force Majeure.
- 37.5 If an Event of Force Majeure which is the subject of a notice under clause 37.1(a) continues for more than 60 days, then either party may terminate this Minor Works Contract on written notice to the other party, in which case clauses 39.1, 39.2 and 39.3 will apply.

## **38 Default or Insolvency**

- 38.1 If a party breaches (including repudiates) this Minor Works Contract, nothing in this clause 38 prejudices the right of the other party to recover damages or exercise any other right or remedy.
- 38.2 If the Contractor commits a substantial breach of this Minor Works Contract, the Principal may, by hand or by certified post, give the Contractor a written notice to show cause.
- 38.3 For the purposes of clause 38.2, substantial breaches include, but are not limited to:
- (a) failing to:
    - (i) provide Security;
    - (ii) provide evidence of required insurances;
    - (iii) comply with a Direction of the Principal's Representative under clause 7; or
    - (iv) use the materials or standards of work required by this Minor Works Contract;
  - (b) wrongful suspension of work;
  - (c) substantial departure from a Construction Program without reasonable cause or the Principal's Representative's approval;
  - (d) where there is no Construction Program, failing to proceed with due expedition and without delay;
  - (e) in respect of clause 43, knowingly providing documentary evidence containing an untrue statement;
  - (f) where any of the Contractor's Personnel are found guilty of any criminal act related to WUC;
  - (g) failure to comply with any of the Principal's health, safety or environmental protection requirements; and
  - (h) failure to rectify any defective work in accordance with clause 31.
- 38.4 A notice under clause 38.2 must state:
- (a) that it is a notice under clause 38 of this Minor Works Contract;
  - (b) the alleged substantial breach;
  - (c) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in clause 38.5;
  - (d) the date and time by which the Contractor must show cause (which must not be less than 7 clear days after the notice is received by the Contractor); and
  - (e) the place at which cause must be shown.
- 38.5 If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:
- (a) take out of the Contractor's hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to clause 38.9; or
  - (b) terminate this Minor Works Contract.
- 38.6 The Principal will complete work taken out of the Contractor's hands pursuant to clause 38.5(a) and may:
- (a) use materials, equipment and other things intended for WUC; and

- (b) without payment of compensation to the Contractor:
  - (i) take possession of, and use such of the construction plant and other things on or in the vicinity of the Site as were used by the Contractor; and
  - (ii) contract with such of the Contractor's subcontractors and consultants, as are reasonably required by the Principal to facilitate completion of WUC.
- 38.7 If the Principal takes possession of construction plant or other things under clause 38.6, the Principal must maintain them and, subject to clause 38.10, on completion of the work, shall return such of them as are surplus.
- 38.8 The Principal's Representative must keep records of the cost of completing the work under clause 38.6.
- 38.9 When work taken out of the Contractor's hands under clause 38.6 has been completed, the Principal's Representative must assess the cost thereby incurred and certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
- 38.10 If the Contractor is indebted to the Principal, the Principal may retain construction plant or other things taken under subclause 38.5(a) until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the construction plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess must be paid to the Contractor.
- 38.11 If the Principal commits a substantial breach of this Minor Works Contract, the Contractor may, by hand or by certified post, give the Principal a written notice to show cause.
- 38.12 For the purposes of clause 38.11, substantial breaches include, but are not limited to:
  - (a) failing to:
    - (i) rectify inadequate Contractor's possession of the Site if that failure continues for longer than 30 Business Days and will materially adversely affect the Contractor's ability to ensure that WUC reach Practical Completion by the Date for Practical Completion (following any EOT under clause 28.13); or
    - (ii) make a payment due and payable pursuant to the Contract in accordance with the terms of the Contract where that payment is not the subject of a dispute; and
  - (b) the Principal's Representative not giving a certificate of practical completion or reasons as referred to in subclause 28.16.
- 38.13 A notice given under clause 38.11 must state:
  - (a) that it is a notice under clause 38 of this Minor Works Contract;
  - (b) the alleged substantial breach;
  - (c) that the Principal is required to show cause in writing why the Contractor should not exercise a right referred to in clause 38.14, 38.16 or 38.17;
  - (d) the date and time by which the Principal must show cause (which must not be less than 7 clear days after the notice is received by the Principal); and
  - (e) the place at which cause must be shown.
- 38.14 If the Principal fails to show reasonable cause by the stated date and time, the Contractor may, by written notice to the Principal, suspend the whole or any part of WUC.
- 38.15 The Contractor must remove the suspension if the Principal remedies the breach.
- 38.16 The Contractor may, by written notice to the Principal, terminate this Minor Works Contract, if within 28 days of the date of suspension under clause 38.14, the Principal fails:
  - (a) to remedy the breach; or
  - (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.
- 38.17 Damages suffered by the Contractor by reason of the suspension under clause 38.14 must be assessed by the Principal's Representative, who must certify them as moneys due and payable to the Contractor.
- 38.18 If this Minor Works Contract is terminated pursuant to subclause 38.5(b) or 38.16(b), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this

