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Principal: Pilgangoora Operations Pty Limited

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Contractor: [Insert name of Contractor]

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# General Works Contract

[Insert project]

[Insert description of package]

CONTRACT NO.: [Keywords]

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## Date

# Parties

**Principal:** Pilgangoora Operations Pty Ltd (ACN 616 560 395) and ABN 75 616 560 395 of Level 2, 146 Colin Street, West Perth, WA, 6000 (Principal)

**Contractor:** [Insert Contractor name] (ACN [Insert]) and ABN [insert] of [Insert address] (Contractor)

## Agreed terms

### 1 Definitions

In this Contract these terms have the following meanings:

**Authority** means a governmental, semi-governmental, local or other authority that exercises jurisdiction over the work under the Contract or the Site.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Perth, Western Australia.

**Certificate of Practical Completion**, in respect of a Work Order, means a certificate issued under **clause 19.2(a)(ii)**

**Commencement Date** means the commencement date stated in **schedule 1**.

**Confidential Information** means the meaning given to it in **clause 25.1**.

**Contract** means this document together with the documents listed in **schedule 1**.

**Contractor's Representative** means the person identified in **schedule 1** or a replacement approved by the Principal.

**Date for Practical Completion** means, in respect of a Work Order, the date or period of time set out in the relevant Work Order, if any, by which the Contractor must achieve Practical Completion as it may be extended under **clause 17**

**Date of Practical Completion** means, in respect of a Work Order, the date the Contractor achieves Practical Completion, as certified by the Principal's Representative under **clause 19.2(a)(i)**.

**Deed of Guarantee and Indemnity** means the deed in **schedule 5**.

**Dispute** has the meaning given to it in **clause 32.1(a)**.

**Documentation** means all documentation whether in hard form, digital form or in any other media which the Contractor is required to produce or provide to the Principal pursuant to this Contract including plans, drawings, specifications, calculations, models, information, recommendations, reports, records and designs.

**Drawings** means the drawings set out in the Scope of Work and any further drawings issued by the Principal to the Contractor.

**Entitlement** means an entitlement of the Contractor to:

- (a) an extension of time;
- (b) a declaration to the effect that time is at large;
- (c) any adjustment to the Work Order Price or valuation under **clause 16**;
- (d) recover any Loss of any kind arising:
  - (i) under the Contract; or
  - (ii) out of or in connection with the performance of the work under the Contract (including a quantum meruit).

**Environment** includes the meaning given to that term at common law and in any legislation in force in the State or Territory of Australia in which the Site is situated including any land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetic.

**Environmental Law** means any law regulating or otherwise relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, storage and handling of dangerous goods, the health or safety of any person or

any other matters relating to, but not limited to, the protection of the Environment, health or property.

**Existing Operation** means all improvements on or about the Site and operations of the Principal or its Related Bodies Corporate carried out on or about the Site (whether before or after the date of this Contract).

**Expiry Date** means the expiry date set out in **schedule 1**.

**Fair Work Act** means the *Fair Work Act 2009* (Cth), and any regulations made thereunder, or any legislation passed in replacement or substitution.

**Further Term** means the term set out in **schedule 1**.

**Hazardous Materials** means any hazardous materials including asbestos, any form of organic or chemical matter whether solid, liquid, gas, odour, heat, sand, vibration, radiation or substance which makes or has the capacity to make the Environment:

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

**Information Documents** means:

- (a) the Site Information; and
- (b) any other document issued or made available:
  - (i) on, before or after the date of submission of the tender; or
  - (ii) on, before or after the date of execution of this Contract (other than any information, data, or document which the Principal is obliged by the terms of the Contract to provide to the Contractor and the Contractor is expressly obliged or entitled by the terms of the Contract to rely on),

to the Contractor in respect of work under the Contract which is marked, called, or otherwise described as, an "information document" or which the Principal or Principal's Representative intends as being for information only.

**Insolvency Event** means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of Western Australia is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within five Business Days;
- (e) a receiver, or receiver and manager, is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within five Business Days or a person presents a petition against himself or herself;



- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of Western Australia occurs in respect of a person.

**Intellectual Property Right** means any patent, design, trade mark or name, copyright, circuit layout rights or other protected right.

**Key Performance Indicators** means the performance standards set out in **schedule 6**.

**Key Personnel** means the personnel engaged in accordance with **clause 7.3** and specified in the applicable Work Order.

**Latent Ground Condition** means the physical conditions at the Site stated in **schedule 1** (if any), which differ materially from the physical conditions that should reasonably have been anticipated by a competent and diligent contractor at the date of the Response to Work Order Request if that contractor had done all of the things mentioned in **clause 13.2**.

**Legal Opinion** means a legal opinion:

- (a) from legal advisers to the person named in **schedule 1** authorised to practice in the place of incorporation of that person, stating that the Deed of Guarantee and Indemnity is binding and enforceable against that person;
- (b) in favour of the Principal; and
- (c) which is in a form reasonably satisfactory to the Principal.

**Loss** means any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the Principal pays, suffers or incurs or for which the Principal is liable.

**Man-Power Histogram** means, in respect of a Work Order, a document illustrating a rolling forecast of the Contractor's accommodation requirements for its personnel necessary for performing the work under a Work Order at Site, and must include:

- (a) a definition of direct and indirect labour broken down into the disciplines/trades per operating centre where a permanent presence is planned on Site; and
- (b) a Rest and Recreation Roster (**RnR Roster**), detailing the Contractor's manning levels (as such manning levels and RnR Roster may be amended under a Variation or as directed by the Principal in writing) and detailing the Contractor's Camp Accommodation requirements.

**Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

**Policies** means any policies or procedures of the Principal:

- (a) available on the Principal's website;
- (b) listed or set out in **schedule 7**; and
- (c) as notified by the Principal to the Contractor from time to time,

as updated from time to time.

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

**Practical Completion**, in respect of work under a Work Order, is achieved when:

- (a) the Works the subject of that Work Order are complete in accordance with the Work Order Scope and requirements of this Contract, except for minor defects and minor omissions;
- (b) all commissioning, certification and testing required by the Contract and Work Order Scope to be done and passed (if any), has been done and passed for the Works the subject of the Work Order;
- (c) all information which is essential for the use, operation and maintenance of the Works the subject of the Work Order (if any) has been supplied to the Principal's Representative;
- (d) any certificate or approval, which must be issued or given by an Authority for the Works the subject of the Work Order to be lawfully used for their intended purpose (if any) has been issued or given by that

Authority and provided to the Principal's Representative; and

- (e) the Contractor has removed from the Site and the surrounding area, all waste and surplus material arising from the performance of the work under the Work Order.

**Pricing Schedule** means the schedule of rates being **schedule 3** or such other pricing schedule as is agreed in writing by the Principal and the Contractor from time to time.

**Principal's Representative** means the person identified in **schedule 1** or a replacement notified in writing by the Principal to the Contractor.

**Project Documents** means the Principal's contractual arrangements with third parties including:

- (a) the Schedule of Native Title Key Obligations; and
- (b) the Schedule of Key Obligations of the Principal under Pastoral Access and Compensation Deed.

**Related Body Corporate** means the meaning given to it in the *Corporations Act 2001* (Cth).

**Response to Work Order Request** has the meaning set out in **clause 2.3**.

**Safety Legislation** means:

- (a) the *Work Health and Safety Act 2020* (WA) and regulations made thereunder such as the *Work Health and Safety (Mines) Regulations 2022* (WA) (collectively "mine safety legislation"), to the extent the mine safety legislation applies to the Site or the work under the Contract; and
- (b) to the extent the mine safety legislation does not apply to the Site or the work under the Contract, the *Work Health and Safety Act 2020* (WA) and any regulations made thereunder, such as the *Work Health and Safety (General) Regulations 2022* (WA).

**Scope of Work** means the documents set out in or referenced in **schedule 2**.

**Security Interest** means the meaning given in the PPSA.

**Separate Contractor** means:

- Any person other than the Contractor and its subcontractors:
- (a) engaged by the Principal, who carries out work at or about the Site; or
- (b) whom the Principal otherwise allows to carry out work at or about the Site.

**Serious Breach** includes:

- (a) an Insolvency Event occurs in relation to the Contractor;
- (b) the Contractor ceases or threatens to cease to carry on its business or a substantial part of its business;
- (c) the Contractor is a natural person and dies; or
- (d) the Contractor fails to comply with any other material obligation under the Contract.

**Site** means the place set out in **schedule 1** and any other lands and other places identified in a Work Order or made available to the Contractor by the Principal for the purposes of this Contract.

**Site Conditions** means any physical conditions on, under or over the surface of, or at or in the vicinity of, the Site including:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions above, upon and below the ground including any in-ground services or works and partially completed structures;
- (c) topography, ground surface conditions and geology including seismic conditions, rock, other materials and sub-surface conditions;
- (d) climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind blown dust and sand, and seasons; and
- (e) Hazardous Materials.

**Site Information** means:

- (a) any document, specification, drawing, calculation, information, data, report or sample (whatever its form) marked or described as being 'site information' or marked or described in a similar fashion and made available or provided to the Contractor by or on behalf of the Principal;

- (b) any borehole core or borehole log made available or provided to the Contractor by or on behalf of the Principal, whether prior to or after the date of this Contract; and
- (c) any document, specification, drawing, calculation, information, data, report or sample (whatever its form) made available or provided to the Contractor by or on behalf of the Principal, whether prior to or after the date of this Contract, regarding Site Conditions.

**Statutory Position** means the person appointed by the Principal as a site senior executive or exploration manager under the under the *Work Health and Safety (Mines) Regulations 2022 (WA)* for the Site.

**Term** means the term of this Contract determined in accordance with **clause 17.1** and as extended in accordance with **clause 17.2** (if applicable).

**Variation** has the meaning given to it in **clause 15.1 work** means any work, act, action or service including the supply of materials and equipment.

**Work Order** means a document issued and executed by the Principal substantially in the form of **schedule 10**, which includes all details of the Works required to be performed by the Contractor including the information agreed or to be provided by the Contractor in response to the Work Order Request (if any).

