BUNBURY-HARVEY
Regional Council

GENERAL CONDITIONS OF CONTRACT

BUNBURY-HARVEY REGIONAL COUNCIL

AND

[INSERT CONTRACTOR] (ABN [INSERT])

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DATE

PARTIES

Bunbury-Harvey Regional Council of Lot 45 Stanley Road, Wellesley WA 6233
[ABN 79 907 325 881] ('Principal'); and

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

BACKGROUND

(a) The Principal wishes to engage the Contractor to undertake provision of the Works.

(b) The Contractor has agreed to perform and complete the Works on the terms of this Contract.

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

1 DEFINITIONS

In this Contract except where the context otherwise requires:

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

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

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

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

'Clause' means a clause of this document.

'Completion' is that stage in the carrying out and completion of the Works when the Principal determines that:

(a) the Works are complete and meet the requirements of this Contract except for Minor Defects; and

(b) all certificates, documents, warranties, guarantees and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied to the Principal.

'Completion Certificate' means a certificate issued by the Principal under Clause 26.1 evidencing the Date of Completion.

'Confidential Information' means all of the Principal's information which:

(a) is disclosed or otherwise made available to, or acquired directly or indirectly by, the Contractor at any time;

(b) relates to the Principal's or any Local Government's past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information); and

(c) is in oral or visual form, or is recorded or stored in a Document,
and includes this Contract, but does not include information which:

(d) is or becomes generally and publically available other than as a result of a breach of this Contract;

(e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or

(f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

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

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

'Construction Program' means the 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.

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

'Contract' means this document (including all schedules, attachments, annexures and clarifications) and any Order. This also includes RFT1718-0004 tender document.

'Contract Price' means the amount specified in the Contract Specifics but excluding any additions or deductions, which may be required to be made pursuant to this Contract.

'Contract Specifics' means the contract information attached at Schedule 1.

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

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

'Date for Completion' means the date for Completion specified in the Contract Specifics.

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

'Defect' means:

(a) any errors, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works; or

(b) any aspect of the Works which is not in accordance with the requirements of this Contract.

'Defect Liability Period' means, subject to Clause 27.4, the period of time beginning on the Date of Completion and ending on the expiry of the time stated in the Contract Specifics.

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

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

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

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

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

'Force Majeure Event' means any one of the following events which is beyond the control of either Party, could not have been reasonably foreseen by either Party and which prevents a Party from discharging an obligation under this Contract, which, in the case of the Contractor, is critical to the Contractor undertaking the Works:

(a) a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;

(b) a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor's premises and has not been caused by the Contractor; or

(c) the enactment of any statue or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of this Contract, but is not an event which arises from any of the following:

(d) a breach of a contract, including this Contract, or Law, by the Contractor;

(e) negligence by the Contractor relating to the performance of its obligations under this Contract;

(f) an occurrence that is a risk assumed by the Contractor under this Contract; or

(g) a shortage or delay in the supply of materials or equipment or other things required under this Contract; or

(h) wet or inclement weather.

'Framework Agreement' means a Contract designated as such in the Contract Specifics.

'Good Industry Practice' means:

(a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a Professional Contractor;

(b) compliance with applicable standards and codes being the standards and codes specified in the Contract or if not specified, the standards and codes as would be applied by a Principal in the circumstances; and

(c) compliance with applicable Legal Requirements.

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

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

'Insurance' means the insurances which the Contractor is required to obtain under Clause 19 and the Contract Specifics.

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

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

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

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

'Law' means:

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

(b) any common or customary law and equity.

'Legal Requirement' means:

(a) Laws;

(b) Approvals; and

(c) fees and charges payable in connection with the foregoing.

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

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

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

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

'Order' means a purchase order from the Principal to the Contractor which requires specific Works to be performed under this Contract where this Contract is a Framework Agreement.

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

'Payment Certificate' means the certificate issued by the Principal under Clause 31.3.

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

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

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

'**Principal's Personnel**' means directors, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor's Personnel.

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

'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' means a document in a form approved by the Principal evidencing the performance of the Works since the previous Progress Claim (or, if the Progress Claim is the first Progress Claim, since the Start Date) and which includes the information set out in the Contract Specifics.

'RCTI Agreement' means an agreement in the form provided by the Principal pursuant to which the Parties have agreed that the Principal will issue Recipient Created Tax Invoices in respect of the Works.

'Recipient Created Tax Invoice (or RCTI)' has the meaning prescribed in the GST Law.