Minor Works Contract had the defaulting party repudiated this Minor Works Contract and the other party elected to treat this Minor Works Contract as at an end and recover damages.

38.19 If the Contractor becomes Insolvent the Principal may, without giving a notice to show cause, exercise the right under clause 38.5(b).

### **39 Termination by Principal for convenience**

39.1 Without prejudice to any of the Principal's other rights and powers under this Minor Works Contract, the Principal may at any time for any reason within its sole discretion upon 14 days written notice to the Contractor terminate this Minor Works Contract. Upon receipt of such notice the Contractor must:

- (a) stop all further work, except that work that the Principal's Representative Directs as necessary for protecting lives, property or safety;
- (b) hand over documents, equipment, materials and other work for which the Contractor has already been paid;
- (c) carry away all other goods, equipment, materials and articles not referred to in clause 39.1(b) belonging to the Contractor from the site except those necessary to be retained for safety reasons; and
- (d) seek to mitigate any expense or losses that it or any subcontractor may incur or has incurred in relation to its obligations under the Contract.

39.2 If the Principal terminates the Contract under clause 39.1 then the Principal must release and return all Security provided by the Contractor and must pay the Contractor the total of:

- (a) for work executed prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor had made a Progress Claim on the date of termination;
- (b) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of materials reasonably ordered by the Contractor for WUC, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment; and
- (c) the reasonable cost of removal of Construction Plant;

up to a maximum amount of the balance of the Contract Sum (as it is adjusted pursuant to this Minor Works Contract) unpaid at the date of termination and other amounts due and payable pursuant to this Minor Works Contract at the date of termination.

39.3 The amounts to which the Contractor is entitled under clause 39.2 will be in full satisfaction and compensation of the Contractor in relation to the termination of this Minor Works Contract and the Contractor will have no other entitlement as a consequence of the termination or in relation to carrying out WUC to the date of termination.

### **40 Termination by frustration**

40.1 If this Minor Works Contract is frustrated:

- (a) the Contractor's Representative must issue a progress certificate for WUC carried out to the date of frustration, evidencing the amount which would have been payable had this Minor Works Contract not been frustrated and had the Contractor been entitled to and made a Progress Claim on the date of frustration;
- (b) the Principal must pay the Contractor:
  - (i) the amount due to the Contractor evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the Contractor for WUC and which the Contractor is liable to accept, but only if they will become the Principal's property upon payment; and
  - (iii) the costs reasonably incurred:
    - (A) removing Temporary Works and Construction Plant;
    - (B) returning to their place of engagement the Contractor's Personnel engaged in WUC at the date of frustration;
    - (C) by the Contractor in expectation of completing WUC and not included in any other payment; and

(D) each party shall promptly release and return all Security provided by the other.

#### **41 Suspension**

- 41.1 The Principal's Representative may, at any time and for any reason, by notice in writing to the Contractor (stating the reason for and, if it is possible to make such an estimate, the estimated length of, the suspension), direct the Contractor to suspend performance of the whole or any part of the performance of the Works.
- 41.2 Upon receipt of a notice of suspension from the Principal's Representative in accordance with clause 41.1, the Contractor must suspend performance of the relevant obligations until such time as the Principal's Representative directs the Contractor to resume performance of those obligations by notice in writing. The Contractor must do everything possible to minimize any cost or expense to it which is consequent on the suspension.
- 41.3 Unless otherwise agreed, the Principal must, subject to receipt of satisfactory evidence of such costs from the Contractor, pay to the Contractor reasonable compensation reflecting the costs necessarily and reasonably incurred by the Contractor as a direct consequence of the suspension for the period of the suspension under this clause 41, except where the suspension is a result of a Force Majeure Event or, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Contractor or any of the Contractor's Personnel, in which case the Contractor is not entitled to any payment or compensation for the suspension. For the avoidance of doubt, the Contractor is not entitled to recover any amount representing any Consequential Loss of any nature whatsoever, whether based in contract, tort (including negligence) or otherwise arising under, out of, or in connection with, a suspension under this clause 41.
- 41.4 As soon as the Principal's Representative determines that the reason for any suspension under clause 41.1 no longer applies, the Principal's Representative must instruct the Contractor to recommence performance of the relevant obligations suspended under clause 41.1 and the Contractor must promptly recommence performance in accordance with this Minor Works Contract.
- 41.5 If the Principal's Representative suspends the whole or any part of the performance of the WUC under this clause 41 (other than where the suspension is a result of a Force Majeure Event or, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Contractor or any of the Contractor's Personnel), the Date for Practical Completion for the relevant Works will be extended by the period of the suspension.