**Work Order Price** means, in respect of a Work Order:

- (a) where the relevant Work Order states that the fee is based on a lump sum or lump sums, the aggregate of the lump sums in the Work Order which shall in aggregate be a fixed and firm price; or
- (b) where the relevant Work Order states that the fee is based on rates, the sum ascertained by multiplying the rates in the Work Order by the quantities properly supplied in accordance with the relevant Work Order and the Contract; or
- (c) where the Work Order states that the fee is based on a lump sum or lump sums and rates, the aggregate of the lump sums in the Work Order as a fixed and firm price and the sum ascertained by multiplying the rates in the Work Order by the quantities properly supplied in accordance with the relevant Work Order and the Contract,

as adjusted under the Contract and subject to any maximum price or caps specified (if any) in the Work Order.

**Work Order Request** means a work request issued by the Principal to the Contractor under **clause 2.2**, substantially in the form set out in **schedule 9**, setting out the details of the work required, the Date for Practical Completion of that work (if any), the daily rate of liquidated damages to apply (if liquidated damages are to apply) and, if required by the Principal, a request to provide a price to carry out that work.

**Work Order Scope** means the scope of works set out in or referenced in the relevant Work Order or in documents referenced in the relevant Work Order.

**work under the Contract** means all of the work under each and every Work Order issued under the Contract.

**work under a Work Order or Work Order work** means all of the work to be performed by the Contractor under a Work Order, including any construction, testing and commissioning of the relevant Works, Variations, temporary work, remedial work and construction plant.

- (a) **Works** means those parts of the work under a Work Order, including Variations, which are required by the Contract to be handed over to the Principal.

## 2 Performance

### 2.1 Standing offer to perform work

- (a) The Contractor, by entering into this Contract, makes a standing offer to perform work during the Term, on and subject to the terms of this Contract.
- (b) The Principal may accept this standing offer as and when it requires by executing a Work Order in accordance with **clause 2.4**.
- (c) This Contract does not oblige the Principal to issue any Work Order Requests or execute any Work Orders during the Term.

- (d) This Contract does not constitute any commitment by the Principal to procure any work from the Contractor and nothing in this Contract, including any quantities set out in any Contract document or any non-Contract document, is to be taken as imposing a minimum quantity or value of work which must be procured by the Principal.
- (e) The Contractor is, during the Term, one of the Principal's preferred contractors in relation to work set out in the Scope of Work however the Contractor acknowledges that this Contract does not restrict the Principal from procuring work similar or identical to the work set out in the Scope of Work from other contractors.

### 2.2 Work Order Request

At any time during the Term, the Principal may issue to the Contractor a Work Order Request.

### 2.3 Response to Work Order Request

Within two Business Days of the Principal giving the Contractor a Work Order Request, the Contractor must:

- (a) notify the Principal in writing as to whether or not it is willing to perform the work set out in the Work Order Request on the terms set out in the Work Order Request; and
- (b) (if the Contractor is willing to perform the work set out in the Work Order Request in accordance with its terms:
  - (i) provide to the Principal a Man-Power Histogram in respect of the work the subject of the Work Order Request;
  - (ii) if required by the Work Order Request, provide a fuel histogram illustrating a rolling forecast of the Contractor's requirements for fuel in performing the work the subject of the Work Order Request; and
  - (iii) provide its proposed Work Order Price to carry out the work the subject of the Work Order Request, which price may not exceed the sum calculated by using the lump sums, rates and prices in Schedule 3, together the "Response to Work Order Request".

### 2.4 Execution of Work Order

- (a) If the Contractor notifies the Principal that it is willing to perform the work set out in a Work Order Request, the Principal may, but is not obliged to, issue a Work Order to the Contractor.
- (b) Within 5 Business Days of receiving the Work Order from the Principal, the Contractor must execute the Work Order and return it to the Principal.
- (c) Except as set out in **clause 2.5**, the Contractor must not perform any work unless and until it has received a Work Order from the Principal.
- (d) Notwithstanding **clause 2.4(b)**, the Contractor will be deemed to have accepted and be bound by the Work Order if it commences any work under the Work Order.
- (e) If the parties execute a Work Order or the Contractor is deemed to have accepted a Work Order under **clause 2.4(d)**, the Contractor must carry out the Work Order work in accordance with the terms and conditions of this Contract and the Work Order.

### 2.5 Urgent Work

- (a) The Contractor may only proceed with work prior to receipt of a Work Order where urgent work is requested by the Statutory Manager or the Project Director of the Principal and such work relates to a safety or emergency incident. In such circumstances, the Contractor must immediately record, as a minimum, the area on the Site where the work is to be carried out and the details of who provided the urgent work request.
- (b) By 12 noon on the next Business Day immediately following the urgent work request, the Contractor must contact the Principal's Representative, and provide the information recorded. The Principal's Representative will arrange for a Work Order to be issued to the Contractor in respect of the work, the subject of the

urgent works request, as soon as possible but no later than within 5 Business Days.

- (c) The Contractor must then execute the Work Order in the same manner as is set out in **clause 2.4**.
- (d) The Parties agree that the Principal will pay the Contractor for the Work Order work directed under this clause an amount calculated using the Pricing Schedule or if no equivalent rates are included in the Pricing Schedule, such reasonable rates as determined by the Principal's Representative.

## 2.6 Contractor warranties

The Contractor warrants that:

- (a) all Works will:
  - (i) at Practical Completion, be in good order and condition;
  - (ii) comply with the description in the Work Order Scope;
  - (iii) incorporate new materials of good and merchantable quality;
  - (iv) comply with any warranties or guarantees contained in the Contract and Work Order;
  - (v) be suitable and fit for the Site, the conditions at the Site, the environment and conditions in which the Works will be used;
  - (vi) comply with the provisions of any legislation applicable to it;
  - (vii) comply with all relevant Australian Standards; and
  - (viii) be free from all Security Interests; and
- (b) the Contractor is at all times suitably qualified and experienced and will exercise due skill, care and diligence in the performance of the work under the Contract;
- (c) where the work under a Work Order includes design:
  - (i) the design will:
    - (A) comply with all legislative requirements; and
    - (B) be fit for its intended purpose; and
  - (ii) the completed Works will be fit for its intended purpose.
- (d) the work under the Contract is performed in compliance with the Policies; and
- (e) the Contractor will have full unencumbered title in the materials and equipment to be incorporated in any Works and will have the right to sell such materials and equipment.

## 2.7 Warranties additional

The requirements in **clause 2.6** are in addition to any warranties which are or may be implied under the *Sale of Goods Act 1895 (WA)*, the *Competition and Consumer Act 2010 (Cth)* and any other legislation applicable to the work under the Contract.

## 2.8 Key Performance Indicators

- (a) The Contractor must:
  - (i) achieve the Key Performance Indicators; and
  - (ii) monitor the work under the Contract and its other obligations under the Contract which are relative to the Key Performance Indicators.
- (b) If the Contractor fails to achieve any of the Key Performance Indicators, the Principal may give written direction to the Contractor to take the remedial steps contemplated by **schedule 6** or such other reasonable steps to ensure that the Key Performance Indicators are achieved.
- (c) The Contractor must comply with any direction given by the Principal under **clause 2.8(b)**.
- (d) The parties acknowledge that the Contractor will not be in breach of this **clause 2.8** or the Key Performance Indicators to the extent that the Principal has failed to comply with an obligation under this Contract and that failure directly causes the Contractor to breach this **clause 2.8** or to fail to achieve the relevant Key Performance Indicators.

## 2.9 Principal Supplied materials

Where:

- (a) the Principal provides to the Contractor; or
- (b) this Contract requires the Contractor to receive from the Principal,  
any materials or equipment or other thing for incorporation in any Works or use by the Contractor in the performance of the work under a Work Order ("**Principal Supplied Material**"), then the Contractor must:
  - (c) subject to **clause 2.9(e)**, immediately upon receipt of the Principal Supplied Material, be responsible for the Principal Supplied Material as if the Principal Supplied Material had been provided by the Contractor itself for the incorporation in those Works or use by the Contractor in the performance of the work under a Work Order;
  - (d) carefully inspect the Principal Supplied Materials and within 5 days of receipt, notify the Principal of any damage, omission or defect existing in the Principal Supplied Materials; and
  - (e) be responsible for any damage, omission or defect existing in the Principal Supplied Materials, unless the Contractor has given notice to the Principal of such damage, omission or defect in accordance with **clause 2.9(d)** above.

## 3 This Contract

### 3.1 Entire understanding

The documents comprising this Contract:

- (a) constitute, together with the Work Orders, the entire agreement between the parties;
- (b) supersede all previous oral or written communications between the parties; and
- (c) prevail over any subsequently issued standard form terms and conditions or purchase order terms either issued to the Contractor by the Principal or issued to the Principal by the Contractor, which have not been signed by both parties and are not expressly stated as intended to supersede this Contract.

### 3.2 Application of Contract

This Contract applies to the work under the Contract whether commenced before, on or after the date of this Contract. The Contractor agrees that any payment in connection with the work under the Contract performed prior to the date of the Contract is a payment under the Contract and any such payment will be accounted for against the payment due to the Contractor under the Contract.

### 3.3 No bias against drafting party

No term or provision of this Contract will be construed against the Principal on the basis that this Contract or the term in question was put forward or drafted by or on behalf of the Principal.

### 3.4 Mutually explanatory

The provisions in this Contract will be taken as being mutually explanatory and anything contained in one but not in another will be treated as if contained in all.

### 3.5 Discrepancies, errors and ambiguities

If the Contractor finds any discrepancy, error or ambiguity in the Contract, it must inform the Principal's Representative immediately and follow the directions of the Principal's Representative. The Contractor will have no Entitlement as a result of complying with any such direction.

### 3.6 Excluded terms

The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

### 3.7 Minor items necessary for proper performance of the work under the Contract

Minor items not expressly mentioned in a Work Order Scope, but which are necessary for the proper performance of the relevant work under a Work Order, must be supplied or completed by the Contractor at its own expense.

