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**CONTRACTOR'S AGREEMENT**  
**TERMS AND CONDITIONS**

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RECITAL:

- A. The Contractor has expertise in the provision of the Works.
- B. The Company wishes to engage the Contractor to provide the Works upon the Land and the Contractor has agreed to enter into this Agreement in respect of the Works to be provided by the Contractor to The Company on the Land.
- C. Australian Standard 4000-1997 (as amended from time to time) shall be incorporated in and be deemed to be part of this Agreement except to the extent that they are varied or inconsistent with the terms of this Agreement.

NOW THIS CONTRACT WITNESSES THAT:

1. **Definitions and Interpretation**

- 1.1. In this Agreement unless the context otherwise requires the following terms shall have the following meanings:

“**The Company**” means the Company as specified in the Purchase Order;

“**Approval**” means all necessary licences approvals authorisations and permits necessary to permit the carrying out and construction of the Works;

“**Business Day**” means any day which is not a Sunday or a public holiday;

“**Commencement Date**” means the commencement date specified in the Purchase Order;

“**Contractor’s Employees**” means the employees, servants, agents of sub-contractors of the Contractor;

**“Date of Practical Completion”** means the date upon which the Contractor receives notice from the Supervisor that the Works have been completed to its satisfaction as evidenced by a Certificate of Practical Completion issued by the Supervisor to the parties and that Certificate shall be conclusive evidence as between the parties that the Works have been practically completed.

**“Electronic Copy”** means a copy of any document (including but not limited to all records) produced by the Contractor in the course of providing the Works that is recorded on computer tape or disc in a language compatible with the computer equipment used by the Company so that it may be readily accessed by the Company using computer equipment in the possession of the Company;

**“Fixed Lump Sum”** means the total fixed non-escalating cost for the Works payable by The Company to the Contractor and being the amount specified in the Purchase Order;

**“Land”** means each of the locations as listed in the Purchase Order, if applicable;

**“Latest Date for Approval”** means the date specified in the Purchase Order;

**“Latest Date for Practical Completion”** means the date specified in the Purchase Order;

**“Local or Public Authority”** means every governmental or semi-governmental body municipal council health board health commissioner water sewerage and drainage board the Water Authority of Western Australia and every and any other board person or authority whatsoever now or hereafter exercising under any act or by-law any control or jurisdiction over or power in connection with the Works or any part thereof;

**“Plans and Specifications”** means the plans and specifications of the Works (if any) approved by the parties and signed by them to evidence their approval;

**“Program”** means the program referred to in the Purchase Order;

**“Supervisor”** means the supervisor specified in the Purchase Order or any other person designated as the supervisor (from time to time by The Company);

**“Working Hours”** means those hours specified in the Purchase Order or any other working hours agreed to by the parties from time to time.

**“Works”** means those works as identified in the Purchase Order and any variation of those works pursuant to clause 4;

- 1.2. In this Agreement unless the context otherwise requires:
  - 1.2.1. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
  - 1.2.2. the singular includes the plural and vice versa;
  - 1.2.3. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
  - 1.2.4. a reference to any gender includes all genders;
  - 1.2.5. a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;
  - 1.2.6. a recital, schedule, annexure or description of the parties forms part of this Agreement;
  - 1.2.7. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
  - 1.2.8. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - 1.2.9. where an expression is defined anywhere in this Agreement it has the same meaning throughout; and
  - 1.2.10. reference to 'dollars' or '\$' is to an amount in Australian currency.

**NOW THIS AGREEMENT WITNESSES:**

**2. Engagement and Term**

- 2.1. The Company hereby engages the Contractor to carry out the Works upon and subject to the terms and conditions contained in this Agreement.
- 2.2. The Contractor shall:
  - 2.2.1. carry out the Works in accordance with the provisions contained herein; and
  - 2.2.2. only carry out the Works during Working Hours on each Business Day.

### 3. **Approvals**

- 3.1. The Contractor shall at its own cost and expense as soon as practicable after the execution of this Agreement if it has not already done so diligently and expeditiously use its reasonable endeavours to procure the issue of the Approvals and do all acts matters, deeds and things reasonably necessary or desirable to obtain them.
- 3.2. The Company upon request by the Contractor shall do all acts matters and things and sign all documents reasonably required by the Contractor to assist it in obtaining the Approvals.
- 3.3. If:
  - 3.3.1. the Contractor is unable to procure the issue of an Approval on terms and conditions reasonably acceptable to The Company; or
  - 3.3.2. the Contractor is unable to procure the issue of an Approval;by the Latest Date for Approvals or any later date as may be agreed in writing by the parties then The Company may by notice in writing to the Contractor terminate this Agreement without prejudice to any rights the Company may have against the Contractor in respect of any antecedent breach of the terms covenants and conditions contained in this Agreement.

### 4. **Supervisor**

#### Appointment of Supervisor

- 4.1. The Company shall appoint a Supervisor to oversee the carrying out and construction of the Works in accordance with the Plans and Specifications and to liaise between the parties as to the completion of that construction and any variations that may be required.