#### **42 Notification of claims**

- 42.1 The "**Prescribed Notice**" for the purposes of this clause 42 is a written notice of the general basis and quantum of the claim.
- 42.2 Within 10 Business Days after becoming aware of any claim in connection with the subject matter of this Minor Works Contract or WUC, the Contractor must give to the Principal and to the Principal's Representative the Prescribed Notice.
- 42.3 Clause 41.2 and 42.6 does not apply to any claim, including a claim for payment (except for claims which would, other than for this clause 42, have been included in the Final Payment Claim), the communication of which is required by another provision of this Minor Works Contract.
- 42.4 Notwithstanding any other provision of the Contract, the Contractor will not be entitled to any claim against the Principal if it has not complied strictly with this clause 42, including in particular, if it has not given the notices and the details required by this clause 42 strictly in the manner and within the times stipulated.
- 42.5 Notices shall be given in accordance with this clause 42 whether or not the event or circumstance upon which the claim is based is continuing and whether or not the loss, expense or damage has crystallised or can be fully particularised. The details omitted must be provided within 7 days of the day that they do crystallise or can be fully particularised.
- 42.6 If within 10 Business Days of giving the Prescribed Notice the party giving it does not notify the other party and the Principal's Representative of particulars of the claim, the Prescribed Notice will be deemed to be the claim.
- 42.7 Within 20 Business Days of receipt of the Prescribed Notice or, if subclause 42.6 applies, within 20 Business Days of receiving the further particulars under that clause, the Principal's Representative must assess the claim and notify the parties in writing of the decision. Unless a party within a further 20 Business Days of such notification gives a notice of dispute under clause 43 which includes such decision, the Principal's Representative must certify the amount of that assessment to be moneys then due and payable.

### **43 Dispute resolution**

- 43.1 If a Dispute arises between the parties, then:
- (a) a party affected by the Dispute must notify the other party of the nature and extent of the Dispute;
  - (b) the parties undertake in good faith to use their best endeavours to settle the Dispute expeditiously by negotiation; and
  - (c) a party must comply with the process set out in clauses 43.2 to 43.5 before commencing court or other proceedings except where that party is seeking urgent interlocutory relief or if a party has unreasonably failed to comply with its obligations under this clause 43.
- 43.2 If the Dispute is not resolved within 10 Business Days of a party advising the other party of a Dispute under this Minor Works Contract, a party may convene, and the other party must attend, a without prejudice meeting of a senior representative of each party ("**Senior Representative Meeting**") with the objective of settling the Dispute.
- 43.3 The party requesting a Senior Representative Meeting must give not less than 15 Business Days written notice to the other party of the time and place for the Senior Representative Meeting.
- 43.4 Each party must procure that a senior representative of that party attends the Senior Representative Meeting and has authority to negotiate the issues in dispute. Each senior representative must negotiate in good faith and use its best endeavours to resolve the Dispute (subject to any necessary corporate or other action required to authorise and bind a party to such resolution).
- 43.5 The Senior Representative Meeting must take place within 10 Business Days of the service of the notice under clause 43.3.
- 43.6 If the Senior Representative Meeting fails to resolve a Dispute within 15 Business Days (including obtaining any necessary authorisation) or a Senior Representative Meeting has not taken place within the time required under clause 43.5, then, save for where it is a matter requiring referral to an Expert in accordance with clause 44, either party may commence court proceedings in relation to the Dispute.
- 43.7 Despite the parties being in dispute or taking steps to comply with this clause 43, the parties must continue to perform their respective obligations under this Minor Works Contract in a timely manner (including those pre-existing obligations the subject of the Dispute or disagreement to the extent possible).
- 43.8 Where a Dispute concerns whether the Works comply with the requirements of this Minor Works Contract and is not resolved following the process set out in clauses 43.2 to 43.5, the parties may, by agreement, refer the Dispute for resolution by an Expert in accordance with the process set out in clause 44.