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

(a) the Principal;

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

(c) public or private utilities or a statutory or other relevant authorities,

either concurrently or sequentially with the Works:

(d) at, on, over or adjacent to the Site; or

(e) which may be connected to, associated with, ancillary to or otherwise related or relevant to the Works.

'Representative' means the Principal's Representative or the Contractor's Representative.

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

'Schedule of Rates' means the schedule of rates attached in Schedule 4.

'**Site**' has the meaning given in the Contract Specifics.

'Site Standards and Procedures' means the documents listed in Schedule 3 and any other guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time.

'Specification' means the specification attached in Schedule 2.

'Start Date' has the meaning given in the Contract Specifics.

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

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

'Tender' means the offer submitted by the Contractor to carry out the Works under this Contract and includes associated documentation.

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

'Variation' means any change to the Works, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Works.

'Variation Order' means a written direction by the Principal to carry out a Variation in accordance with Clause 29.

'Variation Quotation' has the meaning given in Clause 29.2.

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

'Works' means the whole of the work to be carried out and completed by the Contractor in accordance with this Contract, including Variations provided for by this Contract.

2 INTERPRETATION

In this Contract (unless the context otherwise requires):

(a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;

(b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';

(c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';

(d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;

(e) words in the singular include the plural and vice-versa;

(f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;

(g) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;

(h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, calendar quarter or calendar year;

(i) headings are for convenience only and do not affect interpretation of this Contract;

(j) a promise on the part of 2 or more persons binds them jointly and severally; and

(k) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

3 ORDER OF PRECEDENCE

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

(a) this document;

(b) the Specification;

(c) any other schedules, attachments or annexures to this document; and

(d) any Order.

4 SEVERABILITY

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

(a) read down, if possible, so as to be valid and enforceable; and

(b) severed from this Contract to the extent of the invalidity or unenforceability,

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

5 NOTICES

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

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

(b) facsimile transmission is not accepted ; or

(c) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.

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

(a) if by delivery in person, when delivered to the address of the recipient;

(b) if by post, 3 Business Days from and including the date of postage;

(c) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

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

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

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

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

6 PERFORMANCE AND PAYMENT

6.1 The Contractor must perform and complete the Works (including all design) by the Date for Completion and in accordance with:

(a) this Contract;
(b) Good Industry Practice; and
(c) all Legal Requirements.

6.2 The Contractor must ensure that the Works when completed will be fit for the Intended Purpose.

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

7 ORDERS

7.1 If this Contract is a Framework Agreement, this Clause 7 applies.

7.2 The Principal:

(a) May require the Contractor to provide Works from time to time by giving the Contractor an Order; but

(b) Is not obliged to issue Orders or otherwise purchase Works.

7.3 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 include in the notice details of the aspects in which it disagrees with the information and/or requirements; or

(b) Recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.

7.4 If the Contractor:

(a) Gives notice under Clause 7.3, the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or

(b) Does not give notice pursuant to Clause 7.3 the Contractor must perform its obligations under the Order in accordance with this Contract.

7.5 If, pursuant to a notice issued under Clause 7.3, the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates where appropriate), may determine:

(a) the contract price applicable to that Order and such contract price will deemed to be the Contract Price for that Order; and

(b) the relevant information or requirements for that Order provided that such determination does not otherwise breach the terms of the Framework Agreement.

7.6 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any Works completed prior to the date the cancellation is notified to the Contractor.

8 SITE RISKS

8.1 The Contractor warrants that before the Start Date the Contractor has had access to the Site, carried out its own inspections of the Site and the Environment, and has conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of:

(a) The Site and the Environment; and
(b) All risks and contingencies associated with the Site and the Environment,

or has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, in which case the Contractor acknowledges that there will be no adjustment to the Contract Price or Date for Completion, except as expressly stated in this Contract.

8.2 The Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of the physical conditions and characteristics of the Site and the Environment.

8.3 Without limiting Clauses 8.1 and 8.2, the Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of, or in connection with, all Contamination in, under or around the Site and the Environment which came into existence after the Start Date.

9 COOPERATION

9.1 The Contractor acknowledges that all contractual communications between the Contractor and those Third Parties responsible for carrying out the Related Works must be directed through the Principal.

9.2 In performing the Works, the Contractor must:

(a) Take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the Works (including the work of Subcontractors) with the Related Works; and

(b) not carry out the Works in a manner which may cause damage to, or inconvenience the execution of, the Related Works, and at all times take all necessary steps to protect the Works from accidental damage caused by the Related Works.

9.3 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.

9.4 If the Contractor fails to comply with this Clause and additional work or any alterations or remedial work to either the Works or the Related Works becomes necessary as a result, the additional costs, if any, will be a debt due and payable immediately from the Contractor to the Principal.

