



# BUILDING AGREEMENT

## REFERENCE SCHEDULE

<b>Contract Number</b>	[insert]
<b>Project Number</b>	[insert]
<b>Item 1 – Works</b>	<p>The design and construction on the Site of [Enter No of dwellings and dwelling configuration e.g. 1 x (2 bed x 2 bath) and 2 x (3 bed x 2 bath)] residential dwellings in accordance with the Drawings and Specifications, including:</p> <p>[Delete below paragraphs that are not applicable. Note – for projects built upon land brought to the Department by a third party (i.e. Call for Submissions) the works will generally include items (a) – (d) below.]</p> <p>(a) [the demolition and clearance of all improvements on the Site as at the date of this Contract in accordance with the Principal's Specifications for the Works or the Stage (as applicable) as set out in Appendix B];</p> <p>(b) [the removal and remediation of any contamination, pollution or waste on, at or under the Site to the standard required for residential use by all applicable laws];</p> <p>[delete paragraph (b) if special condition 1 (latent conditions) applies.]</p> <p>(c) [the clearance and levelling of the Site including but not limited to filling all excavations below existing ground level, filling material and compaction to the equivalent to existing adjoining soil];</p> <p>(d) [the undertaking of all engineering and civil site works on, at or under the Site which are required to render the Site suitable for immediate construction].</p>
<b>Item 2 – Site</b>	[Insert Lot Number, House Number, Street Address, Suburb]
<b>Item 3 – Contract Price</b>	[\$[insert] (inclusive of GST)
<b>*Item 4 – Land Sale Contract</b>	[describe sale contract for purchase of land by HA – see Special Condition 2]

<b>*Item 5 – Latest Date</b>	<i>[latest date for HA to become the owner of the land – see Special Condition 2]</i>
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*\*delete items 4 and 5 if not applicable – see Special Condition 2]*

This AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

## **BETWEEN**

**HOUSING AUTHORITY** (ABN 56 167 671 885) a body corporate pursuant to the provisions of the *Housing Act 1980* (WA) and any amendments thereto, whose office is situated at 99 Plain Street, East Perth in the State of Western Australia (“**the Principal**”) of the one part.

AND

**[insert full legal name of contractor]** [ABN] (Building Registration No: [insert]), whose registered office is situated at [address] and whose Postal address is [address] (“**the Contractor**”) of the other part.

## **WHERE AS**

A. The Contractor has:

- (i) received, read and understood this Building Agreement, the General Conditions of Contract and the Special Conditions of Contract (if any) annexed to this Building Agreement;
- (ii) examined and inspected the Site;
- (iii) conducted all reasonable enquiries and examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contractor’s decision to enter into the Contract; and
- (iv) agreed to execute and complete the Works at the Site in accordance with and as shown, described or referred to in this Building Agreement, the General Conditions of Contract and Special Conditions of Contract (if any) annexed to this Building Agreement.

B. In consideration of the Contractor undertaking the Works, the Principal has agreed to pay the lump sum, which (subject only to clause 23 of the General Conditions and any Special Conditions of Contract) is a guaranteed maximum price, specified in Item 3 of the Reference Schedule to this Building Agreement.

## **NOW IT IS AGREED**

1. This Building Agreement, the General Conditions of Contract and the Special Conditions of Contract (if any) annexed to this Building Agreement shall be collectively referred to as “**the Contract**”.
2. In consideration of the Contract Price being paid by the Principal to the Contractor at the time and the manner set forth in the Contract, the Contractor will execute and complete the Works, in accordance with and within the time stated in the Contract.
3. If there is any ambiguity or discrepancy between any documents comprising the Contract the following order of precedence shall apply:

- 3.1 Building Agreement and Special Conditions;
- 3.2 Appendix A - Schedule;
- 3.3 Appendix B - the Principal's Specifications;
- 3.4 Appendix F - Modular Construction (if applicable);
- 3.5 General Conditions of Contract
- 3.6 Appendix C - the Contractor's Specifications (if any);
- 3.7 Appendix D - the Drawings;
- 3.8 Appendix E - Contractor Reports and Records; and
- 3.9 Appendix G – Aboriginal Employment Targets Practice Guide Annexure.

4. Words which are used herein:

- 4.1 appearing in the Reference Schedule have the meanings given to them in the Reference Schedule; and
- 4.2 which are defined in the General Conditions of Contract shall have the same meanings as are given to them in the General Conditions of Contract.



## **ATTACHMENT 1 - SPECIAL CONDITIONS OF CONTRACT**

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### **1.CONTRACT CONDITIONAL ON OWNERSHIP OF SITE**

- 1.1.1 The Contract is subject to and conditional upon the Principal becoming the registered proprietor of the Site pursuant to the Land Sale Contract (as specified in item 4 of the Reference Schedule) on or before the Latest Date (as specified in item 5 of the Reference Schedule). For the avoidance of doubt, and notwithstanding anything to the contrary in the Contract, the Contractor is not entitled to any progress payment until such point that the Principal becomes the registered proprietor of the Site.
- 1.1.2 If the Principal has not become the registered proprietor of the Site on or before the Latest Date, or the Land Sale Contract is terminated for any reason whatsoever prior to the Latest Date, the Principal may terminate the Contract immediately by notice in writing to the Contractor, and the Contractor must refund to the Principal any amounts which have been paid by the Principal to the Contractor under the Contract in full and without any deduction.

## ATTACHMENT 2 – GENERAL CONDITIONS OF CONTRACT



Government of **Western Australia**  
Department of **Communities**

# HADC001

## GENERAL CONDITIONS OF CONTRACT

This is a lump sum (guaranteed maximum price) contract for simple building works including alterations undertaken. This contract should not be used for complex or high-risk works or when Nominated Sub-Contractors, Nominated Suppliers, Prime Cost Amounts or Bills of Quantities are used.

## Version History

Current version 2018.011.26
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## GENERAL CONDITIONS OF CONTRACT

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### 1. DEFINITIONS AND INTERPRETATIONS

1.1 In the Contract the following words have the meanings hereby assigned to them, except where the context otherwise requires:

1.1.1 “the Principal”, “the Contractor”, “the Contract” and “the Site” are defined in the Building Agreement;

1.1.2 “Approvals” means:

- (a) development approval;
- (b) a building permit;
- (c) where more than one dwelling is being constructed as part of the Works, subdivision approval; and
- (d) all other permits, approvals or licenses required in connection with the construction, or for the performance, of the Works or which are required to enable occupation and use of the completed Works;

1.1.3 “Authority” means every governmental or semi-governmental body, municipal council, health board, health commissioner, water sewerage and drainage board, the Water Corporation and every and any other board, person, authority or department whatsoever now or hereafter exercising under any Act or by-law any control or jurisdiction over or power in connection with the Site or any part thereof or with the construction of the Works or with any water, gas, fuel, electricity, sewerage, garbage, sullage, heating, cooling, ventilation or other services in or about the Site, and every officer or person acting for or on behalf of such an authority;

1.1.4 “Bank Guarantee” means an unconditional and irrevocable guarantee given by a financial institution that:

- (a) has an office open for business in Australia;
- (b) is registered in Australia;
- (c) is regulated by the Australian Prudential Regulatory Authority (APRA); and
- (d) meets a credit rating not less than:
  - (i) A (where the Contract Price is less than \$7,500,000);
  - (ii) A + (where the Contract Price is equal to or greater than \$7,500,000); or
- (e) such other institution, as the Principal reasonably approves in its discretion.

- 1.1.5 "Building Agreement" means the building agreement between the Principal and the Contractor which incorporates these General Conditions and to which these General Conditions are attached;
- 1.1.6 "Certificate of Practical Completion" means a certificate issued by the Superintendent pursuant to clause 32.1;
- 1.1.7 "Claim" includes any claim for an increase in the Contract Price, for payment of moneys (including damages) or for extension of time under, or arising out of, or in connection with, the Contract, a direction of the Superintendent, the Works, the conduct of either party before the Contract is made or otherwise at law, in equity or under statute (including, without limitation, the tort of negligence, misrepresentation or otherwise or for restitution);
- 1.1.8 "Constructional Plant" means appliances and things used in the execution of the work under the Contract but not forming part of the Works;
- 1.1.9 "Contract Documents" means the Specifications, the Drawings and any other Design Documents (as the same may be modified in accordance with the Contract) (provided that if there is any inconsistency between any of these documents, they shall prevail in the order set out in clause 3 of the Building Agreement);
- 1.1.10 "Contract Price" means the price set out in Item 3 of the Reference Schedule, subject to adjustment under this Contract;
- 1.1.11 "Contractor's Design Obligations" means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents;
- 1.1.12 "Contractor's Representative" means the person appointed by the Contractor as its representative under clauses 21.1 and 21.4;
- 1.1.13 "Contractor's Specifications" means the specifications attached or referenced hereto as Appendix C, if any, provided that, if clause 2A.2 applies, the specifications approved by the Principal under clause 2A.2(c) (if there are any) shall, as and from the date of such approval, be and be deemed to be substituted for, and to replace, the specifications attached hereto as Appendix C and to be the "Contractor's Specifications" referenced in this Contract;
- 1.1.14 "Date of Completion" means the date certified by the Superintendent in a Certificate of Practical Completion as the date upon which Practical Completion was reached;
- 1.1.15 "Date for Completion" means the date specified in item 5 of Appendix A as extended by such period agreed or determined in accordance with clauses 23.6 and 25;
- 1.1.16 "Days" shall mean calendar days;
- 1.1.17 "Defects Liability Period" means the period determined in accordance with clause 32.1 and item 8 of Appendix A;
- 1.1.18 'Design Documents' means the Drawings (including but not limited to as-built drawings), the Contractor's Specifications and all other information, samples, models, patterns and the like required by the Contract and created (and

including, where the context so requires, those to be created) by the Contractor for the construction of the Works;

- 1.1.19 "Drawings" means the drawings attached hereto as Appendix D (provided that, if clause 2A.2 applies, the drawings approved by the Principal under clause 2A.2(c) (if there are any) shall, as and from the date of such approval, be and be deemed to be substituted for, and to replace, the drawings attached hereto as Appendix D and to be the "Drawings" referenced in this Contract);
- 1.1.20 "Final Certificate" means a certificate issued by the Superintendent under clause 35;
- 1.1.21 "Force Majeure" means any of the following events, acts or causes beyond the reasonable control of the Contractor:
- (a) act of God, lightning, storm, flood, fire, earthquake, or cyclone;
  - (b) strike, lockout or other labour dispute; or
  - (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, quarantine or epidemic,
- except where:
- (d) the cause is the inability to obtain, use or pay moneys for any reason; or
  - (e) the consequence of the cause could have been prevented, overcome or remedied by the exercise by the Contractor of care and diligence normally exercised by duly qualified persons in the performance of comparable work.
- 1.1.22 "Government Agency" means a department, statutory authority, agency or instrumentality of the State of Western Australia or the Commonwealth of Australia.
- 1.1.23 "Insolvency Event" means in relation to a body corporate:
- (a) an administrator of the body corporate being appointed under the Corporations Act 2001;
  - (b) the body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
  - (c) the entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or reconstruction;
  - (d) the body corporate being insolvent within the meaning of s 95A(2) of the Corporations Act 2001;
  - (e) the body corporate being or stating that it is unable to pay its debts when they fall due;

- (f) the appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- (g) the making of a winding up order, or the passing of or attempted passing of a resolution for winding up, in respect of the body corporate except for the purposes of reconstruction or amalgamation;
- (h) an application being made (which is not dismissed within 30 Days) for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above other than for the purposes of an amalgamation or reconstruction;
- (i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction; and
- (j) any valid enforcement of any encumbrance over any of the body corporate's assets;

1.1.24 “Legislative Requirements” includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Contract; and
- (c) fees and charges payable in connection with the foregoing;

1.1.25 “Practical Completion” is that stage in the execution of the Works (or, if item 11 of Appendix A permits the Works to be completed in Stages, of the said Stage) when:

- (a) the Works or the Stage (as applicable) (including without limitation, all of the Principal's Specifications for the Works or the Stage (as applicable) as set out in Appendix B) are complete except for minor omissions and minor defects:
  - (i) which do not prevent the Works or the Stage (as applicable) from being immediately occupied as a residence; and
  - (ii) whose rectification will not prevent the convenient use of the Works or the Stage (as applicable);
- (b) if strata titling is part of the Works, completion of all work required to obtain new certificates of title (although the issue of new titles may not yet have occurred);
- (c) any tests required by the Contract have been carried out and passed; and
- (d) all warranties, documents and other information required by the Contract including any certificates of compliance or completion required by the *Building Act 2011* for the necessary occupancy permit (including occupancy permit strata if applicable) and building approval certificate (including building approval certificate strata, if applicable) to be issued or

which in the opinion of the Superintendent are essential for the use, operation or maintenance of the Works or the Stage (as applicable), including without limitation, two sets of keys to the Works or the applicable Stage (as the case requires), have been supplied by the Contractor to the Superintendent or to such persons as the Superintendent may direct;

- 1.1.26 “Principal Initiated Variation Order” has the meaning given to that term in clause 23.2;
- 1.1.27 “Principal's Specifications” means the specifications attached or referenced, as the case may be, in Appendix B, copies of which the Contractor acknowledges have been provided to the Contractor as at the date of this Contract;
- 1.1.28 “Profit and Overhead” means the percentage for profit and attendance set out in Item 15 of Appendix A;
- 1.1.29 “Progress Payment” means any payment required to be made by the Principal to the Contractor pursuant to clause 29 in the amount specified in item 6 of Appendix A;
- 1.1.30 “Provisional Sum Items” are limited to those items listed in item 12 of Appendix A and shall include only:
  - (a) statutory fees and charges, services or headwork charges which are required to be paid to an Authority to satisfy a condition or requirement of an Approval or to secure the connection of water, gas, electricity, telecommunications or other utilities to the Site (“Fees and Servicing”); and
  - (b) other costs listed in item 12 of Appendix A (“Other Costs”);
- 1.1.31 “Reference Schedule” means the reference schedule in the Building Agreement;
- 1.1.32 “Retention Monies” means any monies retained by the Principal from Progress Payments in accordance with clauses 29.3.1 and 30;
- 1.1.33 “Special Conditions” means the Special Conditions of Contract (if any) attached to the Building Agreement;
- 1.1.34 “Specifications” means the Principal's Specifications attached hereto as Appendix B and the Contractor's Specifications attached hereto as Appendix C (provided that, in accordance with clause 3 of the Building Agreement, if there is any inconsistency between the said Principal's Specifications and Contractor's Specifications, the Principal's Specifications shall prevail to the extent of that inconsistency);
- 1.1.35 “Stage” means, where the Works consist of a number of individual dwellings or units, the stages (if any) of the Works specified in item 11 of Appendix A;
- 1.1.36 “Strata Plan” includes a strata plan or a survey-strata plan;
- 1.1.37 “the Superintendent” means the person appointed by the Principal from time to time and notified in writing to the Contractor to act as the Superintendent for the purpose of the Contract;

- 1.1.38 "Superintendent's Representative" means a person appointed by the Superintendent as its representative under clause 19.1;
- 1.1.39 "Temporary Works" means works used in the execution of the work under the Contract but not forming part of the Works;
- 1.1.40 "Variation" means any change to the nature, quality or quantity of the WUC or any part thereof, including, without limitation, any addition, increase, decrease, omission, deletion, demolition, removal to or from the WUC;
- 1.1.41 "Works" means the works which the Contractor must complete and handover to the Principal under this Contract, a brief description of which is set out in item 1 of the Reference Schedule and unless inconsistent with the context, includes each Stage of those Works; and
- 1.1.42 "WUC" means the work which the Contractor is or may be required to execute under the Contract and includes the Contractor's Design Obligations, variations and remedial work.
- 1.2 Words importing the singular only also include the plural and vice versa, where the context requires.
- 1.3 Words importing persons shall include bodies corporate or incorporate.
- 1.4 Where the words "Alternative 1" or "Alternative 2" appear in a clause, the alternative nominated in the Schedule will apply to that clause.
- 1.5 The clauses in Appendix F are included in these General Conditions of Contract where the Works includes the provision of pre-fabricated units and shall prevail to the extent of any inconsistency with these General Conditions of Contract. Defined terms in the General Conditions of Contract apply to Appendix F unless expressly stated otherwise.