### **44 Expert determination**

- 44.1 If a Dispute arises which is to be dealt with under this clause 44, then a party may serve a notice on the other party requiring the Dispute to be determined by an Expert.
- 44.2 The parties must endeavour to agree on an independent person to serve as the Expert within 10 Business Days of the service of the notice under clause 44.1. If the parties are unable to agree on an independent person to serve as the Expert, then a party may request the President (for the time being) of the Law Society of Western Australia, or any body which is a successor or equivalent of it, to appoint a suitably qualified person to act as the Expert. The parties may make written submissions to that person on the choice of candidate.
- 44.3 The parties agree that the person appointed as the Expert must:
- (a) be appropriately qualified by their education, experience and training to determine the issues in dispute; and
  - (b) not have any relationship or association with the parties which may affect their impartiality.
- 44.4 The parties agree to instruct the Expert that the Expert:
- (a) acts as an expert and not an arbitrator;
  - (b) may decide on rules of conduct in their absolute discretion and enquire into the matter to be determined as the Expert thinks fit, including receiving submissions and taking advice from any persons that the Expert considers appropriate and requiring the parties to provide any material in their possession or control which is reasonably relevant to the issues in dispute;
  - (c) must give a written decision (including reasons); and

(d) must endeavour to give that decision as soon as practicable.

- 44.5 The parties may make submissions to the Expert, including the provision of expert reports, and the parties agree to give every assistance that the Expert requires, including providing copies of relevant documents with a view to reaching a decision without delay.
- 44.6 Each party is to bear its own costs in relation to the Dispute. The Expert must decide the proportions in which the parties will bear the costs of the Expert having regard to the extent to which the parties may have acted unreasonably or been at fault.
- 44.7 The Expert's determination is conclusive and binding on the parties in the absence of manifest error.

#### **45 Assignment and sub-contracting**

- 45.1 The Contractor must not assign or novate its rights and obligations under this Minor Works Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 45.2 The Principal has the right to assign or novate any or all of its rights and obligations under this Minor Works Contract.
- 45.3 The Contractor must not subcontract any of its obligations under this Minor Works Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 45.4 Any approval to subcontract given by the Principal will not relieve the Contractor of any of its liabilities or obligations under this Minor Works Contract.
- 45.5 Notwithstanding any approval given to the Contractor to subcontract, the Contractor will remain liable to the Principal for:
- (a) the due and continued performance of the Works; and
  - (b) all acts, defaults, neglects and omissions of any subcontractor as if they were those of the Contractor.

#### **46 Personal Property Securities Act 2009 (Cth)**

- 46.1 For the purposes of this clause 46:
- (a) the "**Principal's Personal Property**" means all personal property the subject of a security interest granted under this Minor Works Contract; and
  - (b) words and phrases used that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- 46.2 If the Principal determines that this Minor Works Contract (or a transaction in connection with it) or a provision within it contains a security interest for the purposes of the PPSA, the Contractor agrees it will do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
  - (c) enabling the Principal to exercise rights in connection with the security interest.
- 46.3 The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- 46.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
- (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
  - (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.
- 46.5 The Contractor must not:

- (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Works; or
- (e) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving the Principal 15 Business Days' notice.

46.6 Everything the Contractor is required to do under this clause 46 will be at the Contractor's expense.

46.7 The Contractor and the Principal agree that this Minor Works Contract and all related information and document(s) are confidential ("**Designated Confidential Information**") and will not be disclosed, except to the extent disclosure is permitted or required by this Minor Works Contract or by Law. The Contractor and the Principal agree that the Contractor will not disclose Designated Confidential Information pursuant to a request under section 275(1) of the PPSA.

#### **47 Priority**

47.1 To the extent of any inconsistency between the Special Conditions and any other part of this Minor Works Contract, the Special Conditions will prevail.

47.2 To the extent of any inconsistency between the Contract Specifics and the General Conditions or the Special Conditions, then the General Conditions or Special Conditions (as applicable) will prevail.