10 ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not:

(a) assign this Contract, or any part thereof or any payment thereunder; or

(b) subcontract the whole or any part of this Contract,

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

11 INDEMNITY

11.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind suffered or incurred in connection with any act or omission of the Contractor or the Contractor's Personnel arising from or in connection with the performance or non-performance of the Works, including any:

(a) breach of contract;
(b) breach of Intellectual Property Rights;
(c) Contamination;
(d) Wilful Misconduct;
(e) tort, including negligence or breach of a Legal Requirement; or
(f) breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty.

11.2 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel against any Loss suffered or incurred in connection with any claim by a Third Party against the Principal arising from or in connection with the performance or non-performance of the Works including any:

(a) breach of contract;
(b) breach of Intellectual Property Rights;
(c) Contamination;
(d) Wilful Misconduct;
(e) tort, including negligence or breach of a Legal Requirement; or
(f) breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty.

11.3 The indemnities set out in Clauses 11.1 and 11.2 do not apply to any Loss to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

11.4 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 11.

12 DAMAGE TO PROPERTY

12.1 If the Contractor or the Personnel of the Contractor damage property, including property on or adjacent to the Site, the Contractor must promptly:

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

12.2 If the Contractor fails to comply with an obligation under Clause 12.1, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

13 PROTECTION OF PROPERTY

If urgent action is necessary to protect the Works, other property or people and the Contractor fails to take such action, then, in addition to any other remedies of the Principal, the:

(a) Principal or Principal's Representative may take the necessary action; and

(b) reasonable cost incurred by Principal or Principal's Representative in the circumstances will be a debt due and payable immediately from the Contractor to the Principal.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 The Contractor warrants that the Works and any design, documents or methods of working provided by the Contractor, including the Design Documents, do not infringe any Intellectual Property Right.

14.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.

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

14.4 Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Works and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.

14.5 Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.

14.6 The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Works and any documentation provided pursuant to this Contract.

15 NO ADJUSTMENT TO CONTRACT PRICE

15.1 Unless otherwise stated in this Contract, the Contract Price shall be firm and not subject to rise and fall.

15.2 If this Contract is a Framework Agreement, on each Review Date, the Contractor shall be entitled to adjust the rates (if any) set out in the Schedule of Rates by the percentage movement as published in the Consumer Price Index since the last Review Date.

15.3 If the rates (if any) set out in the Schedule of Rates are adjusted in accordance with clause 15.2, those rates will apply to Orders issued under clause 7 during the period commencing the relevant Review Date and ending on the immediately following Review Date (but only if the Contract Price for such Orders are to be calculated at the rates set out in the Schedule of Rates).

15.4 For clarity, the Contract Price for Orders issued by the Principal before a Review Date will not be affected by any adjustment to the rates (if any) set out in the Schedule of Rates in accordance with clause 15.2.

15.5 The Contractor is not entitled to any adjustment in the Contract Price for any reason except in accordance with Clause 29 as a result of a Variation.

16 CONTRACTOR ACKNOWLEDGMENT AND WARRANTIES

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

(a) At all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Contractor in the performance and Completion of the Works (including all design);

(b) develop and complete the Design Documents so that the Design Documents are accurate, suitable, appropriate and adequate for the Intended Purpose taking into account the Site and the Environment; and

(c) Perform and complete the Works in accordance with the Design Documents so that when completed, the Works will be fit for the Intended Purpose and be in accordance with this Contract.

17 MATERIALS AND EQUIPMENT

17.1 The Contractor must provide all Materials and Equipment, labour and haulage necessary for the performance of the Works.

17.2 The Contractor must ensure that all Materials and Equipment and any other items which the Contractor uses or supplies in the performance of the Works are of merchantable quality, comply with this Contract and all Legal Requirements, and are fit for their usual and intended purpose.

18 COMPLYING WITH LEGAL REQUIREMENTS

18.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Works or the performance of this Contract.

18.2 Without limiting in any way the generality of the foregoing or Clause 35, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* (WA) and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

18.3 If a Legal Requirement is at variance with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the 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 shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

19 INSURANCE

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

(a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and

(b) from insurers approved by the Principal which either:

(i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or

(ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.

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

19.3 Without limiting Clause 19.1, the Contractor must:

(a) pay all premiums and all deductibles applicable to the Insurance when due; and

(b) promptly reinstate any Insurance required under this Clause 19 if it lapses or if cover is exhausted.