## 4 Authority, laws and safety

### 4.1 Comply with laws and Policies

- (a) The Contractor must:

- (i) comply with the provisions of all acts of parliament, ordinances, regulations, by-laws and requirements of all Authorities affecting or in any way relating to the Site or the work under the Contract;
  - (ii) obtain all permits and pay all fees required for the performance of the work under the Contract and keep the Principal indemnified against all fines, penalties, losses or damages incurred by reason of a breach of **clause 4.1**; and
  - (iii) at a minimum, comply with all relevant Australian Standards.
- (b) The Contractor will have no Entitlement as a consequence of a change in a requirement of any thing or body referred to in this **clause 4.1**.

#### 4.2 Policies

Without limiting any other obligations on the Contractor under this Contract, the Contractor must comply with the Policies.

#### 4.3 Occupational health & safety

- (a) The Contractor is responsible for the occupational health and safety at all times of all workers engaged or caused to be engaged by it (including its employees, employees of the Principal or the Principal's subcontractors, and the Contractor's subcontractors and their respective employees, who are working or attending at any working environment or residential premises under the Contractor's control) in connection with the Contract or any part of the work under the Contract.
- (b) The Contractor is responsible for ensuring that the health and safety of other persons is not put at risk from work carried out as any part of the work under the Contract or part of the Work Order work.
- (c) The Contractor must:
  - (i) ensure that in carrying out its obligations under the Contract it complies with all Safety Legislation (including, but not limited to, any duty imposed on the Contractor by the applicable Safety Legislation as a designer, manufacturer, importer or supplier of any Works);
  - (ii) ensure that all subcontractors, and all agents and employees of the Contractor and any subcontractor, comply with all Safety Legislation;
  - (iii) keep the Principal fully and regularly informed of all safety matters arising out of, or in any way in connection with, the Contract;
  - (iv) promptly obey, and must ensure that all subcontractors and all agents and employees of the Contractor, promptly obey all directions and instructions given by the person appointed to a Statutory Position relating to the health and safety of persons or property, or to the proper compliance with the Safety Legislation To the extent of any inconsistency, this **clause 4.3** prevails over all other provisions of this Contract;
  - (v) ensure that all work, plant, equipment and other items used in the carrying out of work under the Contract are maintained in a safe and working order; and
  - (vi) ensure that all work under the Contract is executed in a safe manner including:
    - (A) erecting and maintaining, as required by existing conditions and the progress of the work under the Contract, all safeguards necessary for safety and protection (including barriers, fences and railings); and
    - (B) posting danger signs and other warnings against hazards and notifying the Principal and other users of any dangerous or hazardous conditions arising out of the carrying out of the work under the Contract.
- (d) If the Contractor fails to comply with an obligation under the Safety Legislation or this **clause 4.3**, the Principal may perform or have performed the obligations on the

Contractor's behalf and the costs and expenses incurred by the Principal are recoverable from the Contractor as a debt due to the Principal.

#### 4.4 Anti-corruption

- (a) The Contractor must not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity or other thing of value, which would or could be construed as a corrupt practice, as an inducement or reward:
  - (i) for doing or forbearing to do any action in relation to the Contract; or
  - (ii) for showing or for forbearing to show any favour or disfavour to any person in relation to the Contract.
- (b) However nothing in this **clause 4.4** is intended to limit or affect any lawful inducements or rewards to the Contractor's employees, agents and subcontractors that could not reasonably be construed as involving corrupt practices.

#### 4.5 Emissions and energy data

- (a) In this **clause 4.5**, "consumption", "emission", "energy", "facility", "greenhouse gas", "group", "member", "operational control", "production" and "registered corporation" have the meanings given in the *National Greenhouse and Energy Reporting Act 2007* (Cth).
- (b) Without limiting any other obligation of the Contractor, the Contractor must:
  - (i) keep, and must ensure that all subcontractors keep, all such information and documentation concerning greenhouse gas emissions, energy production and energy consumption in relation to all aspects of the work under the Contract and all Works as a registered corporation would be required to keep and report upon under the *National Greenhouse and Energy Reporting Act 2007* (Cth) if the work under the Contract or any Works were a facility that was under the operational control of the registered corporation or a member of that corporation's group; and
  - (ii) provide access to and copies of any such information and documentation to the Principal upon request.

#### 4.6 Modern Slavery prevention

- (a) The Contractor represents and warrants on a continuing basis that:
  - (i) neither the Contractor nor any of its directors, officers, employees, representatives, agents, contractors or subcontractors will engage in Modern Slavery;
  - (ii) it investigates, assesses and addresses the risk of Modern Slavery practices within its operations and the supply chain used by the Contractor, including by implementing appropriate due diligence and remediation programs;
  - (iii) it will ensure that all personnel responsible for managing the operations and supply chain utilised by the Contractor have undertaken suitable training to be able to identify and report Modern Slavery;
  - (iv) it will advise the Principal regarding any identified instances of Modern Slavery practices and will immediately take all reasonable actions to address or remove such practices; and
  - (v) it has all necessary processes, procedures and systems in place to comply with this **clause 4.6**.
- (b) The Contractor must provide, within a reasonable time, all information reasonably requested by the Principal for the purposes of the *Modern Slavery Act 2018* (Cth).
- (c) The Contractor represents and warrants that any information it supplies to the Principal in accordance with this **clause 4.6** is true and accurate and may be relied upon by the Principal for the purposes of the *Modern Slavery Act 2018* (Cth).

## 5 Security

### 5.1 Provision of security

- (a) As security for the due and proper performance of this Contract by the Contractor:
- (i) within 7 days of the earlier of execution of a Work Order by the parties or commencement of any work under a Work Order, the Contractor must (where security is required by the relevant Work Order) provide the Principal with an unconditional undertaking from a financial institution and in a form approved by the Principal's Representative for the amount in the relevant Work Order (an approved form is in **schedule 4**);
  - (ii) the Principal may retain the percentage specified in a Work Order (if any) of each payment up to a maximum of the amount specified in the applicable Work Order; and
  - (iii) if **schedule 1** so specifies, the Contractor must, within 14 days after the date of the Contract, provide to the Principal:
    - (A) the Deed of Guarantee and Indemnity duly executed and enforceable against the person named in **schedule 1**; and
    - (B) if the person named in **schedule 1** is incorporated outside of Australia, a Legal Opinion supporting, and in respect of, the relevant Deed of Guarantee and Indemnity.
- (b) The Contractor shall not be entitled to make a claim for payment until security to be provided by it has been provided in accordance with this Contract.

### 5.2 Return of security

- (a) Within 30 days of the expiry of the later of the defects liability period (if applicable) or Date of Practical Completion in respect of the Work Order to which the security relates, subject to **clause 5.4**, the Principal must return to the Contractor, any remaining security held by it in accordance with **clause 5.1(a)(i)**.
- (b) Within 30 days of the Date of Practical Completion, subject to **5.4**, the Principal must return to the Contractor the percentage specified in the applicable Work Order of the security held by it in accordance with **5.1(a)(ii)**;
- (c) Within 30 days of the expiry of the defects liability period, subject to **clause 5.4**, the Principal must return to the Contractor the percentage specified in the applicable Work Order of the remaining security held by it in accordance with **clause 5.1(a)(ii)**.
- (d) Within 30 days of the expiry of the Term, subject to **clause 5.4**, the Principal must return to the Contractor, any remaining security held by it in accordance with **clause 5.3(a)(iii)**.

### 5.3 Recourse

- (a) The Contractor accepts that the Principal may call upon the security provided by the Contractor under this **clause 5** at any time and the Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any security provided under the Contract from paying the Principal pursuant to the security;
  - (ii) the Principal from taking any steps for the purposes of making a demand under any security provided under the Contract or receiving any payment under any such security; or
  - (iii) the Principal using the money received under any security provided under the Contract.
- (b) The Principal is not liable for any loss occasioned by the conversion of security into money.

### 5.4 Outstanding claims

Even if the Principal is otherwise required under this Contract to release security, the Principal has a right to retain from the security an amount sufficient to cover any outstanding claim alleged by the Principal against the Contractor under or in connection with the Contract (whether or not that claim has at that time been liquidated).

### 5.5 Holding of and interest on security

- (a) The Principal does not hold any security, or any moneys resulting from the conversion of the security on trust for the Contractor and is not obliged to hold any moneys resulting from the conversion of the security in any particular or defined account.
- (b) Any interest earned on any retention moneys or the proceeds of any security will be retained by the Principal.

## 6 Administration

### 6.1 Agent

The Principal's Representative is the agent of the Principal and the Principal is not obliged to ensure that the Principal's Representative acts as an independent certifier, assessor, determiner or valuer. Unless expressly specified in this Contract, the Principal and the Principal's Representative are not obliged to:

- (a) act reasonably; or
- (b) exercise any discretionary power or right in the interests of the Contractor (including to overcome a failure of the Contractor to comply with any provision of this Contract).

### 6.2 Directions of Principal's Representative

- (a) The Contractor must comply with all directions given by the Principal's Representative in accordance with this Contract. If a direction given by the Principal's Representative conflicts with the requirements of this Contract, the Contractor must inform the Principal's Representative in writing, advising why the direction is contrary to this Contract, before complying with the direction.
- (b) A direction given by the Principal's Representative does not relieve the Contractor of any of its obligations under this Contract.

### 6.3 Informed of progress

- (a) The Contractor must keep the Principal's Representative informed on the state and stages of the performance of the work under the Contract.
- (b) If directed by the Principal's Representative, the Contractor must attend any meetings to discuss any aspect of the work under the Contract.

### 6.4 No agency

The Contractor must not act as or represent that it is the agent of the Principal or hold itself out as being the agent of the Principal.

### 6.5 Principal may perform Contractor's obligations

The Principal may, either itself or by a third party, perform any obligation which the Contractor was obliged to perform under this Contract but which it failed to perform (including complying with a direction of the Principal's Representative). The Losses suffered or incurred by the Principal in performing such an obligation will be a debt due from the Contractor to the Principal.

## 7 Control of employees and subcontractors of Contractor

### 7.1 Contractor's Representative

The Contractor must ensure that the Contractor's Representative:

- (a) has the authority to receive directions on behalf of the Contractor from the Principal and the Contractor's Representative will be deemed to have such authority;
- (b) has the authority of the Contractor to carry out the overall co-ordination and supervision of the Contractor's obligations under this Contract;
- (c) is competent; and
- (d) is not replaced by the Contractor, without the written approval of the Principal.