47.3 To the extent of any inconsistency between the General Conditions and any Schedules (including any documents referred to in the Schedules but excluding the Special Conditions), then the General Conditions will prevail.

47.4 If the Contractor considers that there is any ambiguity or discrepancy in the documents comprising the Minor Works Contract, the Contractor must promptly advise the Principal's Representative in writing, who must give the Contractor a Direction as to the interpretation to be followed. If compliance with any such Direction under this clause 47.4 causes the Contractor to incur more or less cost than otherwise would have been incurred had the Direction not been given, the difference shall be assessed by the Principal's Representative and added to or deducted from the Contract Sum.

47.5 To the extent of any inconsistency in the standard to which the WUC are performed, the higher standard will prevail. Where the standards are not expressly specified, the standard will be consistent with the intended purpose of the WUC.

#### **48 Record Keeping Requirements**

48.1 The Contractor shall make and keep and shall use its best endeavours to ensure all subcontractors make and keep accurate records of its Tender and of WUC, whether in writing or stored on any other medium whatsoever, including:

- (a) all documents referred to in this Minor Works Contract;
- (b) design calculations;
- (c) tender estimates, calculations and mark-ups;
- (d) records as to progress of WUC;
- (e) results of the examination and testing of any work or materials;
- (f) quality assurance records and reports;
- (g) cost to date records, cost to complete calculations, time records, all cost records relating in any way to delays, Variations and day works;
- (h) all consultant's reports and opinions obtained by the Contractor in relation to the matters referred to in this clause 48.1; and
- (i) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.

48.2 Subject to the Contractor's right to claim privilege in respect of any record, the Principal and the Principal's Representative will at any time (provided it has given not less than 5 days notice to the

Contractor ) have the right to inspect and to copy the whole or part of any record referred to in clause 48.1.

- 48.3 Notwithstanding anything to the contrary contained in this Minor Works Contract, the Principal's Representative may defer any Direction or certification required of him or her under any provision of this Minor Works Contract until after such inspection. If any such record is stored on a medium other than in writing, the Contractor must make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the record to be produced to the Principal or the Principal's Representative (as applicable).
- 48.4 The Contractor is not entitled to refuse inspection of any record referred to in clause 48.1 on any basis other than on the basis that legal professional privilege attaches to the record.
- 48.5 The Contractor must co-operate with the Principal or the Principal's Representative (as applicable) when making an inspection, including explaining all filing and costing systems and the extraction of requested categories of documentation from files upon request.
- 48.6 The Contractor acknowledges that the records it holds in connection with this Minor Works Contract may be subject to a request under the Freedom of Information Act received by the Principal, and such records are to be immediately returned to the Principal for review in such circumstances. If the return of the records impacts on the Contractor's performance of its obligations under this Minor Works Contract, the Principal will consider any concerns the Contractor may raise.
- 48.7 The Contractor must (at its own cost and expense), for the duration of this Minor Works Contract, provide the Principal with all assistance reasonably requested by the Principal to assist the Principal in complying with its obligations under the *State Records Act 2000 (WA)* and with the Principal's records management plan, where such compliance is in respect of records created, or to be created, by the Contractor on behalf of the Principal in accordance with this Minor Works Contract.
- 48.8 The Contractor must, in respect of records created during the term of this Minor Works Contract, retain such records for the retention period set out for that class of record in the General Disposal Authority for Local Government Records RD 2010046.

## **49 Notices**

- 49.1 Any notice, approval, consent or other communication ("**Notice**") in relation to this Minor Works Contract must be:
- (a) in legible writing in English;
  - (b) signed by an Authorised Representative of the sender and otherwise in accordance with the requirements of this Minor Works Contract;
  - (c) marked for the attention of the Contractor's Representative if directed to the Contractor, or the Principal's Representative if directed to the Principal; and
  - (d) either:
    - (i) left at the address for the party set out in the Contract Specifics;
    - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address for the party set out in the Contract Specifics; or
    - (iii) sent by email to the email address for the party set out in the Contract Specifics.
- However, if the addressee has notified a change of postal address or email address, then the Notice must be to that changed postal address or email address, as the case may be.
- 49.2 Notices sent by email need not be marked for attention in the way stated in clause 49.1 and are taken to be signed by the named sender.
- 49.3 Despite clause 49.1(d)(iii) and 49.2, a Notice under clause 39, 43 or 44 must not be sent by email.
- 49.4 Notices take effect from the time they are received or taken to be received under clause 49.5 (whichever happens first) unless a later time is specified.
- 49.5 Notices are taken to be received:
- (a) if sent by post, four days after posting (or seven days after posting if sent from one country to another); or
  - (b) if sent by email:
    - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

49.6 Despite clauses 49.4 and 49.5, if Notices are received or taken to be received under clause 49.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **50 Security**

50.1 Subject to clause, the Contractor must provide the Security specified in the Contract Specifics within 7 days of the Commencement Date.