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

(a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;

(b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and

a failure by any insured Party to observe and fulfill the terms and conditions will not affect any other Party;

(c) provide that where the Principal is not a named insured the insurer must waive rights of subrogation against the Principal;

(d) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal; and

(e) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.

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

19.6 The Contractor must maintain public liability insurance. The public liability policy must:

(a) come into effect on or before the Start Date and be maintained until the Insurance End Date;

(b) be in the joint names of the Contractor and the Principal and the Principal's Personnel;

(c) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate during any one 12 month period of insurance;

(d) cover the liability of the Contractor and the Contractor'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 Legal Requirement to be insured under a workers compensation policy),

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

(e) be endorsed to cover:

(i) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract; and

(ii) sudden and accidental pollution.

19.7 In addition to any compulsory motor vehicle third party insurance required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain vehicle and equipment insurance for the Contractor's vehicles, registered plant and equipment used in connection with this Contract whether owned, hired or leased ('**Contractor's Vehicles**'). The vehicle and equipment liability policy must:

(a) come into effect on or before the Start Date and be maintained until the Insurance End Date;

(b) cover against all loss and/or damage to the Contractor's Vehicles;

(c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;

(d) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the aggregate; and

(e) other than compulsory motor vehicle third party insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal.

19.8 The Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law. This insurance cover must:

(a) come into effect on or before the Start Date and be maintained until the Insurance End Date;

(b) to the extent permitted by any Legal Requirement, be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor; and

(c) be for not less than the amount set out in the Contract Specifics in respect of any one event.

19.9 The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.

19.10 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.

19.11 The Contractor must ensure that its Subcontractors are insured as required by this Clause 19, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.

19.12 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal evidence reasonably required by the Principal including terms to the extent necessary to demonstrate compliance with this Contract. Nothing in this Clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.

19.13 If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such

Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.

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

19.15 The Contractor must:

(a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and

(b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.

19.16 The Insurances are primary, and not secondary, to the indemnities referred to in this Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.

19.17 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.

20 ACCESS

20.1 From the Start Date until the Date of Completion, the Principal must provide non-exclusive access to the Contractor to the Site.

20.2 The Contractor must comply with the directions of the Principal's rules, procedures and practices, including the:

(a) Site Standards and Procedures;
(b) Specifications;
(c) safety requirements set out in this Contract;
(d) Environmental requirements set out in this Contract and the Environmental Laws; and
(e) any other policies set out in the Contract Specifics.

21 TIME FOR COMMENCEMENT AND EXTENSIONS OF TIME

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

21.2 The Contractor must:

(a) perform the Works with due expedition and without delay; and
(b) achieve Completion by the Date for Completion.

21.3 Subject to Clauses 21.4, 21.5 and 21.6, if the Works are unlikely to achieve Completion by the Date for Completion the Contractor is entitled to an extension to the Date for Completion if the delay is due to:

(a) breach by the Principal of its obligations under this Contract;

(b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;

(c) a Force Majeure Event occurring before the Date for Completion;

(d) suspension of this Contract under Clause 30, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or

(e) a Variation being granted under Clause 29.

21.4 The Contractor may only claim an extension to the Date for Completion under Clause 21.3 if the Contractor:

(a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;

(b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and

(c) or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.

21.5 The Contractor's claim for an extension to the Date for Completion must:

(a) be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and

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

21.6 If the Principal's Representative reasonably considers that:

(a) the claim for an extension of time under Clause 21.5 relates to an event listed in Clause 21.3; and

(b) Clauses 21.4 and 21.5 have been satisfied,

the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time under Clause 21.5 (or such other time agreed by the Parties) that an extension of time to the Date for Completion is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in Clause 21.3 (as determined by the Principal, acting reasonably).

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

(a) any time that the Principal directs a Variation; or
(b) at any other time at the absolute discretion of the Principal,

notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Date for Completion. The Contractor acknowledges that the mechanism in this Clause 21.7 is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:

(c) impose any obligations on the Principal;

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

(e) in any way constitute a waiver or relaxation of any of the requirements under this Clause 21; or

(f) entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this Clause 21.7.

21.8 If the Principal considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim under Clause 21.5 that the Date for Completion remains unchanged.

21.9 If the Contractor fails to comply with Clause 21.5, the Contractor will have no entitlement to an extension of time of the Date for Completion.

21.10 If an extension of time is granted in accordance with this Clause 21, provided that those costs are not also reimbursable pursuant to Clauses 29 or 30, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay but without regards to overheads, profit or any other cost, loss, expense or damage.

22 PROGRAMMING

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 Start Date.