#### Duties of Supervisor

- 4.2. The parties acknowledge and agree that the duties of the Supervisor shall include:
  - 4.2.1. inspecting the construction of the Works as they proceed and giving the Contractor notice in writing requiring any defects in workmanship or materials or non-compliance with the Plans and Specifications to be rectified within any period as the Supervisor may reasonably direct in the circumstances;
  - 4.2.2. reporting to The Company at the times and in the manner required by The Company of the progress of the construction of the Works but in any event on a weekly basis as a minimum;

- 4.2.3. using its best endeavours to ensure that the Contractor duly and promptly complies with all the terms, covenants and conditions of this Agreement relating to the construction of the Works;
- 4.2.4. using its best endeavours to ensure that the construction of the Works is carried out in accordance with the Plans and Specifications;
- 4.2.5. if necessary, directing any sub-contractors engaged by the Contractor for the construction of the Works to ensure compliance with the Plans and Specifications and the Contractor shall ensure compliance with the Plans and Specifications and the Contractor shall ensure that those sub-contractors so comply;
- 4.2.6. ensuring practical completion of the construction of the Works specifically that all defects and parts not in accordance with the Plans and Specifications are remedied and the Contractor shall ensure that all the defects and parts are so remedied; and
- 4.2.7. issuing each of the parties with a certificate of practical completion as soon as practicable after the Works have been practically completed;
- 4.2.8. issuing each of the parties with a final certificate in accordance with clause 41; and
- 4.2.9. issuing The Company with a certificate confirming that all sub-contractors engaged by the Contractor on the Works have been paid or will be paid in accordance with the order placed upon the sub-contractor by the Contractor.

## **5. Entry on the Land**

### **5.1 The Contractor shall:**

- 5.1.1 ensure that all the Contractors' Employees shall only enter and leave the Land by way of the entrances designated by The Company from time to time;
- 5.1.2 ensure that the Contractors' Employees are thoroughly briefed in relation to instructions to be followed during various entry/exit times;
- 5.1.3 ensure that all the Contractors' Employees, carry some form of identification to show that they are the Contractor's Employees whilst upon the Land.

## **6. Records**

- 6.1 The Contractor shall keep proper and accurate records of the Works provided by the Company under this Agreement in a form approved by the Company and without limiting the generality of the foregoing the Contractor shall ensure that the Contractor keeps a paper and Electronic Copy of all records produced by it in the course of performance of the Works.

- 6.2 The records kept in accordance with this Clause shall set out in respect of each week of the Term:
- 6.2.1 the Works provided by the Contractor under this Agreement; and
  - 6.2.2 any other matter which the Company may specify by notice in writing given to the Contractor.
- 6.3 Within seven (7) days after the end of each month of the Term the Contractor shall deliver to the Company a paper and Electronic Copy of all records kept in accordance with this Clause for that particular month.
- 6.4 The parties mutually covenant and agree that all records, books, drawings, plans and other documentation and things pertaining to the Works shall be the property of the Company and the Contractor shall forthwith upon demand provide a copy of them to the Company and the Company may in its absolute discretion provide a copy of any of those documents to any of its other contractors or consultants.

## 7. **Time and Progress**

### 7.1 Progress

The Contractor shall ensure that the Works reach practical completion by the Latest Date for Practical Completion.

### 7.2 Notice of Delay

If the Contractor becomes aware of anything which will probably cause delay to the Works, the Contractor shall promptly give the Supervisor and The Company written notice of that cause and the estimated delay.

### 7.3 Practical Completion

The parties mutually covenant and agree that:

7.3.1 The Contractor shall give the Supervisor at least 14 days written notice of the date upon which the Contractor anticipates that practical completion of the Works will be reached;

7.3.2 If the Contractor is of the opinion that practical completion has been reached, the Contractor shall in writing request the Supervisor to issue a certificate of practical completion;

7.3.3 Within 14 days after receiving the request referred to in clause 7.3.2, the Supervisor shall give the Contractor and The Company either a certificate of practical completion evidencing the Date of Practical Completion or written reasons for not doing so.

7.3.4 If the Supervisor is of the opinion that practical completion has been reached, the Supervisor may issue a certificate of practical completion, although under no obligation to do so, even though no request has been made.

#### 7.4 Liquidated Damages

If the Works do not reach practical completion by the Date of Practical Completion, the Supervisor shall certify, as due and payable by the Contractor, liquidated damages in Item 10 of the Schedule for every day after the Latest Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of the Contract or The Company taking the Works out of the hands of the Contractor and the Contractor shall forthwith upon demand by The Company pay those liquidated damages to The Company.

### 8. Payment

8.1 In consideration of the Contractor performing the Works under this Agreement, The Company shall pay to the Contractor the Fixed Sum for the Works by monthly progress payments in arrears payable in accordance with the requirements of this clause.

8.2 At the end of each month during the course of the Works the Contractor shall claim payment progressively by giving to the Supervisor and The Company in writing details of the value of those part of the Works completed during that month, (“the progress claim”) including but not limited to a copy of the record kept in accordance with Clause 7 in respect of the Works provided for that particular month.

8.3 The Supervisor shall within 14 days after receiving a progress claim issue to The Company and the Contractor a progress certificate evidencing the Supervisor’s opinion of the moneys due from The Company to the Contractor pursuant to the progress claim and the reasons for any difference (“the progress certificate”).

8.4 If the Supervisor does not issue the progress certificate within 14 days of receiving a progress claim in accordance with clause 8.3 then that progress claim shall be deemed to be the relevant progress certificate.

8.5 The Company shall pay to the Contractor the amount specified in each progress certificate (less those retention moneys as provided in clause 40) within thirty (30) days after the receipt of the relevant progress certificate by The Company.