## **2A. CONTRACTOR'S DESIGN OBLIGATIONS**

### 2A.1 The Contractor:

- (a) shall at its sole cost and expense execute and complete the Contractor's Design Obligations and shall ensure that the Design Documents accord with the Principal's Specifications set out in Appendix B;
- (b) shall not permit any variations to be made to the Specifications and/or Drawings (save and expressly excepting those approved by the Principal, such approval to be in the Principal's sole and absolute discretion);
- (c) shall carefully check the Contract Documents and all design work included or specified in the Contract Documents, including all Drawings, Specifications and other information created for the construction of the Works;
- (d) shall execute and complete any design work required to be carried out in connection with the WUC and prepare all related Design Documents so that the design, Design Documents and work, the subject of that design, is suitable, appropriate and fit for its intended purpose;

- (e) shall, prior to the submission of the Design Documents for any Approvals, (or where Approvals are already obtained, as soon as possible following the date of the Contract) provide to the Principal a complete copy of all Design Documents promptly after preparation of the same and obtain the Principal's approval of such Design Documents (such approval not to be unreasonably withheld, provided such Design Documents have been prepared in accordance with the foregoing paragraphs and this Contract); and
- (f) acknowledges and agrees that it has assumed the risk of any ambiguity or discrepancy in or between the Design Documents, the Principal's Specifications, or any other Contract Documents, or any omission from any such documents, and it shall not be entitled to any extension of time or to any adjustment to the Contract Price, or any other compensation from the Principal whatsoever, in connection with any such ambiguity, discrepancy, omission.

2A.2 Without limiting its obligations under clause 2A.1(e), if this Contract is executed prior to the satisfaction of the condition in clause 2.5 (namely, prior to the issue of all of the Approvals):

- (a) the drawings and Contractor's specifications which are set out in appendices C and D respectively are to be treated as preliminary drawings and specifications only;
- (b) the Contractor shall, as soon as practicable after the issue of the last of the said Approvals, give to the Principal, for approval, a full, complete and updated set of final drawings and specifications for the Works which fully comply with all of the terms, conditions and requirements of all of the Approvals and with the Principal's Specifications;
- (c) the approval by the Principal of the final drawings and specifications provided under clause 2A.2(b) shall not to be unreasonably withheld, and will be deemed reasonably withheld unless the final drawings and plans fully comply with the Principal's Specifications and have been prepared in accordance with the preliminary drawings and specifications and this Contract;
- (d) if the Principal has not granted its approval to the final drawings and specifications by the date which is one month after receipt by it from the Contractor of the final drawings and specifications (or any later date as may be agreed in writing by the parties), then the Principal may by notice in writing to the Contractor terminate this Contract.

If the Contract is terminated under this clause, the Contractor must refund to the Principal all amounts which have been paid by the Principal to the Contractor under the Contract in full and without any deduction.

The Principal must within fourteen (14) days of termination pay to the Contractor the sum (if any) stated or calculated in accordance with item 18 of Appendix A (including GST) or other sum agreed by the Contractor and the Principal, for costs associated with design work carried out by the Contractor to the termination date. For the avoidance of doubt such sum shall be the Contractor's sole remedy in respect of termination under this clause, and the Contractor shall have no claim against the Principal for loss of opportunity or any other cost, loss or damage.



Termination of the Contract shall be without prejudice to any rights the Principal may have against the Contractor in respect of any antecedent breach of the terms, covenants and conditions contained in the Contract.

- (e) if the Principal grants approval to drawings and specifications after the date of the Contract, those final drawings and specifications shall be and be deemed to be (as from the date of such approval) substituted for, and to replace, the drawings and Contractor's specifications set out appendices C and D respectively and all references in this Contract to the Drawings and/or the Contractor's Specifications shall be and be deemed to be a reference to those final (Principal approved) drawings and Contractor's specifications.

2A.3 The Contractor warrants that:

- (a) the Design Documents are accurate, free of error and consistent in every respect and that they are fit for their intended purpose and do not infringe any patent, registered design, trademark or name, copyright or any other intellectual property rights of any third party; and
- (b) the Design Documents have been prepared in such a manner as will enable each individual unit, dwelling or apartment comprised in the Works to be strata titled; and
- (c) upon completion, the Works will be fit for their intended purpose,

and the Contractor shall indemnify the Principal against any action, claim, costs or expenses arising from any breach of this warranty.

2A.4 The Contractor acknowledges that:

- (a) the Principal has not supplied, and is not required to supply, any designs, materials, documents or methods of working in connection with the Works;
- (b) the Contractor is required to supply all documentation required under or in connection with or necessary for the Works; and
- (c) the Contractor is solely liable for such documentation including any increased costs or losses occasioned out of any error, inaccuracy, ambiguity, discrepancy or omission therein.

2A.5 The Contractor warrants that, unless otherwise provided in the Contract, the Contractor owns or has a licence to use and to sub-licence the copyright in the Design Documents.

2A.6 The Contractor grants to the Principal, with effect as and from the date of the Contract, an irrevocable licence to use the Design Documents for the completion of the Works and in connection with any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works, which licence shall survive the termination of the Contract for any reason whatsoever.

2A.7 Neither the Principal nor the Superintendent shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from

responsibility for errors, inaccuracies or omissions therein or authorise any departure by the Contractor from its obligations under the Contract.

- 2A.8 Further to clause 2A.7, the Contractor acknowledges that the warranties in clause 2A.3 and the Contractor's obligations under the Contract shall remain unaffected notwithstanding:
- (a) any receipt or review of, or comment or direction on, the Design Documents by the Principal or Superintendent; and
  - (b) any Variation under the Contract; and
  - (c) the Principal's approval of any drawings and Contractor's specifications under clause 2A.2(c).

## **2. GENERAL OBLIGATIONS**

- 2.1 The Contractor shall execute and complete the WUC at its cost in a proper and workmanlike manner and to a standard consistent with best industry practice and in accordance with the Contract and Contract Documents and shall be solely liable for the care of the Works, temporary works, materials and constructional plant until the Date of Completion of the Works in their entirety.
- 2.2 The Contractor warrants that it shall execute and complete the WUC for the Contract Price. The Contractor acknowledges that the Contract Price is (subject only to any adjustment to it which is required under the Contract) a guaranteed maximum price for the performance of the Contractor's obligations under the Contract and the Contractor acknowledges that it includes the full cost to the Contractor of all risks and responsibilities assumed under the Contract.
- 2.3 Except where otherwise stated in the Contract the Contractor must provide all materials, labour, plant, equipment, tools and everything whether of a temporary or a permanent nature required for the execution of the Works. Save as set out in the Contract, the Contractor is not entitled to make a Claim for an increase in the Contract Price.
- 2.4 The Contractor shall not proceed with the Works until all Approvals have been obtained, on terms and conditions which are satisfactory to the Principal in its sole and absolute discretion.
- 2.5 Subject to clauses 3 and 4, if as at the date of the Contract it has not already done so, the Contractor shall as soon as practicable thereafter diligently and expeditiously do all acts matters deeds and things reasonably necessary or desirable to assist the Principal obtain or issue (as the case requires) the Approvals. The Principal agrees to pay all permit and other application fees which are payable in connection with the Approvals.
- 2.6 If:
- 2.6.1 an Approval is not issued on terms and conditions reasonably acceptable to the Principal; or
  - 2.6.2 an Approval is not issued,  
  
by the latest date specified in item 9 of Appendix A, or any later date as may be agreed in writing by the parties, then the Principal may by notice in writing

to the Contractor terminate the Contract whereupon the Contractor must refund to the Principal all amounts which have been paid by the Principal to the Contractor under the Contract in full and without any deduction.

- 2.6.3. The Principal must within fourteen (14) days of termination pay to the Contractor the sum (if any) stated or calculated in accordance with item 18 of Appendix A (including GST), or other sum agreed by the Contractor and the Principal, for costs associated with design work carried out by the Contractor to the termination date. For the avoidance of doubt such sum shall be the Contractor's sole remedy in respect of termination under this clause, and the Contractor shall have no claim against the Principal for loss of opportunity or any other cost, loss or damage.
- 2.6.4. Termination of the Contract shall be without prejudice to any rights the Principal may have against the Contractor in respect of any antecedent breach of the terms covenants and conditions contained in the Contract.
- 2.6A Without limiting the Contractor's obligations under clause 2.6, if the Works are varied pursuant to a Variation directed by the Superintendent in a Principal Initiated Variation Order, the Principal shall use its best endeavours to procure and obtain or issue (as the case requires), as soon as practicable after the date of the said Variation Order, the issue of any Approvals required in order to implement the Variation. If any such Approval(s) are required and the Principal is unable to procure the issue of such Approval(s) on terms and conditions reasonably acceptable to the Principal, or the Principal is unable to procure the issue of such Approval(s), within a reasonable period of time after the date of the said Variation Order, as determined by the Superintendent (acting reasonably) the Contractor shall not be obliged to carry out the Variation the subject of that Variation Order and that Variation Order shall be and be deemed to be of no force or effect.
- 2.7 The Contractor shall, within 30 days of the date of the Contract, provide to the Principal for the Principal's inspection and approval (which is not to be unreasonably withheld):
  - (a) a PDF document displaying fixtures, equipment and materials for each individual apartment or unit to be constructed as part of the Works including but not limited to cabinetry/joinery, sanitary, plumbing fixtures, appliances, door/door hardware, electrical fixtures, window treatments and sundry items. The aforementioned document shall include, at a minimum, an image, finish/description, supplier/product and colour/code for each item; and
  - (b) a PDF document identifying colour schemes, in the number specified in item 10 of Appendix A for each individual apartment or unit to be constructed as part of the Works and including both interior and exterior schedules for finishes. The aforementioned document shall include, at a minimum, an image, finish/description, supplier/product and colour/code and be presented on a hard copy finishes board.
- 2.8. The Principal shall inform the Contractor, within 14 days of receipt of the finishes boards and schedule for finishes, as to whether or not those boards and schedules are acceptable to the Principal (acting reasonably) and, if they are not acceptable to the Principal (acting reasonably), any reasonable alterations which the Principal requires to the finishes boards and the schedules. On the proviso that the Principal's proposed alterations do not increase the cost of the Works the Contractor shall adopt the Principal's proposed alterations. The Contractor shall construct each dwelling, unit or

apartment the subject of the Works in accordance with the approved finishes for that dwelling, apartment or unit.

- 2.9. The Contractor shall ensure that the Works are constructed:
- 2.9.1. in accordance with the Contract Documents and the Approvals (and the Contractor shall be responsible, at its cost and expense, for undertaking all works required to satisfy, and for obtaining clearances of, all conditions included in any Approvals); and
  - 2.9.2. in a manner which will enable each individual unit, dwelling or apartment comprised in the Works to be strata titled.
- 2.10. The Contractor represents and warrants that each individual unit, dwelling or apartment comprised in the Works will (when constructed) comply with those specifications, standards and finishes set out in Appendix B and C and with the Contract Documents.
- 2.11. Subject to the Principal's obligation in clause 2.5 , the Contractor acknowledges and agrees that it is responsible for all costs, fees, charges, taxes and expenses payable:
- 2.11.1. in connection with the Contractor's Design Obligations;
  - 2.11.2. in connection with the Works; or
  - 2.11.3. to meet the requirements in clause 2.9,  
  
including without limitation, any which are imposed by an Authority as a condition of any of the Approvals (including without limitation any and all statutory fees and charges, developer contributions including any cash in lieu contributions imposed as a condition of planning approval), Authority service charges, headwork charges and consultant and sub consultant fees and charges, and the Contractor shall pay all such charges in full prior to the Date of Completion.
- 2.12. The Contractor shall comply with the State Government's "Buy Local Policy, July 2002" and, wherever possible, shall use local subcontractors and suppliers in the performance of the Works.
- 2.13. The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without the prior approval of the Principal, which approval may be withheld in the Principal's absolute discretion. The Contractor shall refer to the Principal any enquiries concerning the project from the media.

### **3. BUILDING PERMIT**

#### ***Alternative 1 (Principal acts as Permit Authority)***

- 3.8. If this alternative 1 applies, the Contractor acknowledges and agrees that:
- 3.8.1. officers of the Principal have delegated authority to perform the functions of the State as a Permit Authority and may issue a building permit for the Works;
  - 3.8.2. unless instructed otherwise the Contractor will prepare certified application(s) for building permit(s) and submit such application(s) to the Principal for the issue of a building permit;

- 3.8.3. where there is a delay in issuing a building permit pursuant to this subclause and the delay is not caused or contributed to by the Contractor, the delay will be considered to be a delay by an applicable authority and not an act of delay by the Principal;
- 3.8.4. the Principal will pay:
  - a) the building services levy applicable to the works; and
  - b) any building permit application fees.
- 3.8.5. the Contractor has included in the Contract Price the costs of preparing all required applications for building permits; and
- 3.8.6. nothing in this clause affects the Contractor's obligations to comply with all applicable Legislative Requirements, including but without limitation the Building Act 2011 (WA).

***Alternative 2 (standard application to Permit Authority)***

- 3.9. If this alternative 2 applies, the Contractor will:
  - 3.9.1. prepare all necessary building permit applications for the Works;
  - 3.9.2. submit all building permit applications to the applicable Permit Authority;
  - 3.9.3. pay:
    - a) the building services levy applicable to the Works;
    - b) any building permit application fees; and
    - c) the cost of the certifier.
  - 3.9.4. include within the Contract Price the costs involved in the preparation of and submission of all required applications for building permits; and
  - 3.9.5. acknowledge that nothing in this clause affects the Contractor's obligations to comply with all applicable Legislative Requirements including, but without limitation, the *Building Act 2011* (WA).

#### **4. STRATA TITLING**

- 4.1. Where the Contractor is required by Item 14 of Appendix A to undertake strata titling as part of the Works, the Contractor must,:
    - 4.1.1. prepare:
      - 4.1.1.1. a 'draft' Strata Plan from approved working drawings which sets out a proposed separate Lot for each individual dwelling being constructed as part of the Works; and
      - 4.1.1.2. a draft schedule of unit entitlement (Form 3) determined from the draft Strata Plan referred to above and including Drawings and prepared by a licensed valuer,
- in accordance with the requirements of the *Strata Titles Act 1985* and sufficient for the purpose of pre-sales;

- 4.1.2. provide copies of all Approvals, including subdivision approval, of all Authorities which are required to carry out the subdivision in accordance with the Approved Strata Plan (“Subdivision Approvals”);
- 4.1.3. appoint a strata management company (the strata company to be appointed and the terms and conditions of their appointment must be approved by the Principal, such approval not to be unreasonably withheld) to provide the following documentation:
  - 4.1.3.1. draft schedule of levies for quarterly strata fees (sufficient for presales purposes) determined from draft Strata Plan, draft Form 3 and current working Drawings;
  - 4.1.3.2. a management statement specifying any additional by-laws to apply to the strata scheme (which statement must be approved by the Principal, such approval not to be unreasonably withheld);
- 4.1.4. prepare and, where applicable, register at Landgate, the following final strata documents which must be approved by the Principal, such approval not to be unreasonably withheld. Documentation is to be consistent in all respects with the documents prepared and approved by the Principal under clauses 2A.1 or 2A.2.
- 4.1.5. prepare and provide copies of the final strata documents endorsed “Certified Correct” and “approved” by all relevant Authorities, including but not limited to:
  - 4.1.5.1. final Strata Plan from a licensed surveyor’s measurements in accordance with the *Strata Titles Act 1985*;
  - 4.1.5.2. final schedule of units entitlements certified by a licensed valuer in accordance with the *Strata Titles Act 1985*;
  - 4.1.5.3. a certificate (Form 5) from a licensed surveyor in accordance with s 22 of the *Strata Titles Act 1985*;
  - 4.1.5.4. certificates of approval from all relevant Authorities in accordance with the *Strata Titles Act 1985*, including a certificate of the relevant local government (Form BA12 or BA16) and of the Western Australian Planning Commission (Form 26) if required for the Strata Plan to be placed “In Order for Dealings”;
  - 4.1.5.5. copies of clearances of all conditions for all approvals and licences included in any Subdivision Approvals; and
  - 4.1.5.6. all water, drainage, sewerage or other easements duly executed by all parties to them which are required to satisfy any condition(s) of the Subdivision or Development Approvals;
- 4.1.6. prepare the management statement to be lodged by the Principal when new strata titles are applied;
- 4.1.7. pay all fees relating to the strata.
- 4.2. The Principal agrees to promptly review all documents submitted to it for approval under this clause and, if it approves such documents, to promptly execute all

documents that need to be signed by it, as the registered proprietor of the Site, and which the Contractor requires in order to perform its obligations under this clause.

- 4.3. Where the Contractor is not required by Item 14 of Appendix A to undertake the strata titling as part of the Works, if requested by the Principal, the Contractor must do all things reasonably necessary to assist the Principal to register the Strata Plan and obtain new certificates of title for each dwelling constructed as part of the Works.

## **5. CONTRACTOR TO BE INFORMED**

- 5.1. The Contractor is deemed to have:
  - 5.1.1. examined carefully and accepted actual knowledge of the contents of the Contract Documents, these General Conditions of Contract, the Special Conditions (if any) and any other information made available in writing by the Principal to the Contractor prior to the date of the Contract; and
  - 5.1.2. examined all information relevant to the risks, contingencies, and other circumstances having an effect on its decision to enter into the Contract and on carrying out the WUC and which is obtainable by making reasonable enquiries; and
  - 5.1.3. examined the Site and its surroundings and carried out geotechnical investigations at the Site; and
  - 5.1.4. satisfied itself as to the correctness and sufficiency of the Contract Documents and that the Contract Price covers the cost of complying with all of its obligations under the Contract and all matters and things necessary for the due and proper performance and completion of the Contract.
- 5.2. Failure by the Contractor to do any of the things deemed to have been done by it under clause 5.1 will not relieve the Contractor of its liability to perform and complete the Contract in accordance with its terms and conditions.

## **6. REQUIREMENTS OF STATUTES AND FOR SAFETY**

- 6.1. **Statutory and Local Authority Requirements**
  - 6.1.1. The Contractor shall comply with all Legislative Requirements as shall be in force in the place where the WUC are being carried out and shall pay all fees or charges in relation thereto.
- 6.2. **Protection of Persons and Property**
  - 6.2.1. The Contractor shall:
    - 6.2.1.1. provide, erect, and maintain all barricades, guards, fencing, temporary roadways and footpaths, signs and lighting required in connection with the Works;
    - 6.2.1.2. provide and maintain traffic watching and flagging, as required by any Authority or necessary for the protection of the Works and other property or for the safety and convenience of persons (and shall remove them when no longer required); and

- 6.2.1.3. prevent nuisance and unreasonable noise and disturbance arising from the carrying out of the WUC.
- 6.2.2. The Superintendent may, at any time, direct the Contractor to take reasonable steps to control noise in accordance with the specification in Annexure B.
- 6.2.3. The Contractor shall avoid damage to roadways, footpaths, drains and services which are adjacent to the Site and shall preserve and maintain all survey marks and shall make good all damage done by the Contractor, his servants or agents to them from the carrying out of the WUC.
- 6.2.4. The Contractor shall take all reasonable precautions for the safety and convenience of workers and the public when carrying out the WUC.

### **6.3. Default of Contractor**

- 6.3.1. If the Contractor or any sub-contractor defaults in the performance or observance of the requirements of this clause 6, the Superintendent may direct the Contractor to rectify the default within a reasonable period.
- 6.3.2. If the Contractor or any sub-contractor refuses or declines to rectify the default, then the Superintendent may suspend the work relative to the default until the default is rectified and the Contractor shall be responsible for all costs arising out of or in consequence of the default and the suspension.

## **7. CONTRACTOR'S RISK, PUBLIC LIABILITY INSURANCE AND HOME INDEMNITY INSURANCE**

- 7.1. Without limiting its obligations and responsibilities under the Contract, the Contractor, in the joint names of the Principal and the Contractor for their respective rights, interests and liabilities, shall, before commencing the WUC, take out, and keep current for the period referred to in clause 7.2, the following insurances:
  - 7.1.1. a Contractors Risk/Contract Work Policy for an amount not less than the Contract Price; and
  - 7.1.2. a Public Liability Policy in respect of death or bodily injury to any person and damage to property for an amount not less than that stated in item 2 of Appendix A.
- 7.2. The Contractor must maintain the insurance policy referred to in clause 7.1.1 until the Date of Completion of the Works in their entirety and must maintain the insurance policy referred to in clause 7.1.2 until the end of the Defects Liability Period.
- 7.3. The Public Liability Policy of insurance shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action that it may have or may acquire against all or any of the persons comprising the insured, for the purpose of which the insurer shall accept the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.
- 7.4. The Contractor shall lodge certificates of proof of the insurances referred to in clause 7.1 with the Superintendent before the commencement of the Works.



- 7.5. The Contractor will not, and will ensure that its sub-contractors do not, do or allow anything to be done or omitted to be done which may render all or any of the insurances policies or any part of them void or voidable.
- 7.6. Should the Contractor fail to take out any insurance policies which it is required to effect under this clause 7 or under clause 8, the Principal may effect such insurances and the premiums paid by the Principal in relation thereto shall be a debt immediately due and payable from the Contractor to the Principal.
- 7.7. Upon settlement of any claim under an insurance policy effected under clause 7.1.1 the Contractor shall rebuild or repair the Works and replace or repair the materials or goods destroyed within a reasonable time of such settlement.
- 7.8. If required by Item 3 of Appendix A, the Contractor must obtain a policy of home indemnity insurance with respect to the Works which complies with section 25D of the Home Building Contracts Act 1991 (irrespective of whether or not Part 3A of the Home Building Contracts Act 1991 requires such a policy to be affected). The Contractor shall provide a certificate in a form approved by the Minister pursuant to section 25C of the Home Building Contracts Act 1991 that evidences the taking out of the policy of insurance referred to in this clause 7.8 to the Superintendent before the commencement of the Works.

## **8. WORKERS COMPENSATION AND PROFESSIONAL INDEMNITY INSURANCE**

- 8.1. If required by Item 4(a) of Appendix A, the Contractor shall effect and keep in effect until the end of the Defects Liability Period such insurance as may be required at law or necessary to adequately protect the Contractor and the Principal in respect of liability for payment of compensation to any employee of the Contractor, or any liability, loss, damage, claim, demand, action, suit or proceeding, costs and expenses whatsoever suffered or incurred by the Contractor or Principal arising out of or as a result of personal injury to or death of any such person, whether arising under the *Workers' Compensation and Injury Management Act 1981* or any other applicable statute or other legislative provision or at common law.
- 8.2. If required by Item 4(b) of Appendix A, the Contractor shall effect and keep in effect (or must procure that its design and or architectural contractor/consultant effect and keep in effect) a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in item 4(b) of Appendix A for the period of the contract and for at least 6 years after termination or expiration of the Contract or alternatively effect a run-off cover under the insurance policy for a period of at least 6 years.
- 8.3. The Contractor shall lodge certificates of proof of the insurance referred to in clauses 8.1 and 8.2 with the Superintendent before the commencement of the Works.

## **9. PATENT RIGHTS AND ROYALTIES**

- 9.1. The Contractor shall indemnify, release and hold harmless the Principal from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights arising out of or in respect of the Design Documents or any machine, plant, work material or thing, system or method of using, fixing, working or arrangement used or fixed or supplied by the Contractor in connection with the execution of the Contract and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect hereof or in relation thereto.

## **10. ASSIGNMENT AND SUB-CONTRACTING**

- 10.1. The Contractor shall not sub-contract the whole or any substantial portion of the Works to any one sub-contractor; or assign the Contract or assign, mortgage, charge or encumber any of the moneys payable under the Contract or any other benefit whatsoever arising under the Contract without the prior written consent of the Principal, in its sole and absolute discretion. For the purpose of this clause, a portion of the Works shall be and be deemed to be substantial if the value of that portion of the Works to be undertaken by any one sub-contractor exceeds sixty percent (60%) of the Contract Price.
- 10.2. Subject to clause 10.1, the Contractor may sub-contract any part of the Works without the approval of the Principal.
- 10.3. If the Contractor sub-contracts the whole or any part of the Works (subject to the written consent of the Principal, if required by this clause) the Contractor shall remain fully liable and responsible for the proper execution of such sub-contracted part of the Works and/or its obligations under the Contract.
- 10.4. Without limiting the foregoing, the Contractor shall be liable to the Principal for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.
- 10.5. Without limiting the Contractor's liability to the Principal under clauses 10.3 or 10.4 or its obligation to perform and observe the terms and conditions of any sub-contract it has entered into, the Contractor shall:-
  - 10.5.1. in the event of termination of this Contract or takeover of the works by the Principal, immediately upon demand by the Principal, assign to the Principal, absolutely and free of encumbrances, all of its rights, powers and remedies against any third party it has engaged (whether before or after the date of this Contract) to perform any services in connection with the preparation of the Design Documents and/or the construction of the Works, including without limitation any architect, engineer, surveyor, quantity surveyor, environmental consultant or sub-contractor to whom it has sub-contracted the whole or any part of the Works (whether those rights, powers and remedies arise at law, in equity or under or pursuant to a contract or any statute);
  - 10.5.2. not, without the prior written consent of the Principal, exercise any of its rights, remedies or powers against any third party if it materially affects, or is likely to materially affect, the interests of the Principal under this Contract; and
  - 10.5.3. when exercising its rights, powers and remedies against any third party comply with any direction given by the Principal (or the Superintendent) regarding those matters.

## **11. COMMENCEMENT OF THE WORKS**

Before the commencement of the WUC, the Contractor shall:

- 11.1. provide the Principal with a copy of the Contractor's construction programme referred to in clause 43;
- 11.2. effect all insurances required under clauses 7 and 8 and lodge evidence of such with the Superintendent;

- 11.3. give the Superintendent seven (7) days' notice in writing of the proposed date of commencement of the Works;
- 11.4. obtain approval from the Superintendent for the nominated Contractor's Representative; and
- 11.5. provide to the principal a geotechnical report specifying the Site's engineering classification.

## **12. THE SITE**

### **12.1. Possession of the Site**

The Contractor is granted non-exclusive possession of the Site immediately upon the grant of the building permit unless otherwise notified by the Principal.

### **12.2. Access by Other Workers**

12.2.1. The Principal and the Superintendent shall at all times:

12.2.1.1. have free and uninterrupted access to the Site and the Works; and

12.2.1.2. have full power to send workers onto the Site to execute work not included in the Contract (and the Contractor shall afford every reasonable facility during ordinary working hours for such workers' operations, provided that the Superintendent shall consult with the Contractor before sending any such workers onto the Site to ensure such workers' operations shall be carried on in such a manner so as not to impede the progress of the Works included in the Contract and in a manner consistent with the Contractor's health and safety, and site security, requirements).

12.2.2. The Contractor shall not be responsible for any damage which may happen to or be occasioned by the workers of the Principal, except where such damage arises out of some action or inaction on the part of the Contractor, its servants or agents.

## **13. SETTING OUT THE WORKS**

- 13.1. Before commencing work on the Site the Contractor shall engage a licensed surveyor to identify the Site, certify all boundaries and position necessary survey marker pegs, so that the set out of the Works is wholly within the titled boundary except for items for which approval has otherwise been given by proper authorities.
- 13.2. The Contractor will immediately report any discrepancies between the Contract Documents and the survey to the Superintendent and must not proceed until further direction from the Superintendent.
- 13.3. The Contractor shall set out the Works at levels and alignments as shown in the Contract Documents or such alternative levels and alignment as may be notified to the Contractor by the Superintendent.
- 13.4. Unless the Superintendent otherwise directs, the Contractor at his own expense shall rectify any error in setting out the Works which is attributable to the Contractor, or its servants or agents.

## **14. DOCUMENTS AND INFORMATION**

### **14.1. Discrepancies in Information**

14.1.1. If a discrepancy exists between the Contract Documents and survey marks on the Site then the Superintendent's decision as to which shall be followed shall be final.

14.1.2. On drawings figured dimensions shall prevail over scaled dimensions and a larger scale drawing shall prevail over a smaller scale drawing.

### **14.2. Ownership of Documents**

Documents made available to the Contractor free of charge by the Principal shall remain the property of the Principal and shall be returned to the Principal at the completion of the Works.

## **15. MATERIALS AND WORK**

15.1. Except where it is illegal or physically impossible, the Contractor shall execute and complete the Works in strict accordance with the Contract and Contract Documents and adhere strictly to the Superintendent's directions on any matter touching or concerning the Works.

15.2. Unless otherwise specified, materials, plant, equipment or other things salvaged from the works shall become the property of the Contractor and shall be removed by the Contractor from the Site.

15.3. Unless otherwise specified in the Contract, any materials to be incorporated into the Works shall be new and of merchantable quality and reasonably fit for the purpose of the Works.

15.4. All materials and work shall be consistent with the nature and character of the Works and of a kind suitable for its purpose and in conformity with the requirements of the Contract and Contract Documents.

15.5. If the Superintendent is of the opinion that any material or work, whether fixed or not, fails to comply with the Contract or Contract Documents or if he detects any defects during the Defects Liability Period or if he is dissatisfied with any of the Contractor's safety precautions, he may order in writing their removal, replacement and/or correction at the Contractor's expense.

15.6. If the Contractor fails to comply with clause 15.5 the Principal may have the work of replacement, correction or removal carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt immediately due and payable by the Contractor to the Principal.

## **16. TESTING AND INSPECTION OF THE WORKS**

### **16.1. Tests**

Materials and work shall be subjected to such tests as are required by the Contract or as may be reasonably directed by the Superintendent to establish conformity with the Contract and Contract Documents.

## **16.2. Inspections by Superintendent**

16.2.1. Where it is specified that work shall be inspected before being covered up, the Contractor shall notify the Superintendent when such work is ready for inspection, and the Superintendent shall inspect or cause the work to be inspected within seven (7) days of the date of notification.

16.2.2. In the event of the Superintendent not making the inspection the Contractor shall proceed with the work, and if required, open up the work at a later period.

16.2.3. The Contractor acknowledges that the Superintendent owes no duty to the Contractor to inspect the Works or, if it does inspect the Works, to review construction for errors, omissions or compliance with the requirements of the Contract and Contract Documents, and no inspection of the Works or review of construction by the Superintendent will in any way lessen or otherwise affect the Contractor's obligations under the Contract or otherwise according to law or the Principal's rights against the Contractor whether under the Contract or otherwise according to law.

## **16.3. Cost of Test and Inspections**

16.3.1. The cost of the testing and the inspections referred to in clauses 16.1 and 16.2 shall be borne by the Contractor except:

- (a) in the event the Contractor is required to open up the work at a later date due to the Superintendent not making the required inspection within seven (7) days of the date of notification, the Contractor shall be paid the cost of such opening up and making good unless it shall be found that the work does not accord with the Contract or Contract Documents or with the directions of the Superintendent;
- (b) in the event the Contractor is directed by the Superintendent to undertake additional tests to establish conformity, the Contractor shall be paid the cost of such testing unless it shall be found that the work does not accord with the Contract or Contract Documents or with the directions of the Superintendent.

## **17. MATERIALS AND WORK DEFAULT BY CONTRACTOR**

If the Contractor fails to comply with any order or direction of the Superintendent under clauses 15 and 16, after the expiry of seven (7) days, the Superintendent may himself do or cause to be done all such acts which may be necessary in order to comply therewith and all costs incurred shall be borne by the Contractor and be a debt immediately due and payable by the Contractor to the Principal.

## **18. SUPERINTENDENT**

18.1. The Principal shall ensure that at all times there is a Superintendent appointed and that the appointed Superintendent acts honestly and fairly and within prescribed timeframes, or when no timeframe is prescribed, within a reasonable time.

18.2. The Contractor shall comply with all directions provided by the Superintendent pursuant to the provisions of the Contract. Directions may be provided orally

where permitted within the terms of the Contract but shall be confirmed in writing by the Superintendent as soon as practicable.

## **19. SUPERINTENDENT'S REPRESENTATIVE**

- 19.1. The Superintendent may appoint other persons to carry out the functions and duties of the Superintendent under the Contract.
- 19.2. The Superintendent shall notify the Contractor in writing of the appointment of a Superintendent's Representative and the functions under the Contract that have been delegated.

## **20. INSPECTIONS OF THE WORKS**

The Superintendent may appoint or employ other persons to inspect the Works on his behalf and the Contractor shall permit any such person to inspect the Works and shall also comply with all directions of that person.

## **21. CONTRACTOR'S REPRESENTATIVE**

- 21.1. During the currency of the Contract the Contractor shall have a competent representative approved by the Superintendent present on the Site sufficient to ensure proper control, direction and supervision of the Works.
- 21.2. If the Superintendent is of the opinion that the attendance on the Site by the Contractor's Representative is inadequate, the Superintendent may direct the Contractor's Representative to be present on Site at all times during which any activities relating to the Works are taking place.
- 21.3. Directions of the Superintendent given to the Contractor's Representative shall be deemed to be directions given to the Contractor.
- 21.4. The Contractor shall nominate his representative for approval by the Superintendent (such approval not to be unreasonably withheld) before the commencement of the Works.

## **22. INTERFERENCE WITH PUBLIC**

All operations involving the execution of the Works shall, except where otherwise permitted by the Superintendent, be carried out so as not to unreasonably interfere with the public convenience or the access to, use and occupation of public or private roads and footpaths or to or of Crown lands or adjoining public or private properties.

## **23. VARIATIONS BY PRINCIPAL/SUPERINTENDENT**

- 23.1. At any time prior to the Date of Completion, the Principal may instruct the Superintendent to give a written notice to the Contractor setting out a proposed Variation to the Works which the Principal is considering ("Variation Request"). Within seven (7) days of receiving the Variation Request the Contractor must provide to the Superintendent a written notice setting out the adjustment to the Contract Price, determined in accordance with clause 23.4 and the effect on the construction programme (including, without limitation, the Date for Completion set out in Item 5 of the Appendix A), determined in accordance with clause 23.6.
- 23.2. Whether or not the Superintendent has issued a Variation Request pursuant to clause 23.1, the Superintendent may at any time prior to the Date of Completion,

instruct the Contractor to carry out a Variation that in his opinion is desirable by giving a written notice to the Contractor setting out the Variation and any adjustment to the construction programme, Contract Price and the Progress Payments, determined by the Superintendent in accordance with clauses 23.4 and 23.6, as applicable (“Principal Initiated Variation Order”).

- 23.3. No Variation shall be made otherwise than in accordance with a Principal Initiated Variation Order. Subject to clause 2.6A, the Contractor must comply with any Principal Initiated Variation Order given by the Superintendent.
- 23.4. The increase or decrease in the GST inclusive Contract Price for all Variations directed by the Superintendent under a Principal Initiated Variation Order will be determined as follows:
  - 23.4.1. if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
  - 23.4.2. if no specific rates or prices are prescribed, as agreed between the Superintendent and the Contractor;
  - 23.4.3. failing agreement, at such rates or prices determined by the Superintendent, acting reasonably, plus Profit and Overhead; and
  - 23.4.4. if the valuation relates to extra costs incurred by the Contractor for an allowable extension of time to Practical Completion under clause 25, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit.
- 23.5. The Superintendent may direct the Contractor to provide a detailed quotation for the work of a variation supported by measurements or other evidence of cost. Where the Superintendent makes a direction under this clause, the Superintendent shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred.
- 23.6. The extension or reduction of the time for completion of the Works and the adjustments to the construction programme (including, without limitation, the Date for Completion) (if any) resulting from all Variations directed by the Superintendent under a Principal Initiated Variation Order will be the amended timeframes and construction programme agreed between the Superintendent and the Contractor, or failing agreement, determined by the Superintendent, acting reasonably.
- 23.7. Save for any adjustments required in accordance with the Contract, the Contract Price is a guaranteed maximum price and cannot be increased and the time for performance of the Works cannot be extended. The Contractor is at sole risk on price.
- 23.8. Save as expressly permitted in this Contract, the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way connected with, any act, omission, defect, error, fact, matter, thing or circumstance, whether latent or otherwise and whether able to have been foreseen as at the date of this Contract or not (including without limitation any error or discrepancy in any of the Contract Documents) which may increase the cost to the Contractor of undertaking and completing the Works, and the Contractor absolutely and unconditionally releases and discharges the Principal from all Claims, actions, rights or entitlements (whether in tort, restitution, contract, under statute or otherwise and whether known or unknown, actual or contingent) which it may now or at any time in the future have or possibly have which would result in an increase in the Contract Price or compensation or damages for any act, omission, defect, error, fact, matter, thing or circumstance payable to the Contractor.

23.9. No Variation shall invalidate the Contract.

## **24. TIME FOR COMPLETION**

The Contractor shall complete the Works in their entirety by the date stated in item 5 of Appendix A, subject to any extensions of time which may be agreed or determined in accordance with the Contract. The Works shall be taken to be completed upon the Date of Completion.

## **25. LIMITED RIGHT TO EXTENSION OF TIME**

- 25.1. If the Contractor is or will be delayed in reaching Practical Completion by the Date for Completion by a cause described in clause 25.3 below and within 14 days after the occurrence thereof, the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based and attaching an updated construction programme (complying with clause 43.1.1) which discloses the actual progress of the Works as against the approved construction programme, the Contractor shall, subject to clauses 25.2 and 25.6, be entitled to an extension of time for Practical Completion. With any claim for an extension of time for Practical Completion, the Contractor shall give the Superintendent written notice of the period of extension claimed.
- 25.2. Compliance with the notification and other requirements of this clause is a condition precedent to the Contractor's entitlement to an extension of time to Practical Completion.
- 25.3. Any of the following causes whether occurring before, on or after the Date for Completion will entitle the Contractor to an extension of time for Practical Completion:
- 25.3.1. delay or disruption caused by the Principal, the Superintendent or an employee, consultant, other contractor or agent of the Principal or Superintendent, but not where such delay or disruption is as a result of a Principal Initiated Variation Order or of an act which the above persons were entitled to do under this Contract;
  - 25.3.2. a breach of the Contract by the Principal;
  - 25.3.3. an Event of Force Majeure,  
(each, an "EOT Event").
- 25.4. Save for any extension contained in a Principal Initiated Variation Order, the Contractor will not be entitled to an extension of time for any occurrence other than for an EOT Event.
- 25.5. Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not an EOT Event then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.
- 25.6. It is a condition precedent to the Contractor's entitlement to an extension of time to the Date for Completion pursuant to this clause 25 that the Contractor:



- 25.6.1. has submitted a claim for an extension of time in accordance with clause 25.1;
- 25.6.2. must have actually been, or be likely to be, delayed by an EOT Event in a manner which will prevent it from achieving completion of the Works by the Date for Completion (or if the EOT Event occurs after the Date for Completion, in a manner which will prevent it from achieving completion of the Works); and
- 25.6.3. has taken all proper and reasonable steps within its control to minimise the consequences of the delay, including re-programming of the Works, to the extent practicable in the circumstances, and has demonstrated this to the satisfaction of the Superintendent.
- 25.7. If the Contractor has complied with the conditions set out in clause 25.6, then within 28 days after receiving the Contractor's claim for an extension of time, the Superintendent shall give to the Contractor and the Principal a written direction evidencing the extension of time so assessed.
- 25.8. In assessing each extension of time, the Superintendent shall disregard whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost, but shall have regard to any reasonable steps that could have been taken (but have not been taken) by the Contractor to prevent and mitigate the delay.
- 25.9. Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, the Superintendent may at any time and from time to time before issuing the Final Certificate direct an extension of time for any reason. The Superintendent's discretion under this paragraph is for the benefit of the Principal and the Superintendent is not under any obligation to exercise it for the benefit of the Contractor.
- 25.10. No delay or failure by the Superintendent to grant an extension of time or a reasonable extension of time or to do so within the time stated in this Contract will set the Date for Completion or any other time at large but nothing in this clause shall prejudice any right of the Contractor to damages.
- 25.11. The Contractor acknowledges and agrees that the causes of delay for which extensions of time can be granted are limited to EOT Events and that the Contractor has allowed for and assumed the risk of any other causes of delay not amounting to an EOT Event. This Contract is a code of the Contractor's entitlements to any extension of time and the Contractor waives all rights at law or in equity to claim any relief due to an act of prevention by the Principal otherwise than in accordance with the Contract.

## **26. LIQUIDATED DAMAGES**

- 26.1. Should the Contractor fail to complete the Works by the date stated in item 5 of Appendix A, or such extended time as may be agreed or determined in accordance with clauses 23.6 and 25, then the Contractor shall pay the Principal the sum (if any) stated or calculated in accordance with item 7 of Appendix A as liquidated damages for such default for every week or part of a week by which completion of the Works is delayed.

- 26.2. The parties agree that the amount stated in clause 26.1 is a genuine pre-estimate of the loss and damage which will be suffered or incurred by the Principal arising out of the said delay and is not in the nature of a fine or penalty.
- 26.3. Any liquidated damages payable under clause 26.1 shall be a debt immediately due and payable by the Contractor to the Principal.

## **27. CLEANING UP BY CONTRACTOR**

- 27.1. The Contractor shall keep the Works clean and tidy during the Contract.
- 27.2. Prior to the issue of the Certificate of Practical Completion of the Works, the Contractor shall clean the gutters and oil the locks of the Works and clear away and remove from the Site all plant, surplus material, rubbish and temporary works of every kind and fill in and consolidate and level off all excavations (other than those forming part of the Works) made by the Contractor on Site and leave the whole of the Site and Works both inside and out clean and tidy and free of rubbish and surplus material to the satisfaction of the Superintendent.

## **28. RISE AND FALL**

This Contract is not subject to rise and fall in costs.

## **29. CONTRACT PRICE, PROGRESS PAYMENTS AND GST**

### **29.1. Contract Price and Provisional Sum Items**

- 29.1.1. The Contract Price is a lump sum, which is a guaranteed maximum price except to the extent of any permissible Principal Initiated Variation Order.
- 29.1.2. Provisional Sum Items do not form part of the Contract Price, but where pursuant to a direction of the Superintendent the Contractor makes payment of, or incurs a cost with respect to, a Provisional Sum Item, then:
- a) with respect to Fees and Servicing, the actual amount of that payment (exclusive of any GST, to the extent the Contractor is entitled to an input tax credit therefor); or
  - b) with respect to other costs specified by the Contractor and approved by the Principal, the actual cost of the works plus Profit and Overhead (capped at the amount listed in item 12 of Appendix A),
- shall be payable to the Contractor in the next Progress Payment.
- 29.1.3. The Superintendent may direct the Contractor to provide details of Provisional Sum Items supported by measurements or other evidence of cost and payment.

### **29.2. Progress Payments**

- 29.2.1. Subject to these General Conditions of Contract, the Contractor shall be entitled to be paid the Contract Price by Progress Payments made progressively during the carrying out of the Works in accordance with item 6 of Appendix A. The Contract Price is inclusive of GST.

29.2.2. The Contractor acknowledges and agrees that it is registered for GST and that it will maintain such registration until all Progress Payments and Retention Monies have been paid to the Contractor under the Contract.

29.2.3. The Contractor shall, if requested by the Principal, sign (and return to the Principal) the Recipient Created Tax Invoice Agreement.

### **29.3. Deductions**

29.3.1. The Principal may deduct from any Progress Payment:

- a) a sum equal to ten percent (10%) of the Progress Payment, as Retention Monies in accordance with clause 30, until the Principal holds retention monies equal to such amount as specified in item 16 of Appendix A;
- b) any amounts owing by the Contractor to the Principal under this Contract as at the date of the Progress Payment;
- c) any amount paid by the Principal to a worker, subcontractor or supplier under clause 42.

29.3.2. The Principal may deduct from monies due to the Contractor under the Contract any debt or other monies due from the Contractor to the Principal and any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under the Contract or otherwise at law relating to the Works.

## **30. RETENTION MONIES**

30.1. The Retention Monies are to be retained by the Principal for the purpose of ensuring the due and proper performance by the Contractor of all of its obligations under the Contract.

30.2. Subject to the Contract, when a Certificate of Practical Completion is issued one half of the Retention Monies held by the Principal as at that date will be released to the Contractor.

30.3. Subject to the Contract, the balance of the Retention Monies held by the Principal shall be released to the Contractor within twenty-eight (28) days of the Final Certificate.

30.4. Any reduction in the Retention Monies under clauses 30.2 or 30.3 shall not operate so as to waive, prejudice, release or discharge any of the conditions of the Contract or any of the obligations imposed on the Contractor by the Contract.

30.5. Without limiting the Principal's rights under any other provision in the Contract or at law, any debt due from the Contractor to the Principal under or by virtue of any provision of the Contract or any other amount owing by the Contractor to the Principal may be deducted by the Principal, at its election, from:

30.5.1. any Progress Payment or other moneys which may be or thereafter become payable to the Contractor by the Principal;

30.5.2. any Retention Monies then held by the Principal; or

30.5.3. from the Contractor's Security under the Contract (if any).

30.6. Nothing in clause 30.5 shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after that deduction.

30.7. Interest will not be payable by the Principal on any Retention Monies or Security or on the cash proceeds of any Security converted into money pursuant to clause 31.2.

### **31. SECURITY OR BANK GUARANTEES**

31.1. The Contractor may at any time lodge with the Principal an unconditional Bank Guarantee or an undertaking ("the Security") from an approved financial institution or insurance company for an amount equivalent to the limit of Retention Monies specified in clause 29.3.1, whereupon no deductions for Retention Monies will be made from Progress Payments.

31.2. The Principal may convert the Security into money where the Principal becomes entitled to exercise a right under the Contract to deduct any sum from the Security but must first, by written notice, advise the Contractor of the intended action providing at least five (5) days for the Contractor to respond. The Principal shall not be liable for any loss occasioned by such conversion.

31.3. Subject to the Contract, when a Certificate of Practical Completion is issued, the required value of the Security will be deemed to be reduced by one half of its stated amount.

31.4. Subject to the Contract, the Security shall be released to the Contractor within twenty-eight (28) days of the Final Certificate.