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, float, logic links and constraints; 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 Works, and must clearly mark the critical path.

22.4 The Construction Program must take into account the requirements and the 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. Once approved, the updated Construction Program is the Construction Program for the purposes of this Contract.

22.6 Each week, or as otherwise directed by the Principal's Representative, the Principal's Representative and the Contractor must meet at the Site (at a time and date advised by the Principal's Representative) to review the progress of the Works.

22.7 At each meeting referred to in Clause 22.6, the Contractor must provide to the Principal's Representative a report in the form advised by the Principal from time to time.

23 LIQUIDATED DAMAGES

23.1 Subject to Clauses 21, 29 and 30, if the Contractor does not achieve Completion by the Date for Completion, the Contractor must pay to the Principal, Liquidated Damages for every day after the Date for Completion to and including the earliest of:

(a) the Date of Completion; or
(b) termination of this Contract.

23.2 If an extension of time is granted in accordance with Clause 21.6 after the Contractor has paid or the Principal has set off the Liquidated Damages payable under Clause 23.1, the Principal shall repay to the Contractor such of those Liquidated Damages as represent the days the subject of the extension of time.

23.3 The payment of Liquidated Damages will not relieve the Contractor from its obligations to deliver the Works, achieving Completion or from any of its obligations and liabilities under this Contract.

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

23.5 The Principal may recover the amount of Liquidated Damages:

(a) on demand from the Contractor; or
(b) by deducting such amount from any amount owed to the Contractor by the Principal,

after the elapse of the Date for Completion.

23.6 The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this Clause 23 represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if Completion is not achieved by the Date for Completion and such sums shall not be construed as a penalty.

24 PROCEDURE FOR COMPLETION TESTS

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

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

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

24.3 Except:

(a) with the prior written consent of the Principal; or
(b) to the extent necessary to comply with Clause 24.4(a),

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

24.4 If the whole or any part of the Works fails to pass a Completion test, the Contractor must:

(a) promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failures, imperfections or other faults as may be required to ensure that all Completion tests are satisfied;

(b) be responsible for all costs and expenses incurred or sustained (including the cost of the Completion tests being borne by the Contractor); and

(c) if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.

24.5 If the Contractor fails to perform any Completion test in accordance with this Contract:

(a) the Principal is to provide notice to the Contractor stating:

(i) the Contractor's failure to perform the Completion test; and

(ii) that the Contractor has 5 Business Days, or as otherwise agreed with the Principal at the Principal's absolute discretion, from the date of the notice to perform the Completion test;

(b) if the Contractor fails to satisfy the requirement in 24.5(a)(ii), the Principal may perform that Completion test at a date and time determined by the Principal; and

(c) the cost incurred by the Principal in performing that Completion test will be a debt due and payable immediately from the Contractor to the Principal.

25 INFORMATION

The Contractor must, on request by the Principal or the Principal's Representative, provide to the Principal and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Legal Requirement, in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Contract.

26 COMPLETION

26.1 The Contractor must give the Principal at least 21 days written notice of the date on which the Contractor anticipates that Completion will be achieved. When the Principal is satisfied that Completion has been achieved, the Principal must issue a Completion Certificate for the Works.

26.2 On the issue of the Completion Certificate, the Principal will take over the Works.

26.3 The Principal must pay the Contractor (or the Contractor must pay the Principal, as the case may be) within 28 days after the issue of the Completion Certificate, the amount stated in that certificate as being due by the Principal (or by the Contractor, as the case may be).

26.4 The issue of a Completion Certificate does not constitute approval of any work or other matter and does not prejudice any claim by the Principal.

27 DEFECTS LIABILITY PERIOD

27.1 The Principal may, at any time up to Completion and during the Defects Liability Period, conduct performance reviews of the Works. The Principal may notify the Contractor of any failure by the Contractor to comply with this Contract.

27.2 The Contractor must, within a reasonable time (but no later than 30 days), from receipt of a notice from the Principal, rectify any Defect notified to the Contractor before or at Completion, or during the Defects Liability Period.

27.3 If the Contractor fails to rectify any Defect in accordance with this Clause 27, the Principal may rectify the Defect and any resulting liability incurred by the Principal in so doing will be a debt due from the Contractor to the Principal.

27.4 The Defects Liability Period applicable to any work performed for the purposes of rectifying Defects is the period commencing on the date of completion of that remedial work and ending on the expiry of the times stated in the Contract Specifics.

28 REPRESENTATIVES

28.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.

28.2 The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute

resolution procedure in Clause 38 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.

