



FORMAL INSTRUMENT OF AGREEMENT

INSERT PROJECT DETAILS

THIS AGREEMENT made the _____ day of _____ 201

BETWEEN

HOUSING AUTHORITY (ABN 56 167 671 885) of 99 Plain Street East Perth WA 6004 (**Principal**)

AND

##ENTITY DETAILS **##ABN** of **###ADDRESS** (**Contractor**)

RECITALS

- A. The Principal requires the **##DESCRIBE WORKS** as further defined by and set out in the Contract (**Works**).
- B. The Principal and the Contractor agree to enter into this Contract for the delivery of the Works.

NOW IT IS AGREED

1. In consideration of payment of **##insert \$** plus GST (**Contract Sum**), or such other sums as shall become payable at the time and in the manner set forth in the Contract to be paid by the Principal to the Contractor, the Contractor will execute and complete the Works in compliance with the Contract and in accordance with and within the time frames stated in the Contract.
2. The Contract constitutes the entire agreement between the parties and supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
3. It is agreed that this Formal Instrument of Agreement together with the documents listed below (**Contract Documents**) shall together constitute the entire and concluded agreement and the Contract between the Contractor and the Principal (**Contract**).
 - (a) This Formal Instrument of Agreement (including all annexures);
 - (b) Letter of Acceptance dated **##insert date**
 - (c) **Special Conditions – Module Procurement** (delete if not applicable)
 - (d) General Conditions of Contract AS2124-1992 as amended and inclusive of all Annexures (**General Conditions**);
 - (e) Tender Submission
 - (f) **Addendum to the Tender Documents as follows:**
 - (i) **##insert addendum titles**



- (g) Preliminary Construction Programme, titled [##insert title]
 - (h) Drawings as described in the document titled Contract Drawings;
 - (i) Scope of Works/Specifications to be extracted and attached;
 - (j) Aboriginal Employment Plan
 - (k) Condition Precedent/s as follows:
 - (i) [##insert condition precedent/s]
 - (l) Other documents
4. In the event of any ambiguity, discrepancy or inconsistency between the documents comprising the Contract Documents the documents shall rank in the order of precedence listed above to the extent of the discrepancy or inconsistency.

Warranties

5. Each party represents and warrants to the other party that:
- (a) It has full power and authority to execute the Contract and to perform its obligations under the Contract;
 - (b) The Contract has been duly executed by it; and
 - (c) The obligations undertaken by it and set out in the Contract are valid and binding in accordance with the terms of the Contract.
6. The Contractor warrants that it is entering into this Contract:
- (a) solely on the basis of its own investigations and determinations as to the obligations and liabilities assumed or to be assumed by the Contractor and risks involved in performing its obligations under the Contract; and
 - (b) without relying on any representation by the Principal or any other person purporting to represent the Principal.

[*Delete clauses 7 and 8 if Contractor is not a trustee]

Warranty where Contractor is a trustee -

7. The Contractor enters into and is bound by this agreement both:
- (a) in its personal capacity; and
 - (b) in its capacity as trustee of the [##insert trust name] (Trust).
8. The Contractor represents and warrants to the Principal that, in respect of the Trust:
- (a) it is the only trustee;
 - (b) no action is proposed to remove it as trustee of the Trust;



- (c) there is no default under the trust deed constituting the Trust;
- (d) it has the power to enter into and perform its obligations and incur liabilities under this agreement;
- (e) the beneficiaries of the Trust have consented to and benefit from, the entry into and performance of this agreement;
- (f) it has a right of indemnity out of the assets of the Trust for all liabilities incurred by it under this agreement and the assets of the Trust are sufficient to satisfy that right; and
- (g) it will not, without the Principal's consent (not to be unreasonably withheld or delayed):
 - (i) resign;
 - (ii) allow the appointment of a substitute or additional trustee;
 - (iii) terminate the trust or vary the terms of the Trust; or
 - (iv) resettle the Trust.

Governing Law

- 9. The law of Western Australia governs this Contract.
- 10. The parties submit to the exclusive jurisdiction of the courts of Western Australia, the Federal Circuit Court of Australia and the Federal Court of Australia.

Rights are Cumulative

- 11. A party's rights under this Contract are in addition to its rights at law.

Execution of counterparts

- 12. This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

Severance

- (a) If a provision of this agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this agreement.
- (b) The remaining provisions of this agreement remain in full force and effect.