### 7.2 Knowledge

If the Contractor's Representative has knowledge of a matter, that knowledge is taken to also be within the knowledge of the Contractor.

### 7.3 Employees and subcontractors

The Contractor must:

- (a) provide all management and supervision as may be required under applicable Safety Legislation or as may otherwise be required, including providing sufficient competent supervisors;
- (b) employ and must ensure that its subcontractors employ only people who have the skill, training, competence and experience to perform the job they are retained to do;
- (c) ensure that all employees and subcontractor employees hold the necessary licences, permits, endorsements or other certificates required by legislative requirement in carrying out its obligations under the Contract;
- (d) engage Key Personnel throughout the entire provision of work under the Contract in the positions set out in the applicable Work Order;
- (e) subject to **clause 7.4**, not remove or replace any Key Personnel without the Principal's prior written approval;
- (f) if any of the Contractor's personnel become seriously ill or resign from the employment of the Contractor, or are removed in accordance with **clause 7.4**, replace them with persons:
  - (i) of at least equivalent experience, ability and expertise;
  - (ii) who comply with paragraphs 7.3(b) and 7.3(c); and
  - (iii) approved by the Principal's Representative; and
- (g) ensure that its employees and subcontractor employees submit to and comply with the Principal's security requirements and Policies.

### 7.4 Removal

The Principal's Representative may direct the Contractor to remove from any activity connected with the work under the Contract within such time as the Principal's Representative directs, any person employed in the performance of the work under the Contract who the Principal's Representative considers to be undesirable to perform the work under the Contract, or who does not behave in a reasonable manner.

### 7.5 Industrial relations

Without limiting any other provision of this Contract, the Contractor must comply (and ensure that its employees, agents, personnel and subcontractors comply) with the provisions of **schedule 8**.

## 8 Subcontracting

### 8.1 Approval and Liability

- (a) The Contractor must not subcontract any of the work under the Contract without the written approval of the Principal. When seeking approval of a subcontractor, the Contractor must provide any information requested by the Principal. The Principal may impose any conditions it considers necessary in giving its approval. Approval is given to the subcontractors listed in the applicable Work Order.
- (b) The Contractor will be liable for the acts and omissions of subcontractors as if they were the acts and omissions of the Contractor and will not, by subcontracting any of the work under the Contract or any work under a Work Order, be relieved of any of its obligations or liabilities under this Contract or the relevant Work Order.

### 8.2 Subcontractor and supplier warranties

The Contractor must:

- (a) ensure that the Principal will have the benefit of all warranties given by all subcontractors and suppliers in relation to work and services performed by them in connection with the work under the Contract and materials provided by them which are used in the work under the Contract; and
- (b) use its best endeavours to obtain all other warranties reasonably required by the Principal.

## 9 Care of the work under the Contract

### 9.1 Protection

- (a) The Contractor must take all measures necessary to protect people and property on or adjacent to the Site and any place where the work under the Contract is being performed.
- (b) If the Contractor or its employees, subcontractors or agents damage any property, the Contractor must promptly make good the damage and pay any compensation which any law requires the Contractor to pay.
- (c) If the Contractor fails to comply with an obligation under this **clause 9.1**, the Principal may perform or have performed the obligation on the Contractor's behalf and the costs and expenses incurred by the Principal are recoverable from the Contractor as a debt due to the Principal.

### 9.2 Passing of title

- (a) Title in any materials and equipment to be incorporated into any Works will pass to the Principal at the earlier to occur of:
  - (i) delivery of those materials or equipment to the Site; or
  - (ii) when payment is made in respect of part or all of those materials or equipment.
- (b) Nothing in this **clause 9.2** limits or affects **clause 9.3** and notwithstanding that ownership of any materials or equipment or any other item may have passed to the Principal, the Contractor must still ensure that the item is properly stored (and in the case of items being transported to the delivery place, adequately packaged), labelled the property of the Principal and adequately protected and insured.

### 9.3 Responsibility for care of the work under the Contract

- (a) The Contractor is responsible for the care of:
  - (i) the work under a Work Order and any of the Principal's plant and equipment that it accesses from the date of commencement of that work under a Work Order to 4.00 pm on the Date of Practical Completion of those Works or where there is no requirement to achieve Practical Completion for a particular Work Order work, until such time that the relevant Work Order work is complete; and
  - (ii) the relevant work under a Work Order and any of the Principal's plant and equipment that it accesses while it is performing any work under **clause 20**.
- (b) The Contractor must promptly make good loss of, or damage to, any part of the work under a Work Order and any of the Principal's plant and equipment that it accesses while it is responsible for its care.

## 10 Environment

- (a) Without limiting the generality of any other provision of this Contract, the Contractor must in relation to the performance of the work under the Contract:
  - (i) comply with all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law, including procedures specified in documentation relating to the Contractor's environmental management system;
  - (ii) supervise and monitor the performance of all environmental obligations imposed on the Contractor under the Contract and under any applicable Environmental Law; and
  - (iii) report to the Principal on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under the Contract upon request by the Principal.
- (b) The Contractor is liable for and indemnifies the Principal against all claims, demands, actions, costs,

expenses, damages, losses and liability of any kind arising out of or in connection with:

- (i) any breach by the Contractor of this **clause 10** or any Environmental Law; or
  - (ii) the discharge, release or emission of any Hazardous Material, smell or noise into the Environment.
- (c) If the Contractor fails to comply with any of its environmental obligations under the Contract, the Principal may take whatever action is necessary to remedy such failure and deduct the cost of such action from moneys due or becoming due to the Contractor.

## 11 The Site

### 11.1 Access to Site

- (a) Subject to **clause 11.1(b)**, the Principal must make the Site available to the Contractor sufficient for it to perform its obligations under the Contract.
- (b) The Contractor will not be given exclusive possession of the Site and may be required to share the Site with others.

### 11.2 Access for the Principal, the Principal's Representative, and others

- (a) The Contractor must ensure that the Principal, the Principal's Representative, Separate Contractors, and any other person authorised by the Principal's Representative have safe access to any area within the Site at all times.
- (b) The Contractor must provide the Principal and the Principal's Representative, at all times, with access to all workshops and places where work is being prepared or done.

### 11.3 Site forms part of Existing Operation

- (a) This **clause 11.3** applies to the extent that the Site forms part of the Existing Operation which will continue to operate during the term of this Contract.
- (b) The Contractor acknowledges and agrees that the Site is critical to the Existing Operation's ongoing day to day operations.
- (c) In particular, the Contractor must:
  - (i) ensure that the work under the Contract does not materially interfere with the Existing Operation except as specifically provided in the program or otherwise as authorised by the Principal;
  - (ii) ensure that the work under the Contract does not materially interfere with the activities of businesses or persons occupying land adjacent to or in the vicinity of the Site;
  - (iii) maintain safe access to the Existing Operation for the Principal, its employees and other persons requiring access to the Existing Operation;
  - (iv) arrange work on and adjacent to the Site to minimise nuisance to occupants and users of the Existing Operation, to ensure their safety and comfort, and to ensure that the Contractor's activities do not place the Principal in breach of its obligations under the relevant Safety Legislation;
  - (v) where appropriate, protect the occupants and users of the Existing Operation against weather, dust, dirt, water and other nuisance by temporary hoardings and the like; and
  - (vi) maintain fire egress at all times in accordance with all relevant legislative requirements.

### 11.4 Separate Contractors

- (a) The Contractor acknowledges that the Principal has entered into or may enter into contracts with Separate Contractors, or may otherwise allow Separate Contractors, to carry out work at or near the Site.
- (b) In the course of carrying out work under the Contract, the Contractor must:
  - (i) fully co-operate and liaise with all Separate Contractors and carefully co-ordinate its own work with that being carried out or to be carried out by Separate Contractors, so as to avoid

interference with or disruption to or delay of the work of Separate Contractors; and

- (ii) promptly notify the Principal if the Contractor becomes aware of any delay by a Separate Contractor that may delay or adversely affect the performance of the work under the Contract.
- (c) The Contractor is:
- (i) responsible for the rectification of any damage to work under a Work Order caused by the Contractor failing to adequately protect that work or failing to co-ordinate work under a Work Order with the work of Separate Contractors for the period that it is responsible for its care under **clause 9.3**; and
  - (ii) responsible for the rectification of any damage (howsoever caused) to the work of Separate Contractors caused by the Contractor or any subcontractor.
- (d) If the execution of any part of work under the Contract is dependent upon the quality and completeness of work performed by Separate Contractors, the Contractor must inspect the Separate Contractors' work and immediately report all defects (if any) therein to the Principal which in the Contractor's opinion renders such work unsuitable for the proper execution of work under the Contract.
- (e) The Contractor must carry out and complete all Work Order work, notwithstanding the presence of Separate Contractors at or near the Site.
- (f) The Contractor must allow access to and through the Site to any and all Separate Contractors that the Principal may require. Such access must be granted at such times and in such manner so as to permit, in the reasonable opinion of the Principal, the safe, orderly and timely performance of the work of the Separate Contractors.

### 11.5 Surveys and setting out

The Contractor must:

- (a) set out the work in accordance with the Contract and Work Order Scope and any set-out information or survey marks provided by the Principal or the Principal's Representative;
- (b) correct any errors it makes in performing its obligations under **clause 11.5(a)**; and
- (c) carry out any survey which may be necessary for the work under the Contract.

## 12 Additional site provisions

### 12.1 Access to site

- (a) Subject to the Principal providing access to the Site pursuant to **clause 11.1**, the Contractor must ensure that the Contractor, its employees, its subcontractors and their employees:
  - (i) do not enter upon any place, or permit vehicles to enter any place, notified by the Principal to the Contractor in writing as a place to which the Contractor is not to have access, without the prior written consent of the Principal;
  - (ii) without limiting any other provision of the Contract, at all times:
    - (A) keep themselves informed as to the requirements of, comply with and not do anything which may place the Principal in breach of laws or legislative requirements applying to the Site;
    - (B) comply with all procedures, Policies, or rules adopted from time to time by the Principal in connection with the Site;
    - (C) comply with the directions (if any) given to the Contractor by the Principal or others authorised by the Principal or any legislative requirement at any time in connection with the Site (including access to and use of the Site); and

- (D) coordinate on a daily basis access to the Site with the relevant Principal's personnel with sufficient time for the necessary approvals and clearances to be obtained;
  - (iii) only access the Site during the hours and on the days provided for in the Contract;
  - (iv) ensure the Site is kept safe and secure and clean at all times; and
  - (v) not light fires (or undertake cutting, welding, grinding or other activities which are likely to generate fires) within or adjacent to the Site.
- (b) The Contractor must:
- (i) keep and maintain comprehensive details of and, upon request, provide the Principal or its nominee with access to, all visitors authorised to enter the Site (including their full name, employer and the purpose of their visit); and
  - (ii) immediately remove from the Site any employee of the Contractor or its subcontractors who does not comply with the requirements of the Contract.

**12.2 Principal supplied flights and accommodation**

Where **schedule 1** states that the Principal will supply flights and camp accommodation, the provisions set out in Part 1 of **schedule 11** will apply.

**12.3 Fuel**

Where **schedule 1** states that the Principal will supply diesel fuel, the provisions set out in Part 2 of **schedule 11** will apply.

**13 Information documents and Latent Ground Conditions**

**13.1 Information documents not warranted**

The Principal does not warrant, guarantee, make any representation or assume any duty of care with respect to the completeness, accuracy or adequacy of any Information Documents and is not liable to the Contractor upon any claim arising out of or in connection with the Information Documents.

**13.2 Contractor has informed itself**

The Contractor warrants that it will (and it is deemed to have done) each of the following things before each of the dates of each of its Response to Work Order Requests:

- (a) examined and carefully checked and acquired actual knowledge of the contents of the documents which constitute this Contract, including the relevant Work Order Request;
- (b) visited and inspected the Site and its surroundings;
- (c) informed itself completely as to:
  - (i) Site Conditions;
  - (ii) the risks, contingencies and other circumstances which might have an effect on the execution or cost of the relevant proposed work under a Work Order;
  - (iii) the nature of the work and of the plant, equipment, materials and other necessary items;
  - (iv) the availability and cost of labour, plant, equipment, materials and other items required;
  - (v) all legislative requirements and requirements of Authorities; and
- (d) satisfied itself as to the correctness and sufficiency of its price for the relevant proposed work under a Work Order and that that price covers the cost of complying with all of its obligations under the Contract in respect of the Work Order Request and of all matters and things necessary for the due and proper performance and completion of its obligations under the Contract in respect of the relevant work under a Work Order, and any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to perform and complete the relevant work under a Work Order in accordance with the Contract and for the Work Order Price.

**13.3 Notification of Latent Ground Conditions**

- (a) The Contractor, upon becoming aware of a Latent Ground Condition while carrying out work under a Work

Order, must promptly, and where possible before the Latent Ground Condition is disturbed, give the Principal written notice of the general nature thereof.

- (b) If required by the Principal promptly after receiving that notice, the Contractor must, as soon as practicable (but not more than 7 days after receiving the Principal's direction), give the Principal a written statement of:
  - (i) the Latent Ground Condition encountered and the respects in which it differs materially;
  - (ii) the additional work, resources (including construction plant), time and cost which the Contractor estimates to be necessary to deal with the Latent Ground Condition; and
  - (iii) any other details reasonably required by the Principal.

**13.4 Deemed variation for Latent Ground Condition**

If a Latent Ground Condition notified by the Contractor in accordance with the first paragraph of **clause 13.3** causes the Contractor to carry out more work, use more resources (including construction plant) or incur more cost than the Contractor could reasonably have anticipated at the date of the Response to Work Order Request, had it done all of the things mentioned in **clause 13.2**, then the reasonable additional work, resources and cost will be a deemed Variation, but the price of that Variation will not include the cost of any additional work carried out, additional resources used or additional cost incurred:

- (a) prior to the time at which the Contractor gave the written notice required by **clause 13.3(a)** or
- (b) because of any failure by the Contractor to carry out proper and adequate investigations and surveys at the Site and its near surrounds (including any relevant and prudent geotechnical investigations) after the date of the relevant Response to Work Order Request.

**14 Testing and training**

**14.1 Meaning of test**

The word 'test' when used in this **clause 14** includes examine and measure.

**14.2 Direction to test**

The Principal's Representative may direct that any materials and work forming any part of the work under a Work Order must be:

- (a) tested at any time prior to the expiry of the relevant defects liability period; or
- (b) tested and passed before Practical Completion of the relevant work under a Work Order is achieved, with the results promptly provided to the Principal's Representative.

**14.3 Notice of testing**

Before conducting a test, the party conducting the test must give reasonable written notice to the other of the time, date and place of the test. If the notice has been given and the other does not attend, the test may nevertheless proceed.

**14.4 Costs where the work under the Contract does not comply**

If results of the tests show that the work under a Work Order does not comply with the Contract, the costs incurred by the Principal in conducting the tests will be a debt due from the Contractor to the Principal.

**14.5 Training and instruction**

If the Contractor is required to provide any training or instruction to the Principal or employees or contractors of the Principal in connection with any Work Order work, the Contractor must:

- (a) ensure that all training or instruction is:
  - (i) carried out by suitably qualified and skilled persons who are familiar with the operation, use and maintenance of the plant, equipment or services;
  - (ii) designed to meet the requirements of the trainee; and
  - (iii) carried out in accordance with the requirements of the Contract; and



- (b) provide the training and instruction as a condition precedent to Practical Completion of the relevant Works.

## 15 Variations

### 15.1 Meaning of Variations

A Variation means:

- (a) additional work to;
- (b) a change in the character or quality of;
- (c) an increase or decrease in the scope of;
- (d) a change to the levels, lines, positions or dimensions of any part of; or
- (e) an omission, including for the purpose of retaining a third party to perform the omitted work (in which case there will be no liability to the Contractor for loss of profit) from,

the work under a Work Order but does not include any work to overcome a breach, act or omission of the Contractor.

### 15.2 Right to direct Variations

The Principal's Representative may, at any time, direct the Contractor to perform a Variation and the Contractor must perform the Variation. The direction must be in writing and must state that it is a direction for a Variation. If the direction states that the Contractor must provide an estimate of the cost of the Variation, then the Contractor must provide the Principal's Representative with an estimate within the time specified in the direction and if no time is specified, then promptly.

### 15.3 Notification

If the Contractor considers that a direction from the Principal's Representative is a direction for a Variation which does not comply with **clause 15.2** the Contractor must, if possible before commencing work on the Variation and in any event within five Business Days of the direction, notify the Principal's Representative in writing that the Contractor considers the work is a Variation and provide an estimate of any delay consequences, and adjustments to the Work Order Price, arising from the purported Variation. The Principal's Representative will, within three Business Days, either:

- (a) confirm the direction is a Variation and issue a direction complying with **clause 15.2**; or
- (b) notify the Contractor that it is not a Variation.

### 15.4 Contractor to submit final cost

Within 10 Business Days of completion of the work, the subject of the Variation, the Contractor must submit to the Principal's Representative its final claim in respect of the Variation.

### 15.5 Cost of Variations

Where the Principal's Representative has given the Contractor a direction to perform a Variation which complies with **clause 15.2**, the relevant Work Order Price must be adjusted by the amount calculated in accordance with **clause 16**.

### 15.6 Bar on claims

Unless the Contractor has:

- (a) either received a direction which complies with **clause 15.2** or has delivered a notice in the form and within the time required by **clause 15.3**; and
- (b) submitted its final claim in respect of the work, the subject of the Variation, in the form and within the time required by **clause 15.4**,

the Contractor will have no Entitlement as a consequence of complying with any direction given by the Principal's Representative, however this will not prevent the Principal's Representative from reducing the Work Order Price in accordance with **clause 16** by reason of the Variation direction. Under no circumstances will the Contractor have any Entitlement exceeding the amount of its final claim submitted in accordance with **clause 15.4**

## 16 Valuing Variations and adjustments to the Work Order Price

Adjustments to the Work Order Price made in accordance with this Contract must be ascertained by the Principal's Representative as follows:

- (a) to the extent that the parties have agreed the amount of the adjustment, then the amount agreed;
- (b) to the extent that this Contract provides for the amount of the adjustment, then that amount;
- (c) to the extent that the rates contained in **schedule 3** apply, by applying those rates to the quantities properly supplied in accordance with this Contract, as measured by the Principal's Representative;
- (d) if this Contract provides that the Contractor is entitled to delay costs under **clause 17.5**, by applying the delay costs which the Contractor can demonstrate that it has incurred up to the maximum rate in **schedule 1**; or
- (e) to the extent that **clauses 16(a) to 16(d)** do not apply, by arriving at a reasonable amount, having regard to any increase or decrease in the costs that have been or will be incurred by the Contractor, as determined by the Principal's Representative.

## 17 Time and progress

### 17.1 Term

- (a) This Contract commences on the Commencement Date and, unless terminated earlier under the terms of this Contract or extended in accordance with **clause 17.2**, will end on the later of:
  - (i) the Expiry Date; and
  - (ii) the date on which all Works have achieved Practical Completion, but only for the purpose of **clause 17.1(b)**.
- (b) If the Principal has issued a Work Order prior to the end of the Term, but the Contractor has not fulfilled its obligations in respect of that Work Order, then:
  - (i) the Work Order will continue in accordance with its terms and the terms of this Contract, until each party has fulfilled its obligations in respect of the Work Order; and
  - (ii) the Term is extended solely for the purpose of allowing completion of the Work Order, but the Principal must not issue, and the Contractor must not accept, any new Work Order under this Contract after the expiry of the unextended Term.

### 17.2 Further Term

The Principal may extend this Contract for the Further Term commencing on the Expiry Date or the expiry date of a previous Further Term (as applicable). The maximum number of Further Terms is set out in **schedule 1**.

### 17.3 Extension

Unless otherwise agreed by the parties, an extension under **clause 17.2** is to be on the same terms and conditions as this Contract except for the Expiry Date which is to be amended to reflect the date upon which the Further Term expires.

### 17.4 No delay

The Contractor must:

- (a) proceed with all work under a Work Order with due expedition and without delay and in accordance with the requirements stated in the Work Order Request as updated by the Work Order, if any;
- (b) not suspend the work under the Contract unless given a direction under **clause 17.5** or pursuant to a statutory right to suspend; and
- (c) take all steps necessary to minimise the effect of any delay to the work under the Contract.

### 17.5 Suspension

The Principal's Representative may direct the Contractor to suspend the performance of the whole or part of the work under a Work Order. The Work Order Price will be adjusted if the Contractor incurs any additional costs as a result of such suspension (as objectively substantiated to the Principal's Representative's satisfaction), provided that the suspension was not necessary because of an act, default or omission of the Contractor.

### 17.6 Date for Practical Completion

If a Work Order Request or related Work Order includes a Date for Practical Completion clauses **17.7** to **20** will apply in respect of those Works.

## 17.7 Practical Completion

The Contractor must achieve Practical Completion by the Date for Practical Completion.

## 17.8 Power to grant extensions

The Principal's Representative may, at any time and for any reason, by notice in writing to the Contractor, extend a Date for Practical Completion. The Principal's Representative is not under any circumstances obliged to exercise this power for the benefit of the Contractor (including where the Contractor has no Entitlement to an extension of time by reason of a failure to comply with notification provisions in this **clause 17**) or at all.

## 17.9 Contractor's Entitlement

The only circumstances under which the Contractor will be entitled to an extension to a Date for Practical Completion are when all of the following requirements have been met:

- (a) it can demonstrate to the reasonable satisfaction of the Principal's Representative that it has been or will be delayed in achieving Practical Completion of the relevant Works by the Date for Practical Completion by a cause in **clause 17.10** (having regard to **clause 17.12**);
- (b) the relevant cause of the delay delays or will delay an activity which is on the critical path;
- (c) the Contractor has given all notices strictly in accordance with the requirements of this **clause 17**; and
- (d) the Contractor has taken all reasonable steps to mitigate the effect of the delay.

## 17.10 Causes

Subject to **clause 17.12**, the causes of delay referred to in **clause 17.9(a)** are:

- (a) any of the following causes whether happening before, on, or after the Date for Practical Completion:
  - (i) any breach of the Contract by the Principal, its consultants, agents or other contractors (not being employed by the Contractor);
  - (ii) a deemed Variation under clause 13.4 or direction for a Variation under clause 15.2; or
  - (iii) a direction to suspend under clause 17.5;
- (b) any of the following causes that happen on or before the Date for Practical Completion:
  - (i) subject to clause 17.7, a cyclone at the Site, occurring between 1 May and 31 October, that has been named by the Bureau of Meteorology and for which the Bureau of Meteorology has issued a "yellow alert";
  - (ii) a catastrophic natural event at the Site consisting of an earthquake, flood (other than as a consequence of a cyclone) or a fire; or
  - (iii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,

but in each case, only to the extent that the cause:

- (c) is not due to an act, default or omission of the Contractor, its subcontractors, employees or agents or any employee or agent of any of them;
- (d) is beyond the reasonable control of the Contractor, its subcontractors, employees or agents; and
- (e) could not have been prevented by the Contractor, its subcontractors, employees or agents exercising reasonable diligence.

## 17.11 Multiple causes

Where one period of delay has more than one cause, and if one or more of those causes is not a cause referred to in **clause 17.10** then to the extent that those delays are concurrent as determined by the Principal's Representative, the Contractor shall only be entitled to an extension of time to the Date of Practical Completion for 50% of the period of those causes of delay referred to in **clause 17.10** to the extent that they overlap with a cause not referred to in **clause 17.10**

## 17.12 Notification

Where the Contractor wishes to make a claim for an extension of time then it must give a notice in writing to the Principal's Representative within five Business Days of the

commencement of the cause of the delay which provides full detailed particulars of the cause of the delay and how that cause has delayed or will delay the relevant Date for Practical Completion, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.

## 17.13 Period of extension

The period of any extension of time to a Date for Practical Completion to which the Contractor is entitled under this clause will be the reasonable period by which the Principal's Representative determines the Contractor has been or will be delayed in achieving Practical Completion of the relevant Works by the Date for Practical Completion as a consequence of the cause of the delay.

## 17.14 No prejudice

A failure of the Principal's Representative to grant a reasonable extension of time will not cause the relevant Date for Practical Completion to be set at large but nothing in this **clause 17.14** will prejudice any right of the Contractor to damages.

## 17.15 Delay costs

Where the Contractor has been granted an extension of time under this clause in relation to a delay under **clause 17.10(a)**, the Work Order Price may be adjusted to include the additional actual direct costs which the Contractor demonstrates it has reasonably and necessarily incurred up to the maximum rate in **schedule 1**.

## 17.16 No Entitlement

Except as provided in **clauses 17.9, 17.13** and **17.15**, the Contractor will have no Entitlement in relation to delay.

## 17.17 Cyclones

The Contractor acknowledges that the Site will be impacted by seasonal cyclones from time to time. The Contractor must make sufficient allowance in its programming of the work under the Contract to ensure these seasonal weather events are accounted for in the overall delivery of the Works.

## 18 Liquidated damages

### 18.1 Liability for liquidated damages

If the Contractor does not achieve Practical Completion by the Date for Practical Completion, the Contractor will be liable to the Principal for liquidated damages for the amount identified in the relevant Work Order for every day or part of a day from the Date for Practical Completion up to and including the earliest of the Date of Practical Completion and termination of the Contract. That amount will be a debt due from the Contractor to the Principal.

### 18.2 If amount nil

If the Work Order does not set out any rate of liquidated damages or contains words which indicate that liquidated damages will not apply to the relevant Works (whether by the use of the words 'not applicable', 'nil' or otherwise) or if **clause 18.1** is found to be unenforceable for any reason, the Principal is entitled to recover from the Contractor any Loss suffered or incurred by the Principal by reason of the Contractor's delay in achieving Practical Completion by the Date for Practical Completion.

## 19 Practical Completion

### 19.1 Notification of Practical Completion

The Contractor must give written notice to the Principal's Representative when it considers that it has achieved Practical Completion in respect of the Works.

### 19.2 Practical Completion

- (a) Within 5 Business Days of receipt of a notice under **clause 19.1** the Principal's Representative must either:
  - (i) if the Principal's Representative determines that Practical Completion has been achieved, issue a Certificate of Practical Completion which certifies the date that Practical Completion was achieved; or
  - (ii) give the Contractor written notice of matters and things required to be done to achieve Practical Completion.

- (b) If the Principal's Representative gives the Contractor a notice under **clauses 19.2(a)(ii)**:
  - (i) the Contractor must notify the Principal's Representative when the Contractor considers that it has achieved Practical Completion; and
  - (ii) clauses 19.2(a) and 19.2(b) apply again until the Principal's Representative gives a certificate under clause 19.2(a)(i).

## 20 Defects liability period

### 20.1 Duration of defects liability period

If Works involve work of a construction, civil, mechanical, electrical or engineering nature or the Work Order Request or related Work Order states that a defects liability period is applicable to the Works, the defects liability period in respect of those Works will commence on the Date of Practical Completion and will continue for the period specified in the relevant Work Order or if no period is specified, the period specified in **schedule 1**.

### 20.2 Direction to rectify

At any time up to 10 Business Days after the expiry of a defects liability period, the Principal's Representative may direct the Contractor to rectify an omission or defect in the relevant Works. The Contractor must comply with any direction within the time stated in the direction, or if no time is stated, within a reasonable time. The Contractor acknowledges that during the defects liability period the Works will be in use as part of the Principal's operations and that there may be limited access to the Site for the purpose of carrying out any rectification pursuant to this clause.

### 20.3 Failure to carry out rectification

If the Contractor fails to comply with a direction given under **clause 20.2**, or where the rectification work is required urgently, the Principal may perform the work or have the work performed itself or by others. The cost to the Principal of having the work performed will be a debt due from the Contractor to the Principal.

## 21 Price and payment

### 21.1 Obligation to pay

The Principal must pay the Contractor each Work Order Price as consideration for the Contractor's fulfilment of all of its obligations under this Contract.

### 21.2 No rise and fall

The rates provided in **schedule 3** and each Work Order Price are fixed and will not be subject to adjustment for rise and fall or for exchange rate variations, changes in taxes or changes in law or Authority requirements.

### 21.3 Payment claims

The Contractor must, in respect of each Work Order, submit to the Principal's Representative at the times identified in the relevant Work Order (or if there is no time stipulated, on the last day of each month), a payment claim which identifies clearly the amount owing to the Contractor under the Work Order and which states the relevant Work Order number.

### 21.4 Payments

The amount payable by the Principal to the Contractor in relation to each payment claim is calculated as follows:

- (a) if the Work Order provides that rates apply, by applying the rates to the quantities properly supplied by the Contractor in accordance with this Contract, including the Work Order Scope, as measured by the Principal's Representative;
- (b) if the Work Order provides that milestone payments apply, in accordance with the milestone payments set out in the Work Order;
- (c) otherwise, by valuing the Works completed to the date of the claim (as a proportion of the Work Order Price);
- (d) by adding or subtracting any other amounts due from one party to the other under the Contract; and
- (e) by deducting any amount which the Principal is entitled to deduct, retain or withhold.

### 21.5 Evidence of insurance

The Principal is not obliged to make any payment to the Contractor before the Contractor has provided evidence of insurance required under **clause 23**.

### 21.6 Responses to payment claims, timing and effect of payment

- (a) The Principal's Representative must respond to each of the Contractor's claims for payment within 10 Business Days of receipt of the Contractor's claim for payment by issuing to the Contractor a payment schedule identifying the payment claim to which it relates setting out the amount which it considers is due to the Contractor and if this amount is less than the amount claimed in the Contractor's claim for payment, the reasons for the difference.
- (b) The Contractor must submit its tax invoice in respect of each payment schedule, referencing the Work Order and payment claim to which it relates for the amount stated to be due in the payment schedule, within 1 Business Day of receipt of the relevant payment schedule.
- (c) The Principal must pay the Contractor the amount payable in relation to each payment claim within 20 Business Days from the date the payment claim submitted in accordance with clause 21.3. **Error! Reference source not found.**, is received by the Principal.
- (d) A payment made in relation to this Contract is not evidence of the value of the Works completed, an admission of liability or an admission that any work is satisfactory, but is a payment on account only.
- (e) Without limiting the Principal's rights under any provision in this Contract, the Principal may deduct from any amount due to the Contractor (including in respect of a payment claim) or from any security held under **clause 5**, any sum which the Principal asserts is or may become payable by the Contractor under or in connection with this Contract, any other contract, or independent of any contract.

### 21.7 No payment for plant, materials or equipment not delivered

Unless expressly stated otherwise in a Work Order, the Contractor is not entitled to claim payment for Goods, plant, materials or equipment that have not been delivered to the Site.

### 21.8 No approval

The issue of a certificate under this Contract will not constitute approval or acceptance of any work under the Contract or work under a Work Order or other matter nor will it prejudice any claim by the Principal against the Contractor.

## 22 Liability

### 22.1 Indemnity

- (a) Subject to **clause 22.1(b)** and **clause 22.2**, the Contractor indemnifies the Principal and its officers, employees, agents and contractors against:
  - (i) all loss or damage to the Principal's property (including the Existing Operation);
  - (ii) any claim, demand, action, suit or proceeding that may be brought by any person against the Principal, the Principal's Representative or any officer, employee, contractor or agent of the Principal;
  - (iii) any loss, damage, cost or expense suffered or incurred by the Principal in respect of personal injury to or death of any person; and
  - (iv) loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property),
 arising out of or as a consequence of:
  - (v) an act or omission of the Contractor, its employees, agents or subcontractors; or
  - (vi) the Contractor's breach of its obligations under the Contract.

- (b) Notwithstanding any other provision of this Contract, the Contractor is not required to indemnify the Principal for any liability to pay a fine for an offence under the Safety Legislation.

## 22.2 Exclusion of Consequential Loss

Neither party is liable to the other party in respect of any loss of use, loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, loss of use of capital or loss of goodwill arising out of or in connection with this Contract, except in relation to:

- (a) any liability in respect of death or injury to persons or damage to real or personal property;
  - (b) liquidated damages payable by the Contractor or recovery of any Loss under **clause 18.2**; or
  - (c) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
  - (d) breach of any applicable laws by the Contractor related to the work under the Contract or work under a Work Order;
  - (e) breach of clause 25;
  - (f) loss or liability to the extent that the Contractor is indemnified for the liability under any policy of insurance that it is required to maintain under this Contract or would have been indemnified if it had complied with its obligations under this Contract and the insurance policies;
  - (g) liability arising from fraudulent or criminal acts or omissions of the liable party or any of its employees, agents or subcontractors;
  - (h) liability for wilful misconduct in breach of Contract which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of this Contract);
  - (i) liability for insurance deductibles borne by the Contractor; or
- liability for any fine, penalty, sanction or compensation imposed by any law.

## 23 Insurance

### 23.1 Insurance policies effected by the Contractor

Without in any way limiting or affecting the Contractor's other obligations under the Contract, the Contractor must, before performing any of the work under the Contract, effect the following insurances on terms and with insurers approved by the Principal:

- (a) public and product liability insurance:
  - (i) covering legal liability to pay compensation for bodily injury, death, sickness or disease to any person and loss, destruction or damage to real or personal property (including resultant loss of use), arising directly or indirectly from the performance by the Contractor of the work under the Contract and its other obligations under the Contract.
  - (ii) The public and product liability policy must:
    - (A) include a limit of liability not less than the value set out in **Schedule 1**;
    - (B) include a principal's indemnity extension indemnifying the Principal, any Related Body Corporate of the Principal and their respective employees for legal liability arising out of the Contractor's performance of the work under the Contract;
    - (C) include a cross liability clause which confirms insurers accept the term "Insured" as applying to each of the parties constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of

any other insured party to claim under the policy;

- (D) extend to cover goods in the physical and legal control of the Contractor; and
  - (E) extend to cover liability in respect of third party property damage or personal injury arising from the use of unregistered plant and equipment.
- (b) contract works insurance:
    - (i) for the work under a Work Order, including any individual component forming part of the work under a Work Order;
    - (ii) against physical loss, damage or destruction; and
    - (iii) with a limit of liability of not less than the full reinstatement or replacement value of the work under a Work Order, together with costs of demolition and removal of debris and consultants' fees;
  - (c) workers' compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Contractor in connection with the performance by the Contractor of the work under the Contract (including liability under any applicable workers compensation legislation and at common law). The workers compensation policy must:
    - (i) comply with all statutory requirements including providing compulsory statutory workers compensation benefits;
    - (ii) provide common law liability to a limit of not less than the value set out in **Schedule 1**;
    - (iii) include a principal's indemnity extension for both Workers Compensation legislation benefits and common law, in favour of the Principal, any Related Body Corporate of the Principal and their respective employees; and
    - (iv) include a waiver of subrogation in favour of the Principal, any Related Body Corporate of the Principal and their respective employees.
  - (d) comprehensive motor vehicle insurance in respect of all vehicles owned, operated, leased, hired, or controlled by the Contractor or its employees, subcontractors or agents, registered or required to be registered in accordance with any law which are used (or to be used) on any road at any time in connection with the performance by the Contractor of the work under the Contract under the Contract and its other obligations under the Contract. The Motor Vehicle insurance policy must:
    - (i) provide cover for material damage to all vehicles for not less than their market value;
    - (ii) include coverage for liability in respect of third party property damage or personal injury to a limit of liability of not less than the value stated in **schedule 1**;
    - (iii) include a Principal's indemnity extension indemnifying the Principal, any Related Body Corporate of the Principal and their respective employees for legal liability arising out of the Contractor's performance of the work under the Contract;
    - (iv) include a waiver of subrogation in favour of the Principal, any Related Body Corporate of the Principal and their employees; and
    - (v) include personal injury gap coverage arising from the use of registered motor vehicles not otherwise covered by compulsory third party insurance.
  - (e) insurance in respect of all plant, equipment and any other property owned, operated or controlled by the Contractor or its employees, subcontractors or agents or for which the Contractor is responsible which the Contractor brings to or uses on Site including transit risk or at other places where the work under the Contract is performed for not less than the market value of the plant and equipment. The Contractor's plant and equipment policy must:

- (i) include legal liability coverage for road registered plant and equipment to a limit of not less than the value set out in **Schedule 1**;
- (ii) include a Principal's indemnity extension indemnifying the Principal, any Related Body Corporate of the Principal and their respective employees for legal liability arising out of the Contractor's performance of the work under the Contract; and
- (iii) include a waiver of subrogation in favour of the Principal, any Related Body Corporate of the Principal and their employees; and
- (f) any other insurance which is required by Law for the time being in force in Western Australia.

### 23.2 Professional indemnity insurance

- (a) This clause 23.2 applies if:
  - (i) **schedule 1** or any Work Order Request or Work Order specifies that the Contractor must effect professional indemnity insurance; or
  - (ii) any part of the work under a Work Order includes design or professional services.
- (b) Without in any way limiting or affecting the Contractor's other obligations under the Contract, the Contractor must:
  - (i) if **schedule 1** requires the Contractor to effect professional indemnity insurance, before performing any work under the Contract; or
  - (ii) if a Work Order requires the Contractor to effect professional indemnity insurance, before performing any relevant Work Order work, effect professional indemnity insurance covering liability arising from an act, error or omission of the Contractor (or any person engaged by the Contractor) in relation to the performance of the work under the Contract or Work Order work (as applicable).
- (c) The professional indemnity insurance must:
  - (i) have a limit of liability of not less than the value stated in **schedule 1**, or the relevant Work Order;
  - (ii) include provision for one automatic reinstatement;
  - (iii) include an 'unlimited' retroactive date;
  - (iv) extend to include but not be limited to the following professional services; design and consulting activities including pre - design, advice, specification, technical services, project management and supervision of all construction activities including plant testing and commissioning; and
  - (v) remain in force for a minimum of 5 (five) years after the expiry of the Term.

### 23.3 Insurance requirements

- (a) The Contractor must:
  - (i) maintain the insurance policies effected under clauses 23.1(a), 23.1(b), 23.1(c), 23.1(d), 23.1(e) and 23.1(f) for the Term of the Contract;
  - (ii) pay the deductible in connection with any claim made in respect of any loss or risk covered by an insurance policy effected under **clause 23.1**;
  - (iii) ensure that every sub-contractor engaged by the Contractor maintains insurance in the same manner as the Contractor as required by the terms specified in this Contract;
  - (iv) provide at least thirty (30) business days' prior written notice to the Principal of any cancellation or material change to any of the policies referred to in this **clause 23**;
  - (v) give full, true and particular information relevant to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or policies of insurance or the payment of any or all moneys under that policy or policies; and
  - (vi) give (or upon request make available for inspection and copying by) the Principal or the

Principal's insurance brokers the insurance policies effected by the Contractor under **clause 23**.

- (b) The Contractor shall at all times be responsible for complying and abiding by the terms and conditions of the insurances arranged by them and for the payment of all excesses or deductibles under the terms of such insurances.

### 23.4 Failure to procure and maintain insurance

If the Contractor fails to effect or maintain an insurance policy under **clause 23.1**, the Principal may (but is not obliged to) effect and maintain the insurance policy and recover all costs and expenses incurred from the Contractor as a debt. The Contractor is not relieved of any liability under the Contract due to, or as a result of, the Principal effecting or maintaining any insurance policy referred to in **clause 23.1**.

## 24 Inspection and provision of insurance policies

### 24.1 Evidence of insurance

Prior to commencing the work under the Contract, and whenever required by the Principal's Representative, the Contractor must provide to the Principal's Representative certificates of currency for each of the insurance policies required under **clause 23** specifying for each insurance policy the cover, any significant exclusions, limitations or conditions and expiry date, failing which the Principal will be entitled to arrange those insurances and the cost of so doing will be a debt due from the Contractor to the Principal.

### 24.2 Contractor not to prejudice insurance cover

The Contractor must not do anything or allow anything to be done which might cause the insurances referred to in **clause 23** to be cancelled, vitiated, voided or otherwise prejudiced.

## 25 Confidentiality and media releases

### 25.1 Meaning of Confidential Information

'Confidential Information' means any ideas, concepts, drawings, specifications, data or information which:

- (a) relate to the operation or business of the Principal;
- (b) have been produced by the Principal, the Contractor, any subcontractor or any third party; and
- (c) have only been obtained or produced by the Contractor as an incident to the performance of the work under the Contract.

### 25.2 No disclosure

Subject to **clause 25.3** and except to the extent necessary to carry out the work under the Contract, the Contractor must not, and must ensure that its employees do not, without the prior written approval of the Principal, at any time (including after the termination or expiry of this Contract):

- (a) disclose or give to any person any Confidential Information;
- (b) use or reproduce, or permit or allow any other person to use or reproduce the Documentation or Confidential Information; or
- (c) advertise or issue any information, publication, document or article for publication or media release concerning the Contract.

### 25.3 Exclusions

**Clause 25.2** does not apply to the extent that the Confidential Information is:

- (a) in the public domain at the time that the Confidential Information is disclosed or given; or
- (b) required by law to be disclosed or given.

### 25.4 No press release

Without limiting the generality of **clause 25.2**, the Contractor must not advertise or issue any information, publication, document or article for publication or media release concerning the work under the Contract or the Principal's business and activities without the prior written approval of the Principal.

## 25.5 Referral of media enquiries

The Contractor must refer to the Principal any enquiries from the media concerning the work under the Contract or the Principal's business and activities.

## 25.6 Return of documents

Within 10 Business Days of the expiry of the Term or the earlier termination of this Contract, the Contractor must return to the Principal all documents or records (including all Confidential Information) the Principal has supplied to the Contractor in respect of the work under the Contract and copies of any documents or records of the Principal held by the Contractor. The Contractor may retain one copy of the documents for the purpose only of keeping a record.

## 26 Ownership of and copyright in the Documentation

### 26.1 Intellectual Property Rights

The Contractor grants to the Principal a royalty free, perpetual and irrevocable licence to use the Intellectual Property Rights associated with all Documentation for any purpose associated with the use, maintenance or alteration of all Works and a right to grant sub-licences on the same terms to any person for any purpose associated with the use, maintenance or alteration of those Works.

### 26.2 Indemnity

The Contractor indemnifies the Principal against any action, suit, proceeding, claim or demand in respect of any Loss whether arising directly or indirectly from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right, in respect of any Works or of any machine, equipment, work, material or thing, system or method of using, fixing or working, or any arrangement used or fixed or supplied by the Contractor.

## 27 Default and insolvency

### 27.1 Termination for default by the Contractor

If:

- (a) the Contractor commits a Serious Breach; or
- (b) the Contractor does not carry out any obligation under this Contract and, in the case of a default which is capable of remedy, does not remedy that default within five Business Days after the Principal serves written notice on the Contractor requiring the default to be remedied,

the Principal may either:

- (c) terminate the Contract;
- (d) take out of the Contractor's hands the whole or any part of the work under the Contract which is not complete and suspend payment until it becomes due and payable under **clause 27.3(c)**; or
- (e) cancel one or more Work Orders.

### 27.2 Rights of the Principal

Termination of this Contract or cancellation of any Work Order under **clause 27.1** or **clause 28.1**, does not affect the rights of the Principal or the obligations of the Contractor that arose before the termination or cancellation (as applicable), or as a consequence of the event or occurrence giving rise to the termination or cancellation (as applicable), or as a consequence of the breach of any obligation under this Contract which continues to take effect after termination or cancellation (as applicable).

### 27.3 Adjustment on completion of work under the Contract taken over

- (a) The Principal may itself or by using a third party or parties complete work under the Contract taken out of the Contractor's hands and may use materials, equipment and other things intended to be used in connection with the work under the Contract as are reasonably required by the Principal to facilitate completion of the work under the Contract.
- (b) If the Principal exercises the power under **clause 27.3(a)**, the Principal's Representative must, when the work under the Contract is completed, calculate the difference between:

- (i) the additional costs of having the work under the Contract so completed by others and any other Loss suffered or incurred by reason of the Contractor's default; and

- (ii) the amount of retention money held by the Principal.

- (c) If the calculation under clause 27.3(b);

- (i) results in a shortfall to the Principal, the Contractor must pay the amount of the shortfall to the Principal within five Business Days of a written demand for payment; or

- (ii) results in an excess to the Principal, the Principal must pay the amount of the excess to the Contractor within 10 Business Days of receiving the calculation given under this clause.

## 27.4 Contractor's right to terminate

The Contractor may terminate this Contract if:

- (a) the Principal does not pay the Contractor any undisputed money due and owing to it under this Contract; and

- (b) the Principal does not pay that money within a further period of 20 Business Days after the Contractor serves written notice on the Principal requiring payment.

## 28 Termination for convenience

### 28.1 Termination for convenience

- (a) Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may at any time for its sole convenience, and for any reason, by written notice to the Contractor cancel any Work Order effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor.

- (b) If a Work Order is cancelled under this clause the Principal may itself, or engage others to, perform work similar to the work under the Work Order.

### 28.2 Payment upon termination for convenience

If a Work Order is cancelled under **clause 28.1**:

- (a) the Principal's Representative will assess the value of the work performed under the Work Order to the date of cancellation, evidencing the amount which would have been payable had the Work Order not been cancelled and had the Contractor been entitled to and made a payment claim on the date of cancellation;

- (b) the Principal must pay the Contractor:

- (i) the amount determined under clause 28.2(a) less any amounts that have been previously paid to the Contractor under clause 21; and
- (ii) the cost of materials for incorporation into the Works and reasonably ordered by the Contractor which the Contractor is liable to accept, but only if they will become the Principal's property upon payment; and

- (c) the Principal must promptly release and return all remaining security provided by the Contractor in respect of the cancelled Work Order.

## 29 Consequences of termination

The parties acknowledge that:

- (a) the sums payable under **clause 27** and **clause 28** will be in full and final satisfaction of all obligations of the Principal to the Contractor in relation to this Contract, the termination of this Contract, the cancellation of a Work Order and the performance of work under the Contract by the Contractor; and
- (b) all rights vested in the Principal by **clause 27** and **clause 28** are without prejudice to any other rights and remedies of the Principal.

## 30 Claims

- (a) This clause applies to all claims which may be made by the Contractor in relation to any matter or thing arising under this Contract or out of performance of the work under the Contract except for those under **clause 15**, **clause 21** and where there is an entitlement to an

extension to the Date for Practical Completion under **clause 17**.

- (b) The Contractor must:
- (i) within 28 days of the date upon which the Contractor could reasonably have become aware that there would be an adverse impact on the Contractor as a consequence of the events or circumstances on which the claim is based, provide the Principal's Representative with written notice of its intention to lodge a claim, giving details of the nature of the claim; and
  - (ii) within 28 days of the completion of the occurrence of the events or circumstances on which the claim is based, provide the Principal's Representative with a notice which contains detailed particulars of the claim sufficient to identify the matter at issue and to enable the Principal's Representative to understand the precise nature and content of the claim which includes:
    - (A) each item of claim and the basis for it;
    - (B) the clauses of this Contract and the documents upon which each item of claim is based;
    - (C) the Work Order to which the claim relates;
    - (D) if a direction of the Principal's Representative or any other person is relied upon, the date of the direction, who gave it, whether it was given orally or in writing, and the terms of the direction;
    - (E) if an act or omission of the Principal, the Principal's Representative or any employee or agent of the Principal is relied upon, the nature of the act or omission, the date of the act or omission, whether it was oral or in writing, and the particulars of the act or omission;
    - (F) the amounts (including particulars of those amounts) claimed in respect of each item or claim or if no amount is claimed, a statement to that effect; and
    - (G) any other decision sought in respect of the dispute.
- (c) Notices must be given in accordance with this **clause 30** whether or not the event or circumstance upon which the claim is based is continuing and whether or not the loss, expense or damage has crystallised or can be fully particularised. The details omitted must be provided within ten days of the day that they do crystallise or can be fully particularised.
- (d) Any claim which is not notified by the Contractor in accordance with this **clause 30** or, in the case of a claim for an extension to the Date for Practical Completion under **clause 17**, in accordance with **clause 17** is barred.

## 31 Disputes

### 31.1 Determination and Notice of Dispute

- (a) Subject to **clause 31.1(b)**, any dispute arising in relation to this Contract (**Dispute**) must be determined in accordance with this **clause 31**.
- (b) **Clause 31.1(a)** does not prevent either party from applying to the Supreme Court of Western Australia for urgent injunctive relief in relation to this Contract.
- (c) If a party alleges a Dispute has arisen it must give notice of that fact to the other party (**Notice of Dispute**).

### 31.2 Conference

Within 10 Business Days of service of a Notice of Dispute, the Principal's Representative and a senior representative of the Contractor must meet and, in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within 10 Business Days of the last date for the meeting of delegates under this clause (or any longer period agreed by the parties

in writing), the matter will be and is hereby referred to confidential arbitration.

## 31.3 Arbitration

- (a) The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth before one arbitrator. The arbitrator will be nominated by the President of the Resolution Institute, Australia and their successors upon the application of either party. The arbitration will be conducted in accordance with the Resolution Institute Arbitration Rules (as amended by the Resolution Institute from time to time).
- (b) To the extent permitted by law, the parties agree that:
  - (i) the powers conferred and restrictions imposed on a court by Part 1F *Civil Liability Act 2002* (WA) are not conferred or imposed on the arbitrators appointed under this **clause 31.3**; and
  - (ii) any such arbitrators will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act* (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this **clause 31.3**, have applied to any Dispute referred to arbitration.

## 32 Notices

### 32.1 General

A notice, demand, certification, consent, approval, waiver or other communication relating to this Contract:

- (a) must be in writing and in English;
- (b) must be addressed to the attention of the person identified in this Contract or, if the recipient has notified otherwise, then marked for attention in the last way notified; and
- (c) where **schedule 1** states that notices must be given by an electronic management system, the notice must be given by the electronic management system as set out in **schedule 1**.

### 32.2 How to give a communication

Unless **schedule 1** states that a notice must be given by an electronic management system, all notices may be given by being:

- (a) delivered at;
- (b) sent by prepaid post (airmail if appropriate) to;
- (c) sent by email to; or
- (d) given in any other way permitted by Law to, the address, or email (as applicable) of