28.3 The Contractor's Representative is authorised to exercise any functions of the Contractor under this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

29 VARIATIONS

29.1 The Principal may, in its absolute discretion, give the Contractor a Variation Order and, subject to this Clause 29, the Contractor must carry out a Variation which is the subject of a Variation Order.

29.2 The Principal may, in its absolute discretion, require the Contractor to provide a quotation for a proposed Variation (in a form approved by the Principal) before the Principal notifies the Contractor of whether the work is to proceed and the Contractor must provide the quotation ('**Variation Quotation**') within 7 days after receipt of the request.

29.3 The Contract Price will be adjusted for the value of a Variation as determined in accordance with Clause 29.4, which is the subject of a Variation Order and performed by the Contractor.

29.4 The value of the Variation will be ascertained by the Principal as follows:

(a) if accepted in writing by the Principal, as set out in the Variation Quotation;

(b) to the extent that Clause 29.4(a) does not apply, the rates or prices in the Schedule of Rates shall be used; or

(c) to the extent that neither Clauses 29.4(a) or 29.4(b) apply, as determined by the Principal (acting reasonably).

29.5 Any claim for an extension of time to the Date for Completion in connection with a Variation will be:

(a) if accepted in writing by the Principal, as set out in the Variation Quotation; or

(b) where Clause 29.5(a) does not apply, as determined by the Principal (acting reasonably and having regard to whether the Contractor can take reasonable steps to minimise the consequences of any delay).

29.6 Any Variation which is the subject of a Variation Order will be included in the next Progress Claim after completion of all of the Works the subject of that Variation Order, and paid in accordance with Clause 31.

29.7 The Contractor acknowledges that the Principal is not liable for, or in connection with, any Loss, incurred by the Contractor (and the Contractor is not entitled to any payment or compensation) arising out of or in connection with any Variation to the Works except where it is expressly directed pursuant to a Variation Order issued in writing by the Principal pursuant to this Clause 29.

30 SUSPENDING THIS CONTRACT

30.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.

30.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.

30.3 Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Losses.

30.4 If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with Clause 30.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Date for Completion is extended by the period of that suspension.

30.5 The remedies set out in Clauses 30.3 and 30.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

31 PAYMENT

31.1 The Contractor must submit a Progress Claim:

(a) at the time or times in the Contract Specifics;

(b) specifying:

(i) the value of the Works carried out;

(ii) any other amounts the Principal owes to the Contractor; and

(iii) any other information that the Principal requests; and

(c) accompanied by a statutory declaration that it has paid all amounts due and owing to its employees and Subcontractors in connection with the Works.

31.2 If the Contractor does not provide the statutory declaration referred to under Clause 31.1(c), the Principal may pay directly to the Contractor's employees and Subcontractors any amounts they may be owed in connection with the Works. Any amount paid by the Principal under this Clause will be a debt owed by the Contractor to the Principal.

31.3 Within 28 days after receiving a Progress Claim that complies with Clause 31.1, the Principal must give the Contractor a certificate stating the Principal's opinion of the amounts:

(a) the Principal owes the Contractor in connection with the Progress Claim (and reasons for any difference); and

(b) the Contractor owes the Principal in connection with this Contract, ('**Payment Certificate**').

31.4 Within 28 days after the Principal gives the Payment Certificate referred to in Clause 31.3, the Principal must pay the Contractor the balance of the amounts set out in the Payment Certificate after:

(a) exercising any right of set-off in accordance with Clause 48; and

(b) deducting retention monies in accordance with Clause 32.

31.5 If the setting off referred to in Clause 31.4(a) produces a negative balance, then the Contractor must pay that balance to the Principal within 28 days after receiving notice of it.

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

31.7 Subject to its rights of set-off under Clause 48, the Principal must pay the Contractor:

(a) 50% of the aggregated retention monies retained by the Principal under Clause 32 within 28 days after the date of the Completion Certificate; and

(b) the remainder of the aggregated retention monies within 28 days of the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case the payment must be made within 28 days after the last notified Defect has been rectified).

31.8 Without limiting the Contractor's obligations under Clause 31.1 to submit Progress Claims, within 28 days after each of the following:

(a) receiving the Completion Certificate; and

(b) the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case 28 days after the last notified Defect has been rectified),

the Contractor must submit a Progress Claim.

31.9 The Progress Claim lodged under Clause 31.8 must:

(a) comply with Clauses 31.1(b) and 31.1(c);

(b) subject to Clause 31.1(b)(iii), include the details of all sums then claimed as being due to the Contractor arising out of, or in connection with, this Contract; and

(c) include any documents and other information that, in the Principal's reasonable opinion, are necessary to ascertain the amounts the Contractor is owed.