50.2 If this Minor Works Contract is identified as a Framework Agreement in the Contract Specifics, the Contractor must provide the Security specified in an Order by the date specified in that Order.

50.3 The Contractor must ensure that the Security remains valid and enforceable until the date of its return.

50.4 Buyer may have recourse to the Security, in whole or part, on demand:

- (a) as compensation for Contractor's failure to perform any of its obligations under this Minor Works Contract, in which case the Principal may have recourse to an amount determined by the Principal acting reasonably, to compensate the Principal for any losses, claims, charges, costs, penalties or expenses suffered or incurred by the Principal by reason of that failure;
- (b) if the Contractor becomes Insolvent;
- (c) to recover any amount owed by the Contractor under this Minor Works Contract, including a bona fide claim by the Principal against the Contractor under this Minor Works Contract, whether or not that claim has been finally proven or is the subject of a Dispute;
- (d) to satisfy any claim or entitlement to liquidated damages under this Minor Works Contract;
- (e) to recover any costs reasonably incurred by the Principal in rectifying (or procuring rectification of) any Defect as contemplated by this Minor Works Contract; or
- (f) where the Principal is otherwise entitled to exercise a right under this Minor Works Contract in respect of the Security.

50.5 Subject to any demand having been made on the Security, the Principal must promptly release and return fifty per cent of the then current balance of the Security to the Contractor on the issue of the Certificate of Practical Completion.

50.6 Subject to any demand having been made on the Security, the Principal must release and return the then current balance of the Security to the Contractor:

- (a) if the Final Certificate certifies a nil balance or a balance owing by the Principal to the Contractor, within 14 days after issue of the Final Certificate; or
- (b) if the Final Certificate certifies a balance owing by the Contractor to the Principal, within 14 days of the payment by the Contractor to the Principal of all amounts owing by the Contractor to the Principal under this Minor Works Contract.

50.7 The Contractor covenants with the Principal that it will not institute any proceedings, or exercise any right or take steps to restrain the any bank that issued a Security, from exercising its rights or obligations under the Security even where the Contractor disputes the Principal's entitlement to have recourse to the Security, including where the dispute resolution procedures have been commenced under clause 43.

## **51 Entire agreement**

This Minor Works Contract constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **52 Industrial arrangements**

The Contractor agrees to observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the provision of WUC .

### **53 Other matters**

- 53.1 If the whole or any part of a provision of this Minor Works Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Minor Works Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Minor Works Contract or is contrary to public policy.
- 53.2 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Minor Works Contract expressly states otherwise.
- 53.3 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 53.4 The rights and remedies provided in this Minor Works Contract are in addition to other rights and remedies given by law independently of this Minor Works Contract.
- 53.5 Except as, and to the extent, expressly stated otherwise in this Minor Works Contract, a provision of this Minor Works Contract or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- 53.6 The indemnities in this Minor Works Contract are continuing obligations, independent from the other obligations of the parties under this Minor Works Contract and continue after this Minor Works Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Minor Works Contract.
- 53.7 Each party agrees, at its own expense, to do anything reasonably requested by another party (such as negotiating in good faith, obtaining consents, signing and producing documents and getting documents completed and signed) to give effect to the provisions of this Minor Works Contract and the transactions contemplated by it.
- 53.8 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Minor Works Contract or any part of it.
- 53.9 The Contractor must obtain at its own expense any necessary Licences or permits and comply with applicable Laws in performing WUC.
- 53.10 The Principal's rights, remedies and powers under this Minor Works Contract are in addition to any rights, remedies and powers provided by law.
- 53.11 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the provision of works the same as, or similar to, the Works.

### **54 Governing law**

This Minor Works Contract is governed by the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

### **55 Counterparts**

This Minor Works Contract may consist of a number of counterparts each signed by one or more parties to this Minor Works Contract. When taken together, the signed copies are treated as making up the one document.