EXECUTED BY:

PRINCIPAL

The **COMMON SEAL** of the)
HOUSING AUTHORITY)



was hereunto affixed)
in the presence of:)

Signature of Appointed Officer

Signature of Appointed Officer

Name of Appointed Officer

Name of Appointed Officer

Position of Appointed Officer

Position of Appointed Officer

OR*

Signed for and on behalf of)
HOUSING AUTHORITY)
by an authorised officer:)

Signature of Authorised Officer

Name of Authorised Officer

Position of Authorised Officer

** Delete the execution clause which does not apply.*



CONTRACTOR

Executed by)
[##insert Contractor's full name])
([##insert Contractor's ACN]))
Pursuant to section 127 of the)
Corporations Act 2001 (Cth))

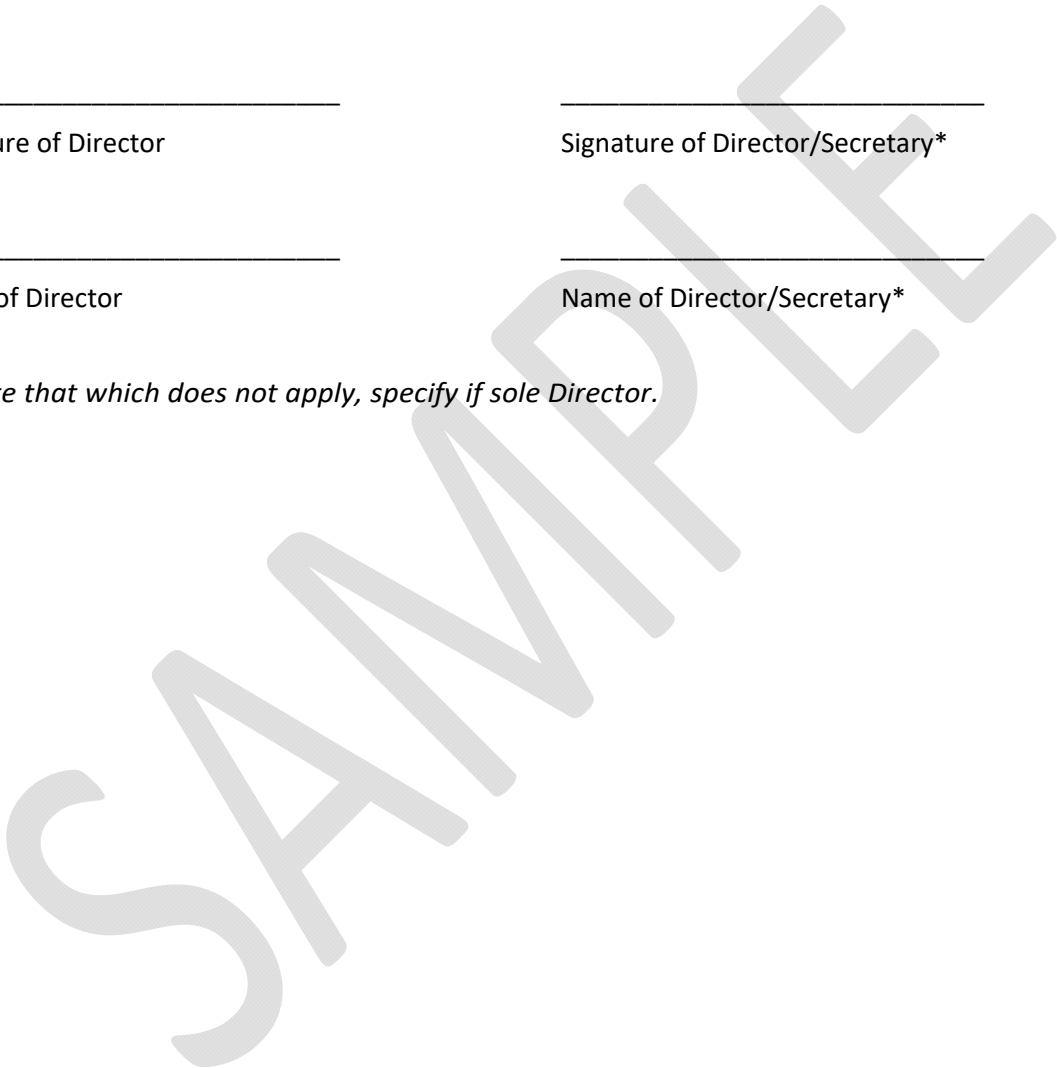
Signature of Director

Signature of Director/Secretary*

Name of Director

Name of Director/Secretary*

**Delete that which does not apply, specify if sole Director.*





Annexure 1 to the Formal instrument of Agreement

Contract Sum Breakdown

The Contract Sum breakdown will be used by the Superintendent for the purposes of assessing progress claims.

[To be completed on award of tender]

SAMPLE



**Annexure 2 to the Formal instrument of Agreement
Agreed Qualifications/Exclusions**

[To be completed on award of tender]

SAMPLE



Annexure 3 to the Formal Instrument of Agreement

Notification of appointment of Superintendent's Representative

Pursuant to Clause 24 of the General Conditions, take notice that the Superintendent has appointed [*name] as Superintendent's Representative.

The Superintendent's Representative has been delegated [*all the functions of the Superintendent under the Contract OR list functions and any limitations here].

[*To be completed on award of tender]

SAMPLE