31.10 The Principal must treat valid Progress Claims submitted under Clause 31.8 as though they were Progress Claims submitted under Clause 31.1.

31.11 Upon the expiration of the periods referred to in Clause 31.4, except as set out in valid Progress Claims submitted in accordance with Clause 31.8:

(a) the Principal has no liability to the Contractor in connection with this Contract; and

(b) the Contractor is absolutely barred from making any claim against the Principal (including by way of proceeding in any court) for any amount whatsoever in connection with this Contract.

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

(a) retention monies retained by the Principal under Clause 32; and

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

31.13 No deduction in accordance with Clause 31.12 affects the Principal's rights to recover the balance of any debt that remains owing after the deduction.

32 SECURITY AND RETENTION MONEY

32.1 The Principal, as security for the Contractor's performance may deduct as retention monies, 10% of each Progress Claim, until an amount equal to 10% of the Contract Price is retained ('**Retention Sum**').

32.2 The Principal may require the Contractor to provide, at any time, in lieu of retention monies, security equal to the value of the Contract Price, or part thereof, as set out in the Contract Specifics, in the form of an unconditional and irrevocable bank undertaking in a form, and from a financial institution, approved by the Principal.

32.3 The Principal may have recourse to any retention money or other form of security held under this Contract at any time it may be entitled to recover from, or be paid by or has a bona fide claim that it is entitled to, the Contractor an amount claimed as due under this Contract or otherwise than under this Contract.

32.4 The Contractor accepts that the Principal may convert into money security provided under this Contract that does not consist of money at any time that it may be entitled to recover from, or be paid by, the Contractor an amount claimed as due and payable under this Contract or otherwise than under this Contract.

32.5 Within 20 days after the Date of Completion, the Principal must return to the Contractor any security provided under this Clause, after deduction of any withholding or set-off the Principal is entitled to make pursuant to this Contract.

32.6 If the Principal wrongly makes a claim on any security provided by the Contractor under this Contract, the Principal must repay the amount wrongfully claimed plus interest calculated at the rates specified in the Contract Specifics from the day that the claim was made until the day that the money was repaid. The Contractor's entitlement under this Clause 32.6 is the sole entitlement in respect of the wrongful claim.

33 GOODS AND SERVICES TAX

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

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

33.3 Any amount referred to in this Contract (other than an amount referred to in Clause 33.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.

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

33.5 The recipient must pay the additional amount payable under Clause 33.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.

33.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 33.4 or at such other time as the Parties agree.

33.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 33.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

33.8 If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 33.4.

34 CONFIDENTIAL INFORMATION AND PUBLICITY

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

(a) the Confidential Information; or
(b) other information concerning the Works, or this Contract,

without the prior written approval of the Principal.

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

(a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or

(b) disclose the Confidential Information:

(i) other than (to the extent they require the information to enable the Contractor to fulfill its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or

(ii) where disclosure is required by Law (including disclosure to any stock exchange).

34.3 The rights and obligations under this Clause 34 continue after the termination or expiry of this Contract.

35 WORKPLACE HEALTH AND SAFETY

35.1 The Contractor must:

(a) perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety;

(b) co-operate with any other contractors or other persons engaged in or associated with the business of the Principal in order to maintain uniform safety and industry practices;

(c) co-operate with the Principal to enable the Principal to comply with any Legal Requirements for workplace health and safety;

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

(e) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident which is notifiable under any Legal Requirement, injury or property damage which:

(i) occurs during the execution of the Works; and

(ii) is associated with the Works;

(f) provide the Principal with any further information relating to workplace health and safety when requested by the Principal;

(g) supply all Materials and Equipment necessary to ensure performance of the Works in a manner that is safe and without risk to health. The Contractor must ensure that all Materials and Equipment supplied by it is, and is maintained, in a condition that is safe and without risk to any person;

(h) provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the execution of the Works; and

(i) at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 35.

35.2 If the Principal observes or becomes aware of a condition that breaches this Clause 35, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.

35.3 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 35.1 or Clause 35.2 does not relieve the Contractor from complying with its obligations under this Clause 35.

36 CONSEQUENTIAL LOSS

In relation to Consequential Loss:

(a) subject to Clauses 11 and 36(b) but notwithstanding any other Clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by any Law; and

(b) Clause 36(a) does not exclude liability of the Contractor for Consequential Loss, if, but for Clause 36(a) the Contractor would have insurance cover for that Consequential Loss under Insurance.