### **32. PRACTICAL COMPLETION**

32.1. As soon as, in the opinion of the Superintendent, the Works (or, if item 11 of Appendix A permits the Works to be completed in Stages, a Stage of the Works) have reached Practical Completion, the Superintendent will issue a Certificate of Practical Completion for the Works or the applicable Stage (as the case requires) to the Contractor and the Defects Liability Period stated in item 8 of Appendix A for the Works or the applicable Stage (as the case requires) shall be calculated from the Date of Completion.

32.2. The Superintendent shall provide to the Contractor, either together with a Certificate of Practical Completion issued under clause 32.1 or as soon as practical thereafter, a list of any minor omissions and minor defects in the Works or the applicable Stage (as the case requires) (which have not prevented Practical Completion from occurring) and the Contractor shall promptly within ten (10) days of receipt of this list rectify the notified defects and omissions to the satisfaction of the Superintendent.

32.3. From the date a Certificate of Practical Completion is issued under clause 32.1 the Works or the applicable Stage (as the case requires) the subject of that Certificate of Practical Completion shall be at the risk of the Principal.

- 32.4. If item 11 of Appendix A permits the Works to be completed in Stages, the Principal may occupy or use each Stage after a Certificate of Practical Completion has been issued under clause 32.1 for that Stage even though the whole of the Works have not reached Practical Completion, and such occupation or use shall not limit or affect the obligations of the parties under the Contract, including the obligation of the Contractor to achieve completion of the Works by the Date of Completion. If the Principal does so, the Principal must allow the Contractor reasonable access to that Stage to enable the Contractor to bring the whole of the Works to Practical Completion and to undertake those further Works necessary to rectify any minor omissions and minor defects in the Works or the applicable Stage under clause 32.2.
- 32.5. The Contractor shall obtain and ensure that the Principal will have the benefit of all warranties specified in the Contract or which in the opinion of the Superintendent are essential for the use, operation or maintenance of the Works.

### **33. DEFECTS LIABILITY PERIOD**

- 33.1. The Contractor shall at his own expense execute all work of repair, amendment, reconstruction, rectification and make good all defects, imperfections, shrinkages, or other faults to the Works or any Stage(s) as may be required by the Superintendent (and/or, if clause 33.5 applies, then in the case of each Sold Lot, as required by the Purchaser of that Sold Lot, as each of those terms are defined in clause 33.5) and notified by the Superintendent or the Purchaser (as the case requires) to the Contractor during the Defects Liability Period for the Works or those Stage(s) (as applicable) or within fourteen (14) days after the expiration of such Defects Liability Period as a result of an inspection made prior to its expiration. The Contractor shall make good all notified defects, imperfections, shrinkages, or other faults to the Works or any Stage(s) as soon as reasonably practicable but, in any event, within forty-five (45) days of the end of the Defects Liability Period for the Works or those Stage(s) (as applicable).
- 33.2. Notwithstanding anything to the contrary in the Contract, if during the Defects Liability Period for the Works or a Stage(s) a defect occurs to the Works or such Stage (as applicable) and the Principal or the Superintendent determines the defect requires urgent repairs and the Contractor is unable to be contacted during normal working hours or is unwilling to do the work within a reasonable time, the Principal may, by his own or other workmen, do such work as the Superintendent may determine as necessary. If the Superintendent is of the opinion that the work done by the Principal is work that the Contractor was liable to do at his own expense under the Contract, the Principal may recover the reasonable cost of the repair from the Contractor as a debt immediately due or payable.
- 33.3. Further to clause 33.1, within fourteen (14) days of the expiration of the Defects Liability Period, the Superintendent (and/or, if clause 33.5 applies, then in the case of each Sold Lot, the Purchaser of that Sold Lot, as each of those terms is defined in clause 33.5) shall prepare a final list of any outstanding defects, imperfections, shrinkages, or other faults for the Works or a Stage (as the case requires) and provide the same to the Contractor and the Contractor will be taken to have complied with its obligations under this clause 33 in connection with the Works or the said Stage (as the case may be) once the defects in that final list are rectified to the Superintendent's reasonable satisfaction.
- 33.4. Should the Contractor fail to rectify any defects or faults within period specified in clause 33.1, the Principal (or if the defect or other fault was notified to the Contractor by the Purchaser, the Purchaser) may, by his own or other workman,

do such work as is necessary to make good the same and the Principal may recover from the Contractor its costs and/or the costs of the Purchaser of making good the same as a debt immediately due and payable from the Contractor to the Principal. The Contractor agrees that, where (and in each instance) the make good works have been undertaken by a Purchaser, the Principal may (by notice in writing given to the Contractor) assign all of its right, title and interest in the debt which has arisen as a consequence of such make good works, and all causes of action or claims arising out of or in connection therewith, to that Purchaser (whilst retaining all right, title and interest in all other amounts owing to it as a debt under this clause 33.4).

33.5. If the Principal, at any time prior to the expiration of the Defects Liability Period for the Works, transfers title to any of the individual units, dwellings or apartments comprised in the Works (“a Sold Lot”) (each person to whom the Principal transfers title to a Sold Lot is hereinafter being referred to as “the Purchaser”) the Contractor agrees that, in the case of each Sold Lot, the Principal may (in its sole and absolute discretion) notify the Contractor that, instead of and in lieu of the Superintendent notifying the Contractor under clauses 33.1 and 33.3 of any defects or faults in the Works comprising part of the Sold Lot, the Purchaser may notify the Contractor under clauses 33.1 and 33.3 of those defects and faults (and the Contractor agrees that any notification given by the Purchaser will be as binding on the Contractor as if it had been given by the Superintendent). If this clause 33.5 applies:

33.5.1. the Superintendent will continue to notify the Contractor under clauses 33.1 and 33.3 of any defects or faults in the Works comprising part of any un-Sold Lots or common property areas; and

33.5.2. the Contractor will, within seven (7) days of the end of each month in which it has received a notification from a Purchaser(s) of any Sold Lot(s), provide the Principal with a complete list of any such notified defects and faults.

#### **34. STRUCTURAL WARRANTY**

The Contractor represents and warrants that the building to be constructed as part of the Works will be structurally sound for a period of six (6) years commencing on the date of issue of the Final Certificate.

#### **35. FINAL CERTIFICATE**

35.1. After the expiration of the Defects Liability Period for the Works or, if item 11 of Appendix A permits the Works to be completed in Stages, of the last Stage, the Superintendent may direct the Contractor to furnish to the Superintendent, within twenty eight (28) days or such additional period as the Superintendent may agree, a final statement of all the Contractor’s Claims against the Principal whether under the Contract or otherwise (“Final Statement”) and no claim which is not included in that Final Statement shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the WUC other than by reason of fraud, dishonesty or wilful concealment on the part of the Principal or Superintendent or any cause of action which could not reasonably have been discovered by the Contractor prior to the issue of the Final Statement. The Final Statement shall be endorsed “Final Statement” by the Contractor.

- 35.2. When the Superintendent is satisfied that all WUC have been finally and satisfactorily executed and the Contractor has fulfilled all its obligations under the Contract (including the rectification of all defects notified to the Contractor under clause 32.2 or during the Defects Liability Period for the Works or all Stages (as the case may be) or within fourteen (14) days after its expiration as a result of an inspection made prior to its expiration), the Superintendent shall issue a Final Certificate and, within twenty-eight (28) days of the date of the Final Certificate, the Principal shall pay to the Contractor all amounts (if any) remaining payable under the Contract.
- 35.3. If the Contractor fails to furnish a Final Statement within the time allowed, the Superintendent shall issue the Final Certificate and no Claim shall thereafter be made by the Contractor against the Principal on any account whatsoever in relation to the performance and execution of the WUC.

### **36. EFFECT OF CERTIFICATES**

- 36.1. The payment of a Progress Payment or the issue of a Certificate of Practical Completion shall not constitute approval of any work or workmanship under the Contract nor does it negate the Contractor's obligations to complete the Works in accordance with the Contract and Contract Documents (and the payment of a Progress Payment shall be taken to be a payment on account only).
- 36.2. Subject to clause 36.3, the issue of the Final Certificate shall indicate that the Contractor has successfully completed the Contract save where the Final Certificate is erroneous by reason of:
- 36.2.1. fraud, dishonesty or deliberate concealment on the part of the Contractor or any of his sub-contractors or any of the employees or agents of the Contractor relating to the Works or part thereof or to any matter dealt with in the Final Certificate; or
  - 36.2.2. any defect, including any omission, in the Works or any part thereof which reasonable inspection at the time of issue of the Final Certificate would not have disclosed; or
  - 36.2.3. any accidental or erroneous inclusion or exclusion of any work, materials, goods or figures in any computation, or any arithmetical error in any computation.
- 36.3. The issue of the Final Certificate does not limit any of the Contractor's obligations under the warranty in clause 34.

### **37. DEFAULT OR BANKRUPTCY OF CONTRACTOR**

- 37.1. If the Superintendent certifies to the Principal that the Contractor has:
- 37.1.1. failed to execute the Works in accordance with the construction programme supplied pursuant to clause 43 or otherwise at a rate of progress satisfactory to the Superintendent;
  - 37.1.2. neglected or omitted to execute any direction of the Superintendent;
  - 37.1.3. failed to complete the whole of the Works within the period stated for completion in clause 24;

- 37.1.4. if an individual, died or committed an act of bankruptcy;
- 37.1.5. if a body corporate, suffered an Insolvency Event;
- 37.1.6. notified that it is unwilling or unable to complete the Works; or
- 37.1.7. been deregistered by any Board, Commission, Licensing Authority, Court, Tribunal or other entity of any kind whatsoever, and as a result of that deregistration, is no longer lawfully able to undertake any or all of the Works to which the Contract relates,

then the Principal may, after giving seven (7) days' notice in writing of his intention to do so, where the default is not capable of remedy or where the default is capable of remedy but has not been remedied to the satisfaction of the Principal within seven (7) days of the notice, terminate the Contract, and without limiting any of the Principal's other rights or remedies under the Contract or at law all Retention Monies and Security held by the Principal may be used by the Principal for the purpose of completing the Works.

37.2. If the Principal terminates the Contract:

- 37.2.1. the Principal may engage another contractor to carry out the balance of the Works and if the reasonable cost of those works exceeds the amount of the Contract Price not paid to the Contractor under the Contract, then that excess is a debt immediately due and payable by the Contractor to the Principal;
- 37.2.2. the Principal is entitled to recover from the Contractor all loss, damage and/or reasonable expenses caused to the Principal by reason of or arising out of the termination;
- 37.2.3. the Contractor grants to the Principal an irrevocable royalty free licence to use all of the Design Documents for the purpose of completing the Works; and
- 37.2.4. the Principal is entitled to require the Contractor to novate to the Principal, or the Principal's nominee, any and all sub-contracts between the Contractor and its sub-contractors, as required by the Principal.

37.3. Upon termination, without limiting the Principal's rights under clause 37.2, the Principal shall pay to the Contractor the reasonable value of any work performed by the Contractor as from the date of the last Progress Payment up to the date of termination, as determined by the Superintendent, less any amounts owing by the Contractor to the Principal under this Contract as at the date of termination.

## **38. TERMINATION FOR CONVENIENCE**

- 38.1. The Principal may, in its sole discretion and at any time and for any reason, terminate the Contract by ten (10) days' notice in writing to the Contractor.
- 38.2. If the Contract is terminated pursuant to this clause, the Contractor may claim payment for:
  - 38.2.1. WUC executed prior to the date of termination being an amount which would have been payable if the Contract had not been terminated and



the Contractor had been entitled to and had made a payment claim on the date of termination;

38.2.2. the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, provided the materials become the property of the Principal upon payment;

38.2.3. direct costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal; and

38.2.4. the reasonable cost of removal of Temporary Works and Constructional Plant.

38.3. Costs payable under clause 38.2 shall be the sole remedy in respect of termination under clause 38.1, and for the avoidance of doubt the Contractor shall have no claim against the Principal for loss of opportunity or any other cost, loss or damage.

38.4. A claim for payment under this clause must comply with the requirements of clause 41.2 and will be determined by the Principal in accordance with clause 41.

### **39. SERVICE OF DOCUMENTS**

Any notice or document to be given to or served under the terms of the Contract shall be deemed to have been given or served if it is sent by prepaid post or is left at the address stated in the Contract. When sent by prepaid post it shall be deemed to have been given or served at the expiration of twenty-four (24) hours after the time of posting.

### **40. GOVERNING LAWS**

The Contract shall in all respects be interpreted in accordance with the laws of the State of Western Australia and with respect to any proceeding claim, action or demand under or arising out of the Contract the Courts of the State of Western Australia shall have exclusive jurisdiction.

### **41. NOTIFICATION OF CLAIMS**

41.1. Except in regards to a Principal Initiated Variation Order the Contractor must, if it wishes to make a Claim against the Principal, arising out of, or in connection with a direction of the Superintendent which it considers constitutes or involves a Variation, give a written notice to the Superintendent within seven (7) days of receiving the direction stating that the Contractor considers that the direction constitutes or involves a Variation and within fourteen (14) days of giving that notice submit a written claim to the Superintendent setting out the information prescribed in clause 41.3. The Contractor must continue to carry out the Works in accordance with the Contract and all directions given by the Superintendent (including any direction in respect of which a notice has been given under this clause).

41.2. Except for a claim for the original Progress Payments (clause 29) or for a Variation or for an extension of time (clause 25), the Contractor must, if it wishes to make a Claim against the Principal in respect of any direction or other facts, matters or things (including, without limitation, a claim for breach of Contract by the Principal) (subject to clause 23.7) arising out of, or in connection with, the Works or the Contract, give a written claim to the Superintendent within fourteen (14) days of

the first occurrence of the direction or other facts, matters or things upon which the Claim is based specifying that the Contractor intends to make a Claim and setting out the information prescribed in clause 41.3. For the avoidance of doubt, nothing in this clause limits clause 23.7 and (without limiting clause 23.7) no Claim may at any time be made by the Contractor for an increase in the Contract Price.

- 41.3. A written claim made by the Contractor under clause 41.1 or 41.2 must particularise the direction or other facts, matters or things on which the Claim is based, the legal basis for the Claim, the facts relied upon in support of the Claim in sufficient detail to permit the Superintendent to verify the Claim and details of the amount of the Claim and how it has been calculated.
- 41.4. If the direction or other facts, matters or things upon which a Claim under clause 41.1 or clause 41.2 is based are continuing then the Contractor must continue to update the information specified in clause 41.3 every twenty-eight (28) days after the Contractor gave the Superintendent the written claim under clause 41.1 or clause 41.2 (as the case may be) until after the Claim has settled or ceased.
- 41.5. If the Contractor fails to comply with clauses 41.1, 41.2, 41.3 or 41.4, the Principal will not be liable (in so far as it is possible to exclude liability) upon the Claim by the Contractor and the Contractor will be absolutely barred from making any Claim against the Principal arising out of, or in connection with, the relevant direction or other facts, matters or things on which the Claim under clause 41.1 or 41.2 was based.
- 41.6. Clause 41 will not limit the operation or effect of any other provision of the Contract which requires the Contractor to give a notice to the Superintendent in order to preserve its entitlements under the Contract.

## **42. PAYMENT OF WORKERS AND SUBCONTRACTORS**

- 42.1. At least 14 days before the date the Principal is required to make a Progress Payment to the Contractor, or at any other time requested by the Superintendent, the Contractor shall provide a statutory declaration declaring that all workers, subcontractors and suppliers have been paid any amounts due and payable to them as at the date of the payment claim. The Principal is not obliged to pay any amount until the Contractor has complied with its obligations under this clause.
- 42.2. Where requested by the Superintendent following receipt of a statutory declaration under clause 42.1, the Contractor shall also provide documentary evidence to support the declaration and a list of the names and contact details of each subcontractor and supplier engaged to perform the Works, within 5 days of the Superintendent's request.
- 42.3. The provision of the statutory declaration and additional documentary evidence, if applicable, shall be a condition precedent to any entitlement to payment.
- 42.4. The Principal may, at its discretion, make a payment directly to a worker, subcontractor or supplier where:
  - 42.4.1. the Contractor requests in writing; or
  - 42.4.2. the worker, subcontractor or supplier requests in writing and provides a Court Order or adjudication determination evidencing money due and payable by the Contractor in connection with this Contract.

- 42.5. Where payment is made by the Principal under clause 42.4, it shall be deemed to be a payment to the Contractor in satisfaction of the Principal's payment obligations under this Contract.

### **43. PROGRAMMING OF THE WORKS**

#### **43.1. Construction Programme**

43.1.1. The Contractor shall supply to the Principal a construction programme (which must be acceptable to the Superintendent) showing the dates by which various stages or parts of the WUC are to be executed or completed within twenty-eight (28) days of the date of this Contract.

43.1.2. The Contractor shall adhere to the construction programme referred to in clause 43.1.1 unless a deviation therefrom is directed by the Superintendent pursuant to clause 43.2 or is otherwise provided for by the Contract or by Law.

#### **43.2. Deviation from Construction Programme**

43.2.1. The Superintendent may from time to time direct a deviation from a construction programme supplied by the Contractor pursuant to clause 43.1 and, in any such event, the Superintendent may direct the Contractor to supply him a further construction programme. The Contractor will, within the time stated in any such direction, supply such a further construction programme.

43.2.2. Any such further construction programme shall have effect and be subject to the same conditions as if it were a construction programme supplied by the Contractor pursuant to the provisions of clause 43.1.

43.2.3. The supply of a construction programme or of a further construction programme under the Contract shall not relieve the Contractor of any obligation to execute the Works with due expedition and without delay.

### **44. REPORTING AND RECORDS**

The Contractor must provide the reports and maintain the records as set out in Appendix "E".

### **45. GENERAL**

45.1. No provision of the Contract shall be varied, waived, discharged or released either at law or in equity except with the prior consent in writing of the parties.

45.2. The Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

45.3. To the extent that any one or more of the sections clauses sub-clauses or any portion or portions of the Contract are rendered unenforceable or are prohibited those sections clauses sub-clauses and/or portion or portions thereof shall be to that extent unaffected and severable without invalidating or modifying the remainder which shall continue in full force and effect between the parties as if the section clause sub-clause or portions rendered unenforceable or prohibited had not been included herein

45.4. The Contract may only be varied by a document in writing signed by the parties.

- 45.5. The rights, powers and remedies provided in the Contract are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of the Contract.

#### 46. GST

- 46.1. The consideration for any Supply under the Contract is inclusive of any GST imposed on the Supply.
- 46.2. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a Member is entitled to an Input Tax Credit.
- 46.3. In this clause, GST, GST Group, Input Tax Credit, Member, Representative Member, Supply and Tax Invoice have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### 47. ABORIGINAL EMPLOYMENT TARGETS

- 47.1. If specified in item 19 of Appendix A, the Contractor must comply with the *Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide* in Appendix G to the extent applicable to the region where the Site is located.

#### 48. THE WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY (WAIPS)

- 48.1. Application of this Clause

(a) This clause 48 applies if:

- i. the contract value of the supply under the Contract meets the criteria prescribed by the Western Australian Jobs Act 2017 and the Western Australian Jobs Regulations 2018; and
- ii. the Contract is not exempt from WAIPS.

- 48.2. Definitions

In this clause 48, the following terms have the following meanings, unless the context otherwise requires:

(a) **Annual Report** has the meaning given in clause 48.5(a)(i).

(b) **Final Report** has the meaning given in clause 48.5(a)(ii).

(c) **Industry Link Advisory Service** or (**ILAS**) means Industry Link Advisory Service of Level 6, 1 Adelaide Terrace, East Perth, Western Australia 6004. ILAS plays a key role in liaising with Agencies and bidders in WAIPS applicable projects and procurements.

- (d) **Participation Plan** means the Western Australian Industry Participation Strategy – Participation Plan document submitted by the Contractor with its Tender for this Contract or otherwise forming part of the Contract documents or submitted after the award of the Contract, that complies with WAIPS and being to the satisfaction of the Principal.
- (e) **Participation Plan Obligations** means the Contractor's obligations under clause 48.3(b).
- (f) **Term** means the term of the Contract.
- (g) **WAIPS** means the Western Australian Industry Participation Strategy.

#### 48.3. The Participation Plan

- (a) The Contractor must provide or have already provided to the Principal a completed Participation Plan in compliance with WAIPS and also being to the satisfaction of the Principal within 28 days of the date of award of the Contract.
- (b) The Contractor must, in performing its obligations under the Contract, comply with the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in Section B of the Participation Plan (Participation Plan Obligations).
- (c) The Contractor acknowledges and agrees that its Participation Plan Obligations apply during the Term, any extensions of the Term and until all of its reporting obligations as set out in Clause 48.5 are fulfilled.
- (d) The Contractor acknowledges and agrees that the Participation Plan Obligations include the Contractor ensuring its sub-contractors (at any tier) do what is necessary to enable the Contractor to comply with clauses (b) and (c).

#### 48.4. Variation or revision of Participation Plan

If a party wishes to vary or revise the Participation Plan, the parties must liaise in good faith with a view to agreeing and then documenting the proposed variations or revisions. If the parties cannot agree on a variation or revision of the Participation Plan, it will remain unchanged.

#### 48.5. Participation Plan Reporting

- (a) The Contractor must submit to the Principal a report as to the matters covered by the Participation Plan:
  - i. in every year of the Term, in respect of that year (**Annual Report**); and
  - ii. after the end of the Term, in respect of the whole of the Term (**Final Report**), in accordance with this clause.
- (b) Each report submitted under clause (a) must use the form of, and must address the matters outlined in, the Participation Plan Report Template which is attached to the Contract.
- (c) Subject to clause (d), the Contractor must submit:

- i. an Annual Report the Principal on each anniversary of the commencement of the Term, or on such other date each year as is notified by the Principal to the Contractor; and
  - ii. a Final Report no later than 2 months after the end of the Term.
- (d) Where the Term is 12 months or less, only one report from the Contractor is required, which the Contractor must lodge within 2 months after the end of the Term.
- (e) Each report required under clause (a) report must be accurate, up-to-date comprehensive, sufficiently detailed, and in no way misleading or deceptive.

#### **48.6. Verification of Contractor's compliance with Participation Plan**

- (a) The Contractor must:
- i. permit the Principal or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Contractor for the purposes of this Contract;
  - ii. permit the Principal, or its duly authorised representative, from time to time to undertake a review of the Contractor's performance of the Participation Plan Obligations; and
  - iii. ensure that its employees, agents and sub-contractors (at all tiers) give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection.
- (b) If the Principal requests from the Contractor information or access to documentation in connection with the Participation Plan or the Participation Plan Obligations, or information or documentation in connection with any report referred to in clause 48.5, the Contractor must promptly comply with such request, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
- (c) The Contractor authorises the Principal, and any duly authorised representative of the Principal, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Participation Plan Obligations.
- (d) The obligations set out in this clause 48.6 are in addition to and do not derogate from any other obligation under this Contract.

#### **48.7. Verification of Participation Plan**

The Contractor must ensure that both the Participation Plan and each report referred to in clause 48.5 is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

#### **48.8. Use of Information**

Both the Principal and the State of Western Australia may use or disclose the Participation Plan, any report provided under clause 48.5, or any information or documentation referred to in clause 48.6 for the legitimate purposes of or relating to government or the business of government.

48.9. Compliance with Participation Plan

The Contractor acknowledges that if the Contractor does not comply with the Participation Plan Obligations, this may result in the State of Western Australia (including any Principal, department, authority or instrumentality of the State) not awarding a supply contract, or supply contracts, to the Contractor in the future.

48.10. Clause Survives

This clause 48 survives the termination or expiration of the Contract.

## APPENDIX "A" – SCHEDULE

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<b>Item 1 (Clause 7.1.1)</b> Contractors' Risk Policy	Not less than the Contract Price
<b>Item 2 (Clause 7.1.2)</b> Public Liability Insurance	Required [Amount: \$10,000,000]
<b>Item 3 (Clause 7.8)</b> Home Indemnity Insurance	Required
<b>Item 4 (Clause 8)</b>	
(a) Insurance for employees	Required
(b) Professional indemnity insurance	Required [Amount: \$1,000,000]
<b>Item 5 (Clause 24)</b> Date for Completion <i>(Note - may also be expressed as a duration in weeks calculated from the latter of Build Permit or settlement of sale of land where applicable)</i>	
<b>Item 6 (Clause 29)</b> Progress Payments	

**[\*Choose one of the following options, delete the other options in their entirety]**

**[\*Option 1 - Milestone Progress Payments]**

*(Note – this option shall be considered for predominantly single or grouped dwellings projects.)*

All payments under the Contract are contingent upon the Contract becoming unconditional including, where applicable, the Principal becoming the registered proprietor of the land on which any of the individual units, dwellings or apartments comprised in the Works are to be constructed.

The Contractor shall give the Superintendent a notice once any of the Works described in column "A" of the table below have been completed.

The Superintendent shall, within 10 days of receipt of such notice, determine (and notify the Contractor of its determination) if that milestone has been attained.

If the Superintendent fails to notify the Contractor of its determination within 10 days, the Superintendent is deemed to determine, at the end of the 10 day period that the milestone has not been attained.

The Principal shall pay to the Contractor that portion of the Contract Price mentioned opposite such Works in column "B" of the table (which is inclusive of GST) (having taken into account any adjustments in accordance with clause 29.3) within fourteen (14) days after the Superintendent determines that the milestone has been attained.

If the Works comprises of more than one dwelling, then the milestone described in column "A" of the table below must have been completed for all dwellings before the Contractor can give a notice under this item (and this is irrespective of whether or not item 11 of this Appendix A permits the Works to be completed in Stages).

If the Contract Price is adjusted under the Contract, the amount of the remaining Progress Payments shall be adjusted in the manner reasonably determined by the Superintendent to ensure that there is no underpayment or overpayment of the Contract Price.

**(Single and Group Dwelling)**



“A” Progress Payment Milestone (Milestone must be completed for all of the individual dwellings comprised in the Works before the milestone payment is payable)	“B” Amount (inclusive of GST)	“C” Percentage of Contract Price
Slab Down		10%
Plate Height		25%
Roof Cover		20%
Lock Up		20%
Practical Completion		25%
TOTAL		100%

**[\*Option 2 – Milestone then Monthly Progress Payments]**

*(Note – Monthly Progress Payments by percentage of works complete shall be considered for larger projects where it is desirable to make regular payments. Where a contract will be entered into at an early stage of design (i.e. prior to the award of Development Approval and or Build Permit), consideration may be given to identifying such approvals as Progress Payment Milestones)*

Milestone Progress Payments until satisfaction of clause 2.5 (issue of all Approvals) then by Monthly Progress Payments (by percentage of Works completed).

All payments under the Contract are contingent upon the Contract becoming unconditional including, where applicable, the Principal becoming the registered proprietor of the land on which any of the individual units, dwellings or apartments comprised in the Works are to be constructed.

**(a) Milestone Progress Payments**

The Contractor shall give the Superintendent a notice once any of the Works described in column “A” of the table below have been completed.

The Superintendent shall, within 10 days of receipt of such notice, determine (and notify the Contractor of its determination) if that milestone has been attained.

If the Superintendent fails to notify the Contractor of its determination within 10 days, the Superintendent is deemed to determined, at the end of the 10 day period that the milestone has not been attained.

The Principal shall pay to the Contractor that portion of the Contract Price mentioned opposite such Works in column “B” of the table (which is inclusive of GST) (having taken into account any adjustments in accordance with clause 29.3) within fourteen (14) days after the Superintendent determines that the milestone has been attained.

If the Works comprises of more than one dwelling , then the milestone described in column “A” of the table below must have been completed for all dwellings before the Contractor can give a notice under this item (and this is irrespective of whether or not item 11 of this Appendix A permits the Works to be completed in Stages).

If the Contract Price is adjusted under the Contract, the amount of the remaining Progress Payments shall be adjusted in the manner reasonably determined by the Superintendent to ensure that there is no underpayment or overpayment of the Contract Price.



1.	Building Services Levy	[xx]
2.	Building Permit Application Fee	[xx]
3.	BCITF Levy	[xx]
4.	Water Corporation Fee	[xx]
5.	Western Power Fee	[xx]
6.	Gas Authority Fee	[xx]
7.	Other	[xx]

Other Costs		
Item	Description	Estimated Provisional Sum (inclusive of Profit and Overhead)
1.	[xx]	[xx]
2.	[xx]	[xx]
3.	[xx]	[xx]

<b>Item 13 (Clause 3)</b>	Building Permit	Alternative 1
<b>Item 14 (Clause 4)</b>	Strata Titling by Contractor	[Applicable/ Not Applicable]
<b>Item 15 (Clause 1.1.28)</b>	Percentage Profit and Overhead	[xx] %
<b>Item 16 (Clause 29.3.1)</b>	Limit of Retention Monies	NA
<b>Item 17 (Clause 31)</b>	Security/Bank Guarantee	5% of Contract Price
	Security/Insurance Bond	NA
<b>Item 18 (Clauses 2A.2(d) &amp; 2.6.2)</b>	Reimbursement of Design Costs	[\$xx per project/Not Applicable]
<b>Item 19 (Clause 47)</b>	Aboriginal Employment Targets	[Applicable/Not Applicable]

## APPENDIX "B" - PRINCIPAL'S SPECIFICATIONS

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1. Housing Authority Part A Qualitative Brief – Single Dwellings (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
2. Housing Authority Part A Qualitative Brief – Grouped Dwellings (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
3. Housing Authority Part A Qualitative Brief – Multiple Dwellings (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
4. Housing Authority Part B Functional Brief – Single and Grouped Dwellings (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
5. Housing Authority Part B Functional Brief – Low-Rise Multiple Dwellings (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
6. Housing Authority Part B Functional Brief – Universal and Mobility Design (as completed by the Contractor and approved by the Principal) – **Version XXXXXX**  
**(APPLICABLE / NOT APPLICABLE)**
7. Housing Authority Part C Construction Specifications (NATSPEC – BCA CLASS 1a, 1b & 10)  
**(APPLICABLE / NOT APPLICABLE) – Version XXXXXX**
8. Housing Authority Part C Construction Specifications (NATSPEC – BCA CLASS 2 & 3)  
**(APPLICABLE / NOT APPLICABLE) – Version XXXXXX**
9. Housing Authority Demolition Specifications (NATSPEC – BCA CLASS 1a, 1b & 10)  
**(APPLICABLE / NOT APPLICABLE) – Version XXXXXX**
10. Housing Authority Demolition Specifications (NATSPEC – BCA CLASS 2 & 3)  
**(APPLICABLE / NOT APPLICABLE) – Version XXXXXX**
11. Housing Authority Landscaping Brief for Design and Construct Projects  
**(APPLICABLE / NOT APPLICABLE) – Version XXXXXX**

## **PRELIMINARY SPECIFICATION**

### **1. SITE**

#### **1.1 FENCING**

If any existing fencing on any boundary of the Site:

1.1.1 contains asbestos, the Contractor shall remove, dispose of and replace such fencing with an 1800mm high double-sided steel panel fence on post and rail or such other fencing type as approved by the Principal; or

1.1.2 is damaged, missing or encroaching, the Contractor shall repair or replace the fencing as instructed by the Principal.

#### **1.2 POWER SUPPLY**

The Contractor shall arrange, provide and maintain a power supply with adequate outlets distributed about the Site for executing the work under the Contract (both for construction and testing). At Practical Completion, the Contractor shall arrange to close such power supply account.

The Contractor shall pay all costs and charges in connection with the power supply incurred up to and including the date of Practical Completion.

Where the mains supply of electricity is not available at the Site, the Contractor shall allow and arrange to provide a suitable alternative power supply.

#### **1.3 WATER SUPPLY**

The Contractor shall arrange, provide and maintain a temporary water supply to the Site as necessary for executing the work under the Contract. At Practical Completion, the Contractor shall arrange to close such water supply account.

The Contractor shall pay all costs and charges in connection with the water supply incurred up to and including the date of Practical Completion.

Where the mains supply of water is not available the Site, the Contractor shall allow and arrange to provide a suitable alternative temporary water supply.

#### **1.4 GAS SUPPLY**

When a gas supply is necessary for executing the work under the Contract the Contractor shall arrange provide and maintain such temporary gas supply and connections.. At Practical Completion, the Contractor shall arrange to close such gas supply account.

The Contractor shall pay all costs and charges in connection with the gas supply incurred up to and including the date of Practical Completion

#### **1.5 TEMPORARY STORAGE**

The Contractor shall make room, as and when directed by the Superintendent, available for the temporary storage of equipment, fittings and furniture required for the work under the contract. Room directed to be used for temporary storage purposes shall be completed up to the stage of painting and made secure to the approval of the Superintendent.

#### **1.6 CONTRACTOR'S SITE ACCOMMODATION**

The Contractor shall provide its own temporary facilities (appropriate to the size / project requirements), as required for the safe keeping and laying out of its copies

of the Contract documents. The Contractor shall remove the temporary facilities from the Site prior to the issue of the Certificate of Practical Completion.

#### **1.7 WORKMEN'S AMENITIES**

The Contractor shall provide all statutory and necessary amenities and sanitary facilities for workmen and other persons lawfully upon the site and remove them prior to the issue of the Certificate of Practical Completion.

#### **1.8 SITE SIGNBOARD**

Within 14 days of commencing work on Site, the Contractor must erect the site signboard on Site in accordance with the requirements of the Building Services (Registration) Regulations 2011.

The Contractor is responsible for all costs associated with the construction, sign writing, delivery and erection, maintenance and removal of the site signboard and the costs will be deemed to be included in the Contract Price.

As soon as practical after the issue of the Certificate of Practical Completion, the Contractor must remove from the Site the site signboard at the Contractor's own cost.

No other name board, sign or advertisements are permitted on the Site without the prior written approval of the Superintendent, unless authorised or required by law.

#### **1.9 SITE CONTROL**

The Contractor shall at all times comply with the regulations and any site-specific restrictions imposed by the Superintendent relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other regulations in force on the Site.

The Contractor must comply with all statutes, regulations and by-laws relating to the protection of the environment.

The Contractor shall ensure that green waste, earth, fill, brick, mortar, concrete, and metal are recycled either for use on-site or by delivery to a recycling facility. The contractor may be required to provide the Superintendent with off-site disposal documentation detailing the recycling facility destinations that received the materials.

The Contractor must obtain written approval from the Superintendent for the formation of any temporary roads, the erection of temporary structures or any site clearing not specifically documented.

The Contractor must not remove, damage or destroy, or cause to be removed, damaged or destroyed any trees or shrubs at the site without the written approval of the Superintendent. No fire shall be lit without the written approval of the Superintendent.

Flammable or explosive products shall be stored in accordance with the relevant statutes and to the approval of the Superintendent.

#### **1.10 REFUSE DISPOSAL**

The Contractor shall handle and dispose of site refuse (including foodstuffs) in accordance with the requirements of the waste materials recycling provisions detailed in the Site Control clause, relevant statutes and to the approval of the Superintendent.

The Contractor shall handle, transport and dispose of Site refuse containing asbestos in accordance with the Principal's Specifications and in compliance with the current *Environmental Protection (Controlled Waste) Regulations*.

#### **1.11 SOIL EROSION**

The Contractor must take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the work under the contract.

#### **1.12 SMOKING ON CONSTRUCTION SITES**

In respect of construction sites, smoking is prohibited.

#### **1.13 VEHICLES**

All debris, spoil, rubbish or materials shall be suitably contained and covered in vehicles during transportation to or from the site to prevent spillage or contamination of adjoining and other areas or property.

The Contractor must maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas.

### **2. HEALTH SAFETY AND ENVIRONMENTAL CONTROLS**

#### **2.1. OCCUPIED SITES**

If the Site is part of an occupied premise or facility, the Contractor is to liaise with the occupier regarding Safety and Health requirements.

The Superintendent will arrange a safety co-ordination meeting between the occupiers and the Contractor. The occupiers will provide to the Contractor their occupation requirements on and/or adjacent to the site to assist the Contractor in the development of a Site specific Safety Management Plan addressing the Contractors and occupiers operational interface requirements. The Safety Management Plan shall incorporate the Contractor's own operations and the interface with the occupiers operations.

The Contractor shall be responsible for coordinating the implementation of the Safety and Health standards on the occupied Site for the duration of the Contract and shall co-ordinate and integrate the Works in order that the occupier is able to safely continue normal activities for the duration of the Contract.

The Contractor shall obtain a copy of the Evacuation Plan for the occupied Site and ensure that all persons admitted onto the site are familiarised with the Evacuation Plan and comply with its requirements.

#### **2.2. WORKPLACE SAFETY AND HEALTH CONTROLS**

The Contractor shall comply with the *Occupational Safety & Health Act 1984* (the Act), and the *Occupational Safety & Health Regulations 1996* (the regulations) and with any amendments that may be made to the Act and regulations from time to time.

The Act, regulations, Codes of Practice and other safety information can be accessed from the WorkSafe WA website at <http://www.commerce.wa.gov.au/worksafe/>.

The Contractor is deemed to have control of the Site for the purposes of executing the work under the Contract. Accordingly the Contractor is responsible for ensuring that, wherever practicable, its employees and all other persons entering and moving about the Site, for whatever purpose, are not exposed to hazards.

The Contractor is deemed to be in control of all matters related to the execution of the work under the Contract and accordingly is responsible for all such matters under the Act and regulations.

The Contractor shall, wherever practicable, appoint a Safety and Health Representative or Representatives to perform the functions as defined under the Act.

The Contractor shall comply with all obligations under the Act. The Contractor shall also report all such matters promptly to the Superintendent.

### **2.3. MATERIAL SAFETY DATA SHEETS**

The Contractor shall ensure that a copy of all manufacturer/supplier Material Safety Data Sheets are available on a register on site for each hazardous substance used in connection with the work under the Contract.

### **2.4. OCCUPATIONAL HEALTH AND SAFETY INFORMATION**

Prior to the commencement of work on Site, or at any other time the Superintendent directs, the Contractor shall consult with the Principal and the Superintendent for the purposes of ensuring that, as far as practicable, the works can be carried out without risk to the health and safety of either those doing the work, or anyone else who may be at or near the construction site.

The Contractor shall ensure that the following information is recorded, reviewed and updated regularly, and kept until the Works are completed:

- a) The identification of hazards to which a person at the Site is likely to be exposed;
- b) An assessment of the risk of injury or harm to a person resulting from those hazards; and
- c) The risk control measures through which the risk of injury or harm may be eliminated or otherwise controlled.

If the Contractor becomes aware that a change in the design of the Works could better eliminate or control a risk of injury or harm to those doing the construction work, or anyone else who may be at or near the Site, the Contractor shall ensure that this information is passed on to the Principal and the Superintendent.

The Contractor shall ensure that any Occupational Safety and Health information it receives from the Principal or the Superintendent is incorporated into its hazard identification, risk assessment and risk control measures.

### **2.5. SAFETY MANAGEMENT PLAN**

Prior to the commencement of the work on Site, the Contractor shall prepare and implement a Safety Management Plan relevant to the works under the Contract. The Safety Management Plan shall be maintained, and where necessary updated, throughout the Contract. The Safety Management Plan shall be appropriate to the risks associated with the work under the Contract and shall contain provision for, but not be limited to, the following elements:

- a) Occupational Safety and Health induction for new employees;
- b) listing of competencies required for specialist work (eg. rigger, scaffolder);
- c) the arrangements for managing occupational safety and health incidents on the Site, including accident/incident reporting and investigation



- d) the safety rules at the Site and description the arrangements for ensuring that all persons working at or visiting the Site are informed of the rules;
- e) hazard identification, risk assessment and risk control including routine inspection processes;
- f) plant/equipment inspection processes;
- g) pre-job planning, procedural issues and JSA's (Job Safety Analyses, also known as Safe Work Method Statements). Within the Safety Management Plan, particular attention is to be given to identifying hazardous activities including, but not limited to, work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights;
- h) emergency evacuation procedures;
- i) methods of communicating and consulting with employees and transmitting new work procedures to employees;
- j) hazardous substances exposure management;
- k) site security;
- l) purchasing/hiring controls (to avoid unknowingly bringing hazards onto the Site);
- m) quantitative performance measures (application to be determined by contract size and duration);
- n) traffic management plan; and
- o) any other matters that the Superintendent may direct from time to time.

Each element of the Safety Management Plan shall specifically address:

- a) the person on the Site who shall take responsibility for the successful implementation of each element;
- b) the hierarchical structure by which the responsibility is performed, and;
- c) the specific manner by which the element is performed.

The Contractor shall prepare the Safety Management Plan in conjunction with a competent person suitably experienced and qualified in safety matters. The Principal may direct that the Contractor prepare the Safety Management Plan in conjunction with the Consultant.

Prior to the commencement of the Works, the Contractor shall certify to the Superintendent that its Safety Management Plan:

- a) has been prepared;
- b) has been provided to each person doing construction work at the Site (where this is practical) or is otherwise available for inspection on the Site; and
- c) has been implemented on Site.

## **2.6. OCCUPATIONAL HEALTH AND SAFETY INDUCTION TRAINING**

The Contractor shall not permit its employees, the employees of other parties or other persons to commence work on the Site until they have been inducted. Such induction shall include but not necessarily be limited to:

- a) familiarisation with the Safety Management Plan;
- b) reporting of accidents and incidents - which shall include the type of events to be reported, how an event is reported and to whom the event is reported;

- c) emergency procedures - which shall cover the procedure for a medical emergency and for evacuation of the Site in the event of a life threatening situation arising;
- d) personal protective equipment (PPE) - the standard requirements for the Site;
- e) lifting and manual handling skills;
- f) sun protection;
- g) avoidance of noise induced hearing loss;
- h) location of and access to First Aid on the Site;
- i) legislative framework - an employee's rights and responsibilities under the Act and Regulations;
- j) procedure for the resolution of safety issues at the workplace; and
- k) Site security.

The Contractor shall induct all parties working on the Site and shall prepare "Training Session Attendance" sheets signed by each attendee verifying that such induction has occurred.

Upon commencement of work on the Site, the Contractor shall further induct all parties working on the Site with regard to all significant hazards associated with their particular activity and area of employment on the Site and where relevant shall include the use of powered plant, tools and equipment.

## **2.7. SITE AND PUBLIC SECURITY**

Notwithstanding the Contractor's obligations to site and public security as stated elsewhere in this Contract, the Contractor shall monitor and control, wherever practicable, the access of all persons to the Site.

The Contractor shall ensure that no persons, unrelated to the Contract, enter the Site without the express permission of the Contractor.

PPE standards shall apply at all times and a person shall only enter the Site after that person has received a safety briefing regarding hazards relevant to the Site.

## **2.8. SAFE WORK METHOD STATEMENTS**

Where construction work on the Site is high risk construction work, the Contractor shall ensure that a person having day-to-day, on Site control of the high-risk work at the Site gives the Contractor a written Safe Work Method Statement before the high risk construction work commences. The Contractor shall ensure that the Safe Work Method Statement is kept up to date.

For the purposes of this clause, high risk construction work includes:

- a) work involving a risk of a person falling 2 metres or more; or
- b) work on telecommunications towers; or
- c) the demolition of any existing structure; or
- d) disturbing or removing asbestos; or
- e) the alteration to a structure that requires the structure to be temporarily supported to prevent its collapse; or
- f) work within a confined space;
- g) the excavation to a depth of more than 1.5 metres; or

- h) the construction of tunnels; or
- i) the use of explosives; or
- j) work on or near pressurised gas pipes (including distribution mains); or
- k) work on or near chemical, fuel or refrigerant lines; or
- l) work on or near energised electrical installations and lines (whether overhead or underground); or
- m) work in an area that may have a contaminated or flammable atmosphere; or
- n) work involving tilt-up or precast concrete; or
- o) work on or adjacent to roads or railways that are in use; or
- p) work on a construction site where there is movement of powered mobile plant; or
- q) work in an area where there are artificial extremes of temperature; or
- r) work in, over or adjacent to water or other liquids if there is a risk of drowning; or
- s) work involving diving.

The Contractor shall ensure that a Safe Work Method Statement will cover all high-risk construction work done at the Site, and that the high risk construction work is carried out in accordance with the statement. Where work is carried out other than in accordance with the Safe Work Method Statement, the Contractor shall ensure that the work ceases (when it is safe to do so) and does not resume until the statement is complied with.

The Contractor shall ensure that the safe work method statement describes:

- a) each high-risk construction work activity that is or includes a hazard to which a person at the construction site is likely to be exposed;
- b) the risk of injury or harm to a person resulting from any such hazards;
- c) the safety measures to be implemented to reduce the risk, including the control measures to be applied to the activity or hazards; and
- d) a description of the equipment used in the work activity; and
- e) the qualifications and training (if any) required for persons doing the work to do it safely.

## **2.9. NOISE CONTROL**

The Superintendent may, at any time, direct the Contractor to take reasonable steps to control noise including, but not limited to:

- a) the substitution of noisy equipment or processes with less noisy alternatives;
- b) the modification of equipment (where this is practical and can be done safely and following consultation with the manufacturer);
- c) situating noisy equipment away from noise sensitive areas;
- d) undertaking noisy work in areas or at times specified by the Superintendent;
- e) installing screens to limit the impact of noise on noise-sensitive areas;

- f) any other measure the Authority's Representative considers reasonable; and
- g) for the purpose of this clause, 'equipment' has the same meaning as stated in section 3 of the *Environmental Protection Act 1986 (WA)*.

The Contractor must:

- a) carry out the work in accordance with AS 2436-2010 Guide to Noise and Vibration Control on Construction, Demolition and Maintenance Sites;
- b) ensure the equipment used is the quietest reasonably available; and
- c) prepare and have approved by the CEO of the Environmental Protection Authority a noise management plan if required.

Where the construction work is carried out between 7 pm and 7 am, or on Sundays or Public Holidays, the Contractor must also:

- a) advise the occupants of all nearby properties of the work to be done at least 24 hours before it commences; and
- b) be able to establish that it was reasonably necessary for the work to be carried out at that time.

Where a local government or Authority requires the Contractor to submit a noise management plan, the Contractor must submit the noise management plan to the relevant entity (as well as any application fee due in relation to that noise management plan) 7 calendar days prior to commencing the Work.

Where the Contractor has prepared a noise management plan in accordance with this clause 2.9 Work must be carried out in accordance with that plan.

The Superintendent may direct the Contractor to provide to the Superintendent:

- a) a written statement confirming it has complied with its requirements under this clause in relation to noise; and
- b) a certificate of acoustic performance issued by a laboratory registered with the National Association of Testing Authorities Australia for any equipment before permitting its use, or continued use, on the Site.

### **3. SERVICES INSTALLATION**

The Contractor shall ensure mechanical, electrical, plumbing, and similar service installations; equipment and their associated services are installed in such order that will ensure that all essential components and parts are accessible for the purposes of maintenance and replacement.

### **4. JOINING UP**

In addition to any particular items of work specified, the Contractor shall ensure that the joining of all existing and new work and the cutting away in connection therewith shall be carried out in a manner approved by the Superintendent and made good in all trades to match existing adjacent work.

### **5. CONDITIONS OF EMPLOYMENT**

Any person or employer who for the purpose of its trade or business employs a person or employee upon or in connection with any part of the work under the contract, shall be required to observe all the conditions of the relevant award applicable to that trade or business, or the provisions of a registered Enterprise or Workplace Agreement.

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APPENDIX "C" - CONTRACTOR'S SPECIFICATIONS

Schedule of Finishes, Fixtures, Equipment and Materials

## APPENDIX "D" – DRAWINGS

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## **APPENDIX “E” - CONTRACTOR REPORTS AND RECORDS**

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### **1. CONTRACTORS REPORTS**

The Contractor shall issue a Contract progress and status report as required by the Superintendent, based on the current approved Construction Program, giving details including but not limited to:

- work under the Contract currently in progress, highlighting critical activities;
- activities affected by or linked with delays whether the subject of time claims or not;
- work activities to commence in the next period;
- actions required by the Principal or Superintendent;
- program status;
- onsite disruptions; and
- as otherwise directed.

### **2. SITE RECORDS**

The Contractor shall collect and maintain, on a daily basis, information on:

- work done on all activities,
- site attendance of all staff and work operatives,
- presence and use of all constructional plant.

The Contractor shall allow access to the records and assist in providing accurate information to enable the Superintendent to make independent assessment of contract progress and program.

### **3. SITE MEETING MINUTES**

The Contractor shall throughout the duration of the Contract arrange for site meetings (as required by the Superintendent) between itself, appropriate subcontractors and the Superintendent and consultants.

Each meeting shall be minuted and a copy of the minutes forwarded to the Superintendent within two days of each meeting. Note: the level of documentation required in respect to the minutes and meeting records is to be commensurate with the project complexity and the significance of the issue being addressed.

The purpose of these Site meetings is to assist in attaining full co-operation between all concerned on the project as well as checking progress of the work under the Contract and providing the opportunity for general discussion of the work under the Contract.

At the first Site meeting the Contractor shall submit to the Superintendent the names and telephone numbers of all responsible persons who may be contacted after working hours during the course of the contract.

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## **APPENDIX “F” - MODULAR CONSTRUCTION**

## 1. INTERPRETATION

“Modules” means the pre-fabricated units as described in the Contract Documents, which are to be delivered and installed in accordance with the requirements of the Contract.

“Module Construction Site” means the place(s) other than the Site at which the Modules are assembled, fitted out and/or constructed.

## 2. ACCESS FOR PRINCIPAL AND OTHERS AT THE MODULAR CONSTRUCTION FACILITY

- (a) The Contractor must facilitate access to the Module Construction Site during business hours for the Principal, the Superintendent and any representatives appointed on behalf of the Principal, for the purpose of inspection or assessing the Modules or in order to carry out an assessment or valuation to facilitate payment under the Contract.
- (b) Following the receipt of any payment claim, the Superintendent, Principal and any authorized representatives may attend at the Module Construction Site to inspect the Works.
- (c) The Principal and/or Superintendent must give 48 hours notice to the Contractor in advance of an inspection.

## 3. INSPECTION ON COMPLETION OF THE MODULES

- (a) The Contractor must advise the Superintendent, [TBC days] prior to the anticipated completion of a Module, that the Module is assembled and ready for inspection at the Modular Construction Facility.
- (b) Within 7 days of receipt of the advice referred to in the proceeding paragraph, the Superintendent may attend at the Modular Construction Facility to inspect the Module. The Principal or a representative on behalf of the Principal may also attend to inspect the Module(s).
- (c) If the Superintendent or the Principal is of the opinion that the Module is not assembled in accordance with the requirements of the Contract, the Superintendent must advise the Contractor in writing of this and of the reasons for this view.
- (d) The inspection of a Module by the Superintendent, the Principal or any representative on behalf of the Principal does not prejudice the Principal's right to later assert that the Module is not assembled in accordance with or otherwise comply with the requirements of the Contract.

## 4. PAYMENT CLAIMS FOR MODULES

- (a) The Contractor shall not be entitled to make a Payment Claim for part or all of a Module until:
  - (i) the work the subject of the Payment Claim has reached the Milestone Stage identified in Table A below;
  - (ii) the Contractor has satisfied the requirements described in that Milestone Stage;
  - (iii) the Module is free from all defects reasonably apparent or capable of identification; and
  - (iv) the Module is clearly marked as the property of the Principal and is separated from and distinguishable from all other items, plant, equipment and materials.



- (b) The Milestone Stages giving rise to the Contractor's entitlement to make a Payment Claim are as follows:

**Table A**

Description of Claim	Time for Claim	Time for Payment	Amount of Contract Price (inc GST)
Manufacture of Modules	Upon completion of a Module and otherwise in accordance with clause 29.2	In accordance with Contract terms	35%
All Modules Transported Costs and Installed (including insurance costs)	Upon delivery of <u>all completed</u> Modules to Site and otherwise in accordance with clause 29.2	In accordance with Contract terms	35%
Practical Completion	Upon incorporation of all Modules into the Works on Site	In accordance with Contract terms	30%
		TOTAL	100% (inc GST)

## 5. OWNERSHIP AND RISK OF PRE-FABRICATED MODULES

- (a) The scope of the works under the Contract includes the construction of the Modules and their delivery and installation on Site. Ownership of the Modules passes to the Principal on payment for a completed Module under clause 29.2, following which, the Contractor:
- (i) shall ensure, where the Modules are not incorporated into the Works but the Contractor is entitled to payment under this Contract, that the completed Modules are kept separate from other goods and clearly identify the completed Modules as the property of the Principal. In complying with this obligation the Contractor must ensure that each Module has a large notice affixed to it clearly identifying it as the property of the Principal in addition to other signage/identification required to clearly identify the property;
  - (ii) must ensure that the completed Modules continue to be clearly identified as the property of the Principal until they are affixed to the Site.
- (b) Despite title in the Modules passing to the Principal, risk in each Module remains with the Contractor until the Works are completed in accordance with this Contract. Without limiting the generality of the foregoing this includes the obligation to insure the Modules.

## 6. TRANSPORT OF GOODS

The Contractor shall satisfy itself of its obligations under the *Transport Co-ordination Act 1966 (WA)* with respect to any transport of the Modules that may be required for work under the Contract.

## **7. INSURANCE**

In addition to the insurance obligations under the General Conditions of Contract (as amended), insurance cover (under a Contract Works policy) shall include for the following amounts:

- (a) [\$TBC] for inland transit of works materials;
- (b) [\$TBC] for materials stored offsite.

## **8. ADDITIONAL SECURITY**

The Principal shall not be obliged to make any payment for unfixed plant or materials:

- (a) except to the extent required by this Appendix; and
- (b) unless the Contractor first provides additional security in the amount of [TBC% of the value of the value of the Modules by way of Bank Guarantee]

## APPENDIX “G” – HOUSING AUTHORITY ABORIGINAL EMPLOYMENT TARGETS IN CONSTRUCTION AND CIVIL WORKS CONTRACTS PRACTICE GUIDE

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### GASCOYNE, MID WEST, WHEATBELT, PEEL, SOUTH WEST, GREAT SOUTHERN, GOLDFIELDS/ESPERANCE AND METRO REGIONS

#### 1. Definitions

For the purposes of this Annexure, the following words have the following meanings:

- a) “**Aboriginal Employment Plan**” means the plan submitted by the Contractor and approved by the Principal that sets out how the Contractor will meet the requirements of the Practice Guide in respect of the Contract, a copy of which is included as Attachment 1 to this Annexure;
- b) “**Aboriginal Employment Report**” means the report to be provided by the Contractor to the Principal for each Reporting Period in accordance with the Practice Guide and clause 5 of this Annexure;
- c) “**Aboriginal Employment Target**” means the employment target for Aboriginal Workers specified in the Aboriginal Employment Plan or such other target as agreed by the parties to the Contract in writing;
- d) “**Aboriginal Workers**” has the meaning given in the Practice Guide;
- e) “**Contractor**” means the head contractor engaged by the Principal under the Contract to perform the Works;
- f) “**Contract**” means any contract attaching or otherwise subject to this Annexure;
- g) “**Practice Guide**” means the *Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide* in effect as at the date of the Contract;
- h) “**Principal**” means the Housing Authority and any other person named as the principal under the Contract;
- i) “**Reporting Period**” means each calendar month from the date of the Contract until the completion of the Works, or such other period specified in the Practice Guide;
- j) “**Site**” means the land and other places made available to the Contractor by the Principal for the purpose of the Contract; and
- k) “**Works**” means the works to be undertaken under the Contract.

#### 2. Application of Annexure

This Annexure forms part of the Contract. To the extent of any inconsistency between the terms of this Annexure and any of the other terms of the Contract, the terms of this Annexure prevail.

#### 3. Contractor Obligations

The Contractor must comply with the Practice Guide and the terms of this Annexure. Without limiting the application of the Practice Guide the Contractor must:

- a) submit the Aboriginal Employment Plan in accordance with clause 4 of this Annexure;
- b) within 10 business days after the end of each Reporting Period, submit to the Principal an Aboriginal Employment Report in the manner required by the Principal; and
- c) keep and provide access to the Principal or its agents, all supporting information, documents and evidence used to prepare the Aboriginal Employment Report for each Reporting Period.

#### **4. Aboriginal Employment Plan**

Within 30 calendar days after entering into the Contract (or such longer period as agreed by the Principal), the Contractor must submit to the Principal for approval the Aboriginal Employment Plan which complies with the Practice Guide.

After receiving the Aboriginal Employment Plan from the Contractor, the Principal must notify the Contractor if it approves the plan or if it requires amendments to the plan.

#### **5. Aboriginal Employment Report**

Unless otherwise agreed by the Principal in writing, each Aboriginal Employment Report submitted by the Contractor must be in the form prescribed by the Principal and contain the following information:

- a) the Contract name, number and description;
- b) date of award and date the Works commenced on the Site;
- c) full legal entity name, business name, Australian Business Number for the Contractor and each of its Relevant Subcontractors;
- d) the names and total number of hours worked by, Aboriginal Workers in connection with the performance of the Works during the Reporting Period;
- e) the total number of employees and contractors engaged by the Contractor and its Relevant Subcontractors and the estimated total number of hours worked by these persons in connection with the performance of the Works during the Reporting Period; and
- f) any other information reasonably requested by the Principal.

#### **6. Verification of Compliance**

The Principal reserves the right to verify and audit compliance with the Practice Guide and this Annexure.

## KIMBERLEY AND PILBARA REGIONS

### 1. Definitions

For the purposes of this Annexure, the following words have the following meanings:

- a) “**Aboriginal Employment Plan**” means the plan submitted by the Contractor and approved by the Principal that sets out how the Contractor will meet the requirements of the Practice Guide in respect of the Contract, a copy of which is included as Attachment 1 to this Annexure;
- b) “**Aboriginal Employment Report**” means the report to be provided by the Contractor to the Principal for each Reporting Period in accordance with the Practice Guide and clause 5 of this Annexure;
- c) “**Aboriginal Employment Target**” means the employment target for Aboriginal Workers specified in the Aboriginal Employment Plan or such other target as agreed by the parties to the Contract in writing;
- d) “**Aboriginal Workers**” has the meaning given in the Practice Guide;
- e) “**Contractor**” means the head contractor engaged by the Principal under the Contract to perform the Works;
- f) “**Contract**” means any contract attaching or otherwise subject to this Annexure;
- g) “**Practice Guide**” means the *Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide* in effect as at the date of the Contract;
- h) “**Principal**” means the Housing Authority and any other person named as the principal under the Contract;
- i) “**Reporting Period**” means each calendar month from the date of the Contract until the completion of the Works, or such other period specified in the Practice Guide;
- j) “**Site**” means the land and other places made available to the Contractor by the Principal for the purpose of the Contract; and
- k) “**Works**” means the works to be undertaken under the Contract.

### 2. Application of Annexure

This Annexure forms part of the Contract. To the extent of any inconsistency between the terms of this Annexure and any of the other terms of the Contract, the terms of this Annexure prevail.

### 3. The Principal

The Principal is committed to implementing the Practice Guide and adhering to the principles contained in the Practice Guide.

### 4. Contractor Obligations

The Contractor must comply with the Practice Guide and the terms contained in this Annexure. Without limiting the application of the Practice Guide the Contractor must:

- a) do all things reasonably necessary to meet the Aboriginal Employment Target;
- b) within 10 business days after the end of each Reporting Period, submit to the Principal an Aboriginal Employment Report in the manner required by the Principal;

- c) keep and provide access to the Principal or its agents, all supporting information, documents and evidence used to prepare the Aboriginal Employment Report for each Reporting Period; and
- d) comply with the dispute resolution process in clause 8 of this Annexure.

## **5. Aboriginal Employment Report**

Unless otherwise agreed by the Principal in writing, each Aboriginal Employment Report submitted by the Contractor must be in the form prescribed by the Principal and contain the following information:

- a) the Contract name, number and description;
- b) date of award and date the Works commenced on the Site;
- c) full legal entity name, business name, Australian Business Number for the Contractor and each of its Relevant Subcontractors;
- d) the names, dates of birth and addresses of, and total number of hours worked by, Aboriginal Workers in connection with the performance of the Works during the Reporting Period;
- e) the total number of employees and contractors engaged by the Contractor and its Relevant Subcontractors and the total number of hours worked by these persons in connection with the performance of the Works during the Reporting Period; and
- f) any other information reasonably requested by the Principal.

## **6. Verification of Compliance**

The Principal reserves the right to verify and audit compliance with the Practice Guide and this Annexure.

The Contractor must, upon reasonable notice, provide the Principal or its agents, with access at any reasonable time and from time to time to the Site, the Contractor's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Principal in order to verify compliance by the Contractor with the Practice Guide and this Annexure.

## **7. Breach of Contract**

A failure to comply with the requirements of the Practice Guide or this Annexure is deemed a substantial breach of the Contract.

Subject to compliance with the dispute resolution provisions in clause 8 with respect to the Contractor's failure to meet the Aboriginal Employment Target, but otherwise without limitation to any other right of the Principal under the Contract, the Principal may at its absolute discretion do any or all of the following:

- a) suspend the Contractor from further contracting opportunities with the Principal for a period of time determined by the Principal;
- b) downgrade or suspend the Contractor's status for works contracts with the Principal; or
- c) withhold payment of money due to the Contractor until the Contractor satisfies the Principal that it has complied with the requirements of the Practice Guide, or is making a bona fide attempt to ensure compliance with the Practice Guide.

## **8. Dispute Resolution**

If at any time the Principal or the Contractor reasonably believes that the Contractor is, or will be, unable to meet the Aboriginal Employment Target, the party holding this belief must give a notice in writing to the other party under this clause.

On receipt of a notice under clause 80, the parties agree to use reasonable commercial efforts to agree a resolution:

- a) by a conference to be held within 14 days of receipt of a notice under clause 80 between the Superintendent appointed under the Contract (if any) on behalf of the Principal and a representative of the Contractor; and
- b) if no resolution is achieved under clause 8(b)(i), by a conference to be held within 28 days of receipt of a notice under clause 80 between the management representatives of each of the Principal and the Contractor.

The discussions during any conference convened in accordance with this clause will be on a without prejudice basis.

The Principal will not exercise its remedies under the Contract for failing to meet the Aboriginal Employment Target unless it has made reasonable efforts to comply with the dispute resolution procedures set out in this clause 8.

Notwithstanding this clause 8, the Principal and the Contractor shall continue to perform the Contract, and the Contractor shall continue with the Works.

**[IF KIMBERLEY AND PILBARA REGIONS ATTACH ABORIGINAL EMPLOYMENT PLAN HERE]**