8.6 The Company may within twenty eight (28) days after the date of delivery of any progress claim;

8.6.1 dispute the correctness of any invoice or record from time to time delivered by the Contractor by giving written notice to the Contractor;

- 8.6.2 require the production of any evidence necessary to verify the statement delivered by the Contractor; and
- 8.6.3 require the Contractor to amend any statement found to be incorrect.
- 8.7 If the dispute referred to in clause 8.6 is with respect to a failure to carry out any of the Works, The Company may include in the notice an amount which it claims by way of compensation with respect to that failure.
- 8.8 If the parties are unable to resolve by agreement a dispute concerning a record or invoice delivered by the Contractor including the payment of any compensation referred to in the notice issued in accordance with clause 8.7, then the dispute shall be referred to arbitration under and in accordance with the provisions of Clause 25.
- 8.9 A payment made by The Company to the Contractor pursuant to a record and/or invoice delivered by the Contractor does not constitute proof of or admission that all or any of the Works for which the payment was made have been duly rendered or that any other services not included in the record have not been rendered.
- 8.10 The parties mutually covenant and agree that:
- 8.10.1 In the event that at any time during the term of this Agreement any amount in the nature of value added tax goods and services tax or other such tax (“GST”) shall become payable by the Contractor in respect of any goods or services whatsoever supplied to The Company pursuant to this Agreement (including but not limited to any such tax calculated as payable by reference any costs or expenses payable by either the Contractor or The Company as the value of a taxable supply) (“GST Amount”) The Company shall be liable, to pay to the Contractor the GST Amount.
- 8.10.2 The Contractor must take reasonable steps to ensure that a valid tax invoice and adjustment note and any other documentation required by the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time (“GST law”) to enable input tax credits to be claimed is provided to The Company as soon as reasonably practicable after the occurrence of an event that causes the GST Amount to be attributed to a particular tax period.
- 8.10.3 If the GST Amount recovered by the Contractor from The Company in respect of any taxable supply made under this Agreement exceeds the amount of GST ultimately held to be payable on the taxable supply, including by reason of:
- 8.10.3.1 an amendment to the GST law;

8.10.3.2 the issue of or an alteration in a ruling or advice of the Commissioner of Taxation; or a decision of any tribunal or court,

Then the Contractor will refund to The Company the difference between the two said amounts. Where an adjustment event (as defined in the GST law) in relation to any supply to The Company has occurred the Contractor must provide an adjustment note to The Company as soon as reasonably practicable.

## 9. Construction

9.1 In constructing the Works the Contractor shall:

9.1.1 construct the Works with all due diligence and speed;

9.1.2 construct and complete the Works in strict accordance with the provisions of this Agreement and with the Approvals and the Plans and Specifications;

9.1.3 construct the Works with new and good quality materials in a proper and workmanlike manner to the absolute satisfaction of the Supervisor who shall have the right to condemn any works and any work so condemned shall, insofar as may be necessary, be promptly dismantled, re-executed, re-constructed and/or altered in order that it may conform with the standards of good workmanship required by the Supervisor;

9.1.4 keep the Supervisor fully informed of all matters and things concerning the construction of the Works and forthwith upon receipt of the same comply with and ensure all sub-contractors engaged by the Contractor for the construction of the Works comply with all directions given by the Supervisor pursuant to this Agreement in accordance with the terms of the direction;

9.1.5 at its own cost and expense comply with and ensure that the Contractor's employees, agents, contractors, sub-contractors, servants or workmen comply with and observe and indemnify The Company, in respect of all present acts (State or Federal) ordinances, orders, regulations and by-laws and all orders, requirements and notices from or by any Local or Public Authority including (but without limitation) the Western Australian Fire Brigade Board which relates to the Approvals or the construction of the Works;

9.1.6 not employ any contractor, sub-contractor, workman or person in or about the construction of the Works against whom The Company makes (in the reasonable opinion of the Supervisor) reasonable objection; and

9.1.7 fence and light adequately at all times all works, trenches, excavations, projections and materials within the Land.

**10. Reliance On Contractor's Skill**

- 10.1 The Contractor acknowledges that The Company is relying on the professional skill of the Contractor in the performance of the Works.
- 10.2 The Contractor shall perform the Works to that standard of care and skill to be expected of a Contractor who regularly acts in the capacity in which the Contractor is engaged and who possesses the knowledge, skill and experience of a Contractor qualified to act in that capacity.
- 10.3 The Contractor warrants that the Contractor's Employees are competent and have the necessary skill training and experience to carry out the Works.

**11. Responsibilities and Obligations of the Contractor**

The Contractor shall:

- 11.1 as soon as practicable following the execution of this Agreement and in any event prior to the Commencement Date (if it has not already done so) submit to the Company a Program for carrying out the Works;
- 11.2 with due expedition and without delay and in accordance with the Program provide all professional skill and advice required for carrying out the Works;
- 11.3 comply with all directions of The Company and the Supervisor given in connection with the Works;
- 11.4 remain fully responsible for the Works carried out by the Contractor notwithstanding any review or acceptance of those Works by The Company and/or the Supervisor;
- 11.5 not engage or permit any person without appropriate qualifications and experience to carry out or be involved in carrying out the Works on behalf of the Contractor;
- 11.6 ensure that the key personnel (if any) stated in Item 8 (or alternates reasonably approved by The Company) are used by the Contractor to carry out the Works;
- 11.7 promptly give written notice to The Company if and to the extent the Contractor becomes aware that any document or other information provided by The Company is ambiguous or inaccurate or is otherwise insufficient to enable the Contractor to carry out the Works;
- 11.8 make all reasonable enquiries to ascertain and clarify the requirements of The Company regarding the Works;

- 11.9 regularly consult The Company and the Supervisor regarding the carrying out of the Works and in any event at a frequency determined by the Company;
- 11.10 as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Works, give written notice to The Company and the Supervisor detailing the matter or circumstance and its anticipated effect to the Works and the Program;
- 11.11 at least three (3) Business Days after the receipt of written notice by the Company to the Contractor, permit the Company to inspect and discuss the work, relevant records and documents produced by the Contractor in carrying out the Works;
- 11.12 except as required by law, treat as confidential all information provided by The Company to the Contractor pursuant to this Agreement;
- 11.13 notify The Company immediately the existence or likelihood of a conflict of interest becomes apparent to the Contractor and cooperate with The Company to resolve such conflict of interest;
- 11.14 take due care of The Company's documents and all other material provided to the Contractor in connection with carrying out the Works;
- 11.15 do all things necessary and necessarily incidental for the proper performance of the Contractor's obligations under this Agreement;
- 11.16 punctually, competently and efficiently perform and provide the Works in accordance with this Agreement and shall cooperate fully with The Company and the Supervisor in providing the Works;
- 11.17 ensure that all the Works are carried out in compliance with all present and future Acts (State or Federal) ordinances orders regulations by-laws and all orders requirements, notices from or by any local or public authority and any codes of conduct, industry standards, or Australian standards applicable to the Works provided by the Contractor;
- 11.18 execute the Works to the complete satisfaction of The Company and the Supervisor and in conformity with all reasonable directions and requirements of The Company and the Supervisor (as the case may be);
- 11.19 ensure that the Contractor's Employees are properly supervised and directed by the Contractor;
- 11.20 provide all equipment, and materials necessary for the execution of the Works;

- 11.21 provide The Company and the Supervisor with a telephone number and fax number on which The Company and/or the Supervisor can contact the Contractor at any time and on any day of the week in respect of the provision of the Works;
- 11.22 in executing the Works, not unreasonably interfere with the normal use of the Land by The Company;
- 11.23 make good to the satisfaction of The Company all damage whatsoever or howsoever caused to the Land in providing the Works by the Contractors' Employees;
- 11.24 use its best endeavours to protect and keep safe the Land when providing the Works;
- 11.25 ensure that any discarded rubbish, paper, cartons, boxes, containers or other waste products which are brought onto the Land by the Contractors' Employees or remaining after carrying out the Works shall be removed from the Land so that the Land is left in the same neat and tidy condition as before entry onto the Land by the Contractor; and
- 11.26 The Contractor shall only use such amounts of power, water and other services as is reasonably necessary for the efficient performance of the Works.

## **12. Responsibilities and Obligations of The Company**

The Company shall:

- 12.1 pay the Contractor in accordance with this Agreement;
- 12.2 when and as required under this Agreement, provide the Contractor with relevant documents, plans, specifications and other information in the possession or control of The Company sufficient to enable the Contractor to carry out the Works;
- 12.3 give or cause to be given to the Contractor in writing timely directions, instructions, decisions and information sufficient to define the Works required and facilitate the provision of the Works by the Contractor;
- 12.4 provide the Contractor with such access to premises or sites of The Company as is reasonably necessary for the Contractor to carry out the Works; and
- 12.5 except as required by law and subject to the Agreement, treat as confidential information so designated in writing by the Contractor.

### 13. **Directions and Variations**

- 13.1 Except where this Agreement otherwise provides, a direction may be given orally by the Supervisor to the Contractor and the Supervisor shall as soon as practicable confirm it in writing, including by way of electronic copy, to the Contractor.
- 13.2 Subject to Clause 13.3, the Supervisor may, by written notice to the Contractor, direct the Contractor to vary the Works and the Contractor shall be bound to comply with that direction and any variation in the fee payable to the Contractor as a consequence of a direction issued by the Supervisor under this Clause shall be agreed between the Supervisor and the Contractor, otherwise Clause 13.5 shall apply.
- 13.3 The Contractor shall not be obliged to comply with a direction which would change the general scope of the Works if the Contractor within 7 days of receipt of the direction gives a written notice to the Supervisor in accordance with this Clause 13.3.
- 13.4 If the Supervisor directs a variation to the Works which the Contractor considers changes the general scope of the Works, the Contractor shall so advise the Supervisor in writing within 7 days, stating whether the Contractor agrees to comply with the direction and, if so, a fee proposal for carrying out the direction. If the Supervisor accepts a Contractor's proposal, the Contractor shall effect the variation in accordance with that proposal.
- 13.5 If the Supervisor either does not agree within 7 days of receipt of the Contractor's notice given under Clause 13.3 that the direction changes the general scope of the Works or does not accept a Contractor's proposal, Clause 25 shall apply if the Supervisor directs the Contractor to proceed with the variation.

### 14. **Safety**

The Contractor shall:

- 14.1 in performing the Works, take all reasonable precautions to prevent injury to any person or damage to any property, including but not limited to any equipment, being upon or in the vicinity of the Land;
- 14.2 ensure that all equipment (including without limitation ladders or scaffolding) used in performing the Works shall comply with all relevant statutory or other requirements and that all equipment is in a safe condition so as not to constitute any hazard to any person or property upon or in the vicinity of the Land and that the equipment shall not at any time be used for any unauthorised use; and
- 14.3 not at any time smoke or allow the Contractors' Employees to smoke on the Land, or near the vicinity of any entry or exits points to the Land;

**15. Equipment and Material**

- 15.1 The Contractor shall provide at its own cost and expense all labour, plant, equipment, and other materials necessary for the execution and performance of the Works.
- 15.2 The Contractor shall ensure that all equipment used by the Contractors' Employees in performing the Works shall be fitted with a residual currency device and shall be kept in good and substantial repair, maintenance order and condition.

**16. Liaison**

- 16.1 The Contractor shall appoint a representative of the Contractor approved by The Company (which approval shall not be unreasonably withheld) and the Contractor shall ensure that its representative contacts a nominated representative of The Company and the Supervisor at least once per week to ascertain whether The Company and/or the Supervisor has any concerns in respect of the Works provided under this Agreement.
- 16.2 The Contractor shall appoint at least one senior representative of the Contractor who shall meet with representatives of The Company and/or the Supervisor at least once in each weekly period, or as required by The Company, to discuss any issues and follow up any action that is agreed to be taken in relation to the provision of the Works.
- 16.3 If the Contractor receives any complaints from The Company and/or the Supervisor (as the case may be) in respect of or related to the Works the Contractor shall use its best endeavours to resolve those complaints as soon as practicable thereafter to the satisfaction of The Company and/or the Supervisor (as the case may be) in its absolute discretion and without cost to The Company.

**17. Communication Book**

- 17.1 The Contractor shall:
  - 17.1.1 supply a communications book to record any problems incurred during the carrying out of the Works; and
  - 17.1.2 supply a communications book to allow The Company and/or the Supervisor to communicate to the Contractors' Employees with any special requests in respect of the Land.

**18. Indemnities**

- 18.1 The Contractor and the Contractor's Employees shall enter and remain on the Land at its own risk in all respects and releases to the full extent permitted by law The Company and its employees from all costs, claims, actions, proceedings, demands, expenses, judgments, damages or losses of any kind whatever resulting from or attributable to any accident, damage, loss, death, or injury occurring at, in, on or in the vicinity of the Land except to the extent that the same is caused by the negligence on the part of The Company or any of The Company's employees.
- 18.2 The Contractor shall indemnify and keep indemnified The Company from and against all costs, claims, actions, proceedings, demands, expenses, judgments, damages and losses suffered or incurred by The Company in connection with or resulting from the loss of life of or personal injury to any person or damage to any property wherever occurring arising from or out of any occurrence in connection with the performance of the Works save and except to the extent that that loss of life, personal injury and damage to property was caused or contributed to by The Company or any of The Company's employees.

**19. Insurance**

- 19.1 The Contractor shall at the Contractor's expense effect and at all times during the course of the Works maintain with a public insurance office approved by The Company on behalf of The Company and the Contractor for their respective rights and interests:-
- 19.1.1 a public liability policy with a cover of not less than TWENTY MILLION DOLLARS (\$20,000,000) or any greater amount that may be required by law. The policy of insurance shall cover all claims, demands, proceedings, judgments, damages, costs and losses of any nature whatsoever in connection with the loss of life of and or personal injury to any person and or loss of or damage to any property (wheresoever occurring) arising from or out of any act, omission, event or occurrence in connection with or arising out of the performance of the Works or otherwise occasioned wholly or in part by any act neglect default or omission by the Contractor or by the Contractor's Employees;
- 19.1.2 Worker's Compensation Insurance coverage required by any Act (State or Federal) ordinances orders regulations by-laws and all orders requirements, notices from or by any local or public authority; and

- 19.1.3 A contractor risks insurance policy to cover the construction of the Works together with all associated temporary works including (but without limiting the generality of the foregoing) all material incorporated or to be incorporated therein the property of the adjacent to the Land in respect of loss, destruction and damage of or to the property insured arising from any cause whatsoever for not less than 110% of the total cost and expense of constructing the Works and which cover shall include (but without limiting the generality of the foregoing) provision for additional costs of demolition and of removal of debris and architects, engineers, quantity surveyors and consultants fees.
- 19.2 All moneys recovered in respect of any insurance under clause 19.1.1 above shall be forthwith expended by the Contractor in the satisfaction reinstatement or replacement of those items for which the moneys are received to the extent that those moneys are sufficient for the purpose and the Contractor shall make up any deficiency from the Contractor's own moneys.
- 19.3 The Contractor shall pay not later than fourteen (14) days prior to the date for payment specified in the first premium notice or demand received in respect thereof all premiums in respect of the insurances to be effected and maintained by the Contractor as herein provided and shall within seven (7) days produce all evidence of the policies and of the renewal thereof which The Company may from time to time require.
- 19.4 The Contractor shall not at any time during the course of the Works do, permit or suffer to be done any act, matter or thing upon the Land whereby any insurances in respect of the Land may be vitiated or rendered void or voidable or whereby the rate of premium on any insurance shall be liable to be increased. If the Contractor shall do or permit to be done any act, matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by The Company or the Contractor then the Contractor shall be responsible for any damage or loss which they may suffer or incur as a result thereof and shall pay to The Company any increased amount of premium over the existing premium paid by The Company which may be charged on any insurance covering the Land (or the building of which the Land forms a part if the Land is only part of the building)(and anything contained therein) if the increased amount is caused by the nature of the business from time to time carried on by the Contractor or other occupier of the Land or by reason of any act or omission of the Contractor or other occupier of the Land.

## 20. **Defects Liability**

The Contractor shall at its own cost and expense forthwith make good to the reasonable satisfaction of The Company and/or the Supervisor any defects, shrinkages or other faults in any work forming part of the construction of the Works which may be evident and have been notified in writing by The Company and/or the Supervisor within twelve (12) months from and including the Date of Practical Completion.

## 21. **Default**

If:

- 21.1 The Contractor defaults in the due and punctual performance of any term or condition of this Agreement on the part of the Contractor to be observed or performed and the Contractor fails to remedy such default (if it is capable of remedy) within seven (7) days of The Company giving notice in writing to the Contractor specifying the default and requiring the default to be remedied;
- 21.2 (subject to the provisions of the Bankruptcy Act 1966) the Contractor becomes bankrupt or suffers his interest in this Agreement to be taken in execution or being a company calls a meeting of its creditors, has a receiver or receiver and manager appointed, goes into liquidation or has any order made against it for the winding up of the Contractor;
- 21.3 the Contractor calls a meeting of the Contractor's creditors or makes any composition or arrangement with, or assignment for the benefit of, its creditors or suffers any execution under any legal process to issue or be levied upon or against any of its goods or chattels; or
- 21.4 the Contractor shall be prevented from performing or observing any term or condition of this Agreement for a period exceeding seven (7) days by reason of any strike, lock-out or industrial dispute, whether attributable to the fault of the Contractor or not,

THEN The Company may, by notice in writing given to the Contractor, (without prejudice to any other powers, rights, authorities or remedies against the Contractor under the Agreement or otherwise) terminate this Agreement but without releasing the Contractor from liability for any moneys due and payable by the Contractor to The Company or for any antecedent breach or failure to observe or perform any term or condition of this Agreement.

## 22. **Power to Carry out Works**

- 22.1 If the Contractor defaults in the observance or performance of any term or condition of this Agreement on the part of the Contractor to be observed or performed, The Company may without derogating from any other power, right, authority or remedy, pay such money, do such things and carry out such works as may be requisite in accordance with any such term or condition and any costs so incurred by The Company together with interest thereon from and including the date any such costs were so incurred until payment by the Contractor shall be repaid by the Contractor to The Company on demand in writing.
- 22.2 For the purposes of clause 22.1, the rate of interest on each day shall be two per centum (2%) per annum greater than the standard rate that would be charged on that day by The Company's bankers on any overdraft of an amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

**23. Deduction of Moneys**

23.1 The Company may deduct any moneys due and payable by or recoverable from the Contractor to The Company from the amount payable The Company to the Contractor under Clause 8 and from any other moneys payable by The Company to the Contractor under this Agreement.

23.2 If any moneys due and payable by or recoverable from the Contractor to The Company under this Agreement exceed any amounts or moneys payable by The Company to the Contractor then the shortfall shall be a debt due and payable by the Contractor to The Company and recoverable from the Contractor.

**24. Relationship of Parties**

Nothing contained in this Agreement shall be deemed to constitute a relationship between The Company and the Contractor other than the relationship of principal and independent contractor and without limiting the generality of the foregoing, this Agreement shall not be construed so as to constitute a relationship of master and servant or principal and agent as between The Company and the Contractor.

**25. Disputes**

25.1 Any dispute or disagreement between the parties to this Agreement in respect of the interpretation of this Agreement or concerning anything contained in or arising out of this Agreement as to the rights, liabilities, or duties of the parties hereunder shall be determined in accordance with the Commercial Arbitration Act 1985 by a single arbitrator agreed upon by the parties in writing, or if he is unable or unwilling to act, or failing agreement by a single arbitrator nominated at the request of either party by the President for the time being of the Law Society of Western Australia Incorporated.

25.2 For the purposes of the Commercial Arbitration Act 1985 the parties agree that each party may appear before the arbitrator personally or where the party is a body, whether corporate or unincorporated, by an officer, employee or agent of the body and each party may, if that party so chooses, be represented by a duly qualified legal practitioner or other representative.

25.3 The parties agree that arbitration in accordance with this Clause is a condition precedent to legal proceedings between the parties relating to the provisions of or any matter or thing arising under or out of this Agreement.

**26. Costs and Stamp Duty**

26.1 The Company shall bear and be responsible for the costs in connection with the drafting, preparation and execution and carrying into effect of this Agreement.

26.2 The Company is responsible for all stamp duty payable on or in respect of this Agreement.

**27. Notices**

27.1 A notice, consent, approval or other communication (each a 'notice') under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

27.1.1 delivered to that person's address;

27.1.2 sent by pre-paid mail to that person's address; or

27.1.3 transmitted by facsimile to that person's address.

27.2 A notice given to a party in accordance with the clause is treated as having been given and received:

27.2.1 if delivered to a person's address, on the day of delivery if a Business day, otherwise on the next following day;

27.2.2 if sent by pre-paid mail, on the third Business day after posting; and

27.2.3 if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next following business day.

**27.3 Address of Parties**

27.3.1 For the purposes of this clause, the address of any party to this Agreement is the address set out in this Agreement or any other address of which that party may from time to time give notice to the other in writing.

**28. Amendment**

This Agreement may only be amended or supplemented in writing, signed by the parties.

**29. Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

30. **Entire Agreement**

This Agreement is the entire Agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior Agreements in relation to the subject matter are merged in and superseded by this Agreement.

31. **Severability**

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in any other jurisdiction.

32. **Assignment and Sub-Contracting**

32.1 Assignment

The Contractor shall not, without The Company's prior written approval (including terms), assign or create any trust of this Agreement or any payment or any other right, benefit or interest thereunder.

32.2 Subcontracting generally

The Contractor shall not without The Company's prior written approval:

32.2.1 subcontract or allow a subcontractor to subcontract any work described in Item 11 of the Schedule; or

32.2.2 allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

32.3 With a request for approval the Contractor shall give The Company written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give The Company other information which The Company reasonably requests, including the proposed subcontract documents without prices.

32.4 Within 14 days of the Contractor's request for approval, The Company shall give the Contractor written notice of approval or of the reasons why approval is not given. The Company's decision shall be final.

32.5 The Company's approval may be conditional upon the subcontract including:

32.5.1 provision that the subcontractor shall not assign nor subcontract without The Company's written consent; and

32.5.2 provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to The Company.

32.6 Except where the Contract otherwise provides, the Contractor shall be liable to The Company for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if they were those of the Contractor and approval to subcontract shall not relieve the Contractor from any liability or obligation under this Agreement.

### **33. Control of the Contractor's Employees**

The Contractor shall:

33.1 engage only competent and trustworthy employees at not less than the prescribed award rates of pay and conditions of employment, and shall personally supervise their separate and several duties;

33.2 as far as practicable use the same Contractors' Employees for all Works on the Land;

33.3 make personnel employed to work on the Land aware of the provisions of this Agreement and shall be responsible for ensuring the suitability of all the Contractors' Employees and that the work performed by the Contractors' Employees meets the requirements of this Agreement;

33.4 employ only persons of good repute and The Company may, in writing, and without stating any reason or without creating any liability for action at law, object to the employment by the Contractor of any specific person in carrying out the Works and the Contractor shall forthwith refrain from employing that person in the performance of the Works; and

33.5 not in any circumstances be relieved of any of its liabilities or obligations under this Agreement and the Contractor shall be liable to The Company for all acts, defaults, omissions and neglects of any and all of the Contractors' Employees.

### **34. Confidentiality and Privacy**

34.1 The Contractor shall:

34.1.1 not permit any of the Contractor's Employees to peruse or examine any office records, files, documents, or correspondence of The Company;

34.1.2 take all possible steps and precautions to ensure that no employee peruses or examines them; and

- 34.1.3 instruct each employee prior to his engagement that if in the lawful performance of his respective duties that employee is accidentally or inadvertently made aware of any information in any records, files, documents or correspondence, any knowledge, systems, know how, techniques, client information, marketing information, trade secrets (“Confidential Information”) of The Company that Confidential Information shall be treated as being strictly confidential and shall not be disclosed, published or released to any person or persons whatsoever on the penalty of that, employee being instantly dismissed from the employment of the Contractor.
- 34.2 The Contractor shall arrange for all the Contractors’ Employees engaged in the performance of this Agreement to comply with the Company’s standard Contractor Privacy and Confidentiality Agreement, a copy of which has been provided to the Contractor contemporaneously upon the execution of this Agreement (as amended from time to time), within seven (7) days of the date of execution of this Agreement by the Contractor reasonably proposed by the Company. The Consultant acknowledges and agrees that any Consultants’ Employees that do not comply with the Company’s standard Contractor Privacy and Confidentiality Agreement, shall not have authorised access to the Premises and shall be required to be replaced by the Consultant, at no extra cost to the Company.
- 34.3 For the purposes of this Agreement the terms “Personal Information”, “Sensitive Information” and “Approved Privacy Code” have the same meaning as in the Privacy Amendment (Private Sector) Act 2000 (“the Act”).
- 34.4 The Contractor shall:
- 34.4.1 comply with:
- 34.4.1.1 the Act and any guidelines issued by the Privacy Commissioner;
- 34.4.1.2 any privacy policy or Approved Privacy Code adopted by The Company (as amended from time to time);
- 34.4.1.3 any direction of The Company regarding compliance with the Privacy Act, guidelines, privacy policy or Approved Privacy Code,
- in respect of any Personal Information or Sensitive Information which the Contractor receives or has access to under this Agreement ; and
- 34.4.2 co-operate with The Company in the resolution of any complaint alleging a breach under the Privacy Act, a privacy policy or an Approved Privacy Code.

34.4.3 indemnify The Company and keep The Company indemnified from any claims, costs actions proceedings or demands judgments damages and losses suffered by The Company arising from or out of or attributable to any breach of this clause.

**35. Further assurance**

Each party must do, sign, execute and deliver and the Contractor must ensure that each of the Contractors' Employees does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

**36. Force Majeure**

36.1 Each of the parties shall be excused from performing any term, covenant or condition required by this Agreement to be performed during the time and to the extent that performance is prevented wholly or in part by circumstances beyond that party's reasonable control. For the purposes of this clause those circumstances shall be referred to as "force majeure" and shall include:

36.1.1 strike, lockout or labour dispute;

36.1.2 act of God, fire, flood, tornado, hurricane, lightning, storm, gale force winds, rain, ice, snow, sleet, fog or any other form of inclement weather, avalanche landslide, peril of the sea or accident of navigation;

36.1.3 explosion, concussion, collision, radiation, act of the public enemy act of war (declared or undeclared), blockade, riot, civil, commotion or disturbance, martial law, sabotage, insurrection or national emergency (whether in fact or law);

36.1.4 governmental, semi-governmental or judicial law, regulation, order, decree, restriction, restraint, prohibition, intervention or expropriation or the failure of any government or semi-governmental or judicial entity to act;

36.1.5 unavoidable accident, uncontrollable delay in transportation, the breakdown of necessary materials, equipment or power or water shortage;

36.1.6 epidemic or quarantine;

36.1.7 any unavoidable accident to the Works; or

36.1.8 any other cause whether similar or dissimilar to the causes herein specifically enumerated beyond the reasonable control of that party and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost.

- 36.2 If the Contractor is by reason of force majeure unable to perform any term covenant or condition required to be performed by it, it shall notify The Company and the Supervisor as soon as possible but in any event within seven (7) days specifying:
- 36.2.1 the cause and extent of the non-performance;
  - 36.2.2 the date of the commencement thereof;
  - 36.2.3 the means proposed to be adopted to remedy or abate the force majeure;
  - 36.2.4 the proposed action by the Contractor to complete the Works by the Latest Date for Practical Completion.
- 36.3 If a party is by reason of force majeure unable to perform any term covenant or condition required to be performed it shall:
- 36.3.1 use all reasonable diligence and employ all reasonable means to remedy or abate the force majeure as expeditiously as possible;
  - 36.3.2 resume performance as expeditiously as possible after termination of the force majeure or the force majeure has abated to an extent which permits resumption of performance; and
  - 36.3.3 notify the other when resumption shall occur.
- 36.4 The period of time during which performance of any term, covenant or condition is prevented by force majeure shall be added to the time provided in this Agreement for performance of that term, covenant or condition and to the time required for the performance of any act dependent thereon.
- 36.5 Without derogating from the generality of clause 36.1, if the Contractor is by reason of force majeure unable to perform any term, covenant or condition required to be performed the Contractor shall not be liable to The Company for consequential, indirect or special losses or damages of any kind arising out of or in any way connected with that non-performance.
- 36.6 If by reason of force majeure the Contractor is unable to perform any term, covenant or condition required by this Agreement to be performed and that non-performance continues for a period of two (2) weeks, The Company may upon giving written notice to the Contractor terminate this Agreement with no liability held whatsoever by the Contractor against The Company.
- 36.7 Termination of this Agreement pursuant to clause 36.6 shall not affect the rights of The Company against the Contractor in respect of any act, matter or thing occurring hereunder prior to termination.

**37. Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

**38. Governing Law**

This Agreement is governed by the law in force from time to time in Western Australia.

**39. Submission to jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

**40. Retention Fund**

40.1 The Company shall make deductions from each of the progress payments made to the Contractor under clause 8, of the percentage indicated in the Purchase Order as and by way of security until the total amount retained is equal to the limit of the retention moneys specified in the Purchase Order (“the retention moneys”).

40.2 The Contractor may, with the prior written consent of The Company, at any time after the Date of Practical Completion provide an unconditional bank guarantee in a form acceptable to The Company for the total amount that The Company is entitled to retain pursuant to this clause.

40.3 The retention moneys or the bank guarantee (as the case may be) shall be retained as security that the Contractor shall carry out his obligations under this Agreement and any debts due to The Company by the Contractor as a result of the Contractor’s failure to carry out any or all of its obligations shall be recoverable by The Company from the retention moneys or the bank guarantee (as the case may be).

40.4 The retention moneys or the bank guarantee (as the case may be) may at any time be applied by The Company:

40.4.1 towards damages or losses caused by or arising out of any breach by the Contractor of any of the provisions of this Agreement and any and all costs related to and arising out of the same; or

40.4.2 towards the payment of any other moneys payable by the Contractor to The Company pursuant to the provisions of this Agreement and any and all costs related to or arising out of the same.

- 40.5 The rights of The Company pursuant to this clause shall not derogate from the other rights and remedies available to The Company under this Contract, at law and in equity in relation to any default of the Contractor pursuant to the terms of this Agreement and without limiting the foregoing shall be in addition to those rights and remedies available to The Company.
- 40.6 The failure of The Company to apply the retention moneys or the bank guarantee (as the case may be) in respect of any matters which may call for its application shall not in any way whatsoever represent a waiver or estoppel or otherwise prejudice the rights of The Company to take any action permitted by the provisions of this Agreement including the application of the retention moneys or the bank guarantees (as the case may be) in accordance with the provisions of this Clause.
- 40.7 Within twenty eight (28) days after the Supervisor has issued a final certificate in accordance with clause 41, The Company shall either:
- 40.7.1 pay to the Contractor any retention moneys held by The Company less amounts retained by The Company pursuant to clause 40.4; or
- 40.7.2 return the bank guarantee to the Contractor less any amounts claimed by The Company under the bank guarantee.

**41. Notice of Final Certificate**

At the end of the defects liability period referred to in clause 20 and upon the making good of any defects notified to the Contractor by The Company and/or the Supervisor in accordance with clause 20, the Supervisor shall issue to each of the parties a final certificate evidencing the moneys finally due and payable between the Contractor and The Company on any account whatsoever in connection with the subject matter of the Agreement.

**42. Australian Standards**

Australian Standard 4000-1997 (as amended from time to time) shall be incorporated in and be deemed to be part of the Agreement except to the extent that they are varied or inconsistent with the terms of this Agreement.

**43. Caveatable Interest**

43.1 This Agreement does not grant nor permit the Contractor any caveatable right or interest over any property owned by the Company or any related body corporate (as defined in the Corporations Act).

#### 44. **Invoicing**

The Contractor is to provide the Company with an invoice for the Works on a monthly basis, or during the month if the Works have been completed, for which payment will be made on a nett 30 day basis unless otherwise agreed in writing i.e. payment of the invoice will be made by the end of the month following receipt of the invoice. The invoice is to provide a breakdown and individually itemise, as a minimum, a description of the Works, a detailed description of each component of Works, full value of each component of the Works, percentage and dollar value of each component of the Works completed and previously paid by the Company, percentage and dollar amount for each component of the Works now being claimed, percentage and dollar amount of retention of the Works already held by the Company, percentage and dollar amount of retention of the Works now being claimed, detailed description and value of all variations previously paid by the Company, detailed description and value of variations now being claimed, and any other detail as may be required by the Company from time to time The final invoice provided by the Contractor to the Company shall be accompanied by all records in accordance with clause 6 with a covering letter from the Contractor addressed to the Company confirming that all records have been provided to the Company and that no records have been retained by the Contractor whatsoever and that all their lower tier contractors have or will be paid in accordance their individual contracts with the Contractor. The Company reserves the right to withhold payment of the final invoice until receipt of all records and covering letter from the Contractor and/or any monthly invoice until clause 6 has been satisfied.