37 FORCE MAJEURE EVENT

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

(a) to the extent practicable, specify in the notice the length of delay to the Date for Completion that will result from the Force Majeure Event; or

(b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.

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

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

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

38 SETTLEMENT OF DISPUTES

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

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

(a) alleged facts on which the claim is based;

(b) legal basis on which the claim is made; and

(c) relief that is claimed.

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

(a) its position in relation to the Dispute; and

(b) the basis for its position.

38.4 Within 10 Business Days of receipt of the response referred to in Clause 38.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.

38.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 38.4, either Party may initiate proceedings in a court of competent jurisdiction.

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

39 TERMINATION OF CONTRACT

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

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

(a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and

(b) the cost of materials and equipment reasonably ordered by the Contractor for the Works and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,

and shall have no further liability to the Contractor.

39.3 If the Contractor:

(a) subject to Clause 38, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably

allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;

(b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;

(c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;

(d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;

(e) or any Contractor's Personnel, are found guilty of any criminal act related to the Works that may bring the Principal into disrepute;

(f) includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or

(g) or the Contractor's Personnel:

(i) cause a safety issue, condition or any risk to health in breach of this Contract; and

(ii) the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

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

39.4 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 39.3 and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

39.5 When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.

39.6 The termination of this Contract does not affect:

(a) any rights of the Parties accrued prior to termination; and

(b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after termination.

40 WAIVERS AND AMENDMENTS

40.1 This Contract may only be amended, or its provisions waived, in writing by the Parties.

40.2 No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

41 ENTIRE AGREEMENT

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

42 RIGHTS AND REMEDIES

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

43 GOVERNING LAW

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

44 PROPORTIONATE LIABILITY

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

(a) this Contract; and

(b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

45 CONSTRUCTION CONTRACTS ACT

45.1 The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation

to the Construction Contracts Act that the Contractor gives to the Principal or receives from a Subcontractor.

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

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

46 PERSONAL PROPERTY SECURITIES ACT

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 Contract; and

(b) words and phrases used in this Clause 46 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

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

(a) ensuring that the security interest is enforceable, perfected and otherwise effective;

(b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or

(c) enabling the Principal to exercise rights in connection with the security interest.

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 without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

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

46.7 Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Clause 46 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

47 APPLICATION OF THIS CONTRACT

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

48 DEDUCTION OF CHARGES OR DEBTS

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

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

Schedule 1 - Contract Specifics

Framework Agreement	No
Contract Price	**(Lump Sum)** - $[***insert***]
Principal's Representative	Tony Battersby – Chief Executive Officer Address: Lot 45 Stanley Road, Wellesley WA 6233 Postal: Po Box 111, Australind WA 6233 Telephone: 08 9711 1052 Mobile: 0407 990 659 Email: tbattersby@bunbury.wa.gov.au
Contractor's Representative	**[*Insert name, title*]** Address: [ ] Telephone: [ ] Facsimile: [ ] Email: [ ]
Time to Submit Progress Claims	1st Day of each month
Details required in Progress Claims	A detailed list of work that has been completed with an itemised cost for invoicing that is required to be paid by the Principal.
Start Date	Within one week from possession of site by the Principal.
Works to be performed	TBA
Date for Completion	TBA
Site	Lot 45 Stanley Road, Wellesley WA 6233
Defect Liability Period	12 Months from the date of practical completion of the works.
Minimum level of Public Liability Insurance Cover required	$10, 000 000 for one claim;
Minimum Contractor's Vehicles Insurance Cover Required	N/A – 3rd Part insurance required.
Minimum Employee Insurance Cover required	As per Workers Compensation WA Legislation

Public Liability Insurance End Date	12 months from the Date of Completion.
Contractor's Vehicles Insurance End Date	Not applicable
Employee Insurance End Date	From the Date of Completion.
Liquidated Damages	$100 per Calender day
Interest rate for wrongful claims on security (Clause 32.6**)**	Supreme Court rates from date of Acceptance of the Contract
Other applicable policies (Clause 20.2(e))	Not applicable
Security	Not applicable

Schedule 2 - Specification

Schedule 3 - Site Standards and Procedures

Schedule 4 - Schedule of Rates

Executed as an agreement

The common seal of
[Insert full name of Principal]
was hereunto affixed pursuant to a
resolution of the ***[Insert name of Principal]*** in the presence of:

sign here ▶ _____
Witness

print name _____

sign here ▶ _____
Chief Executive Officer

print name _____

Signed for
[Insert full name of Contractor]
by his/her/it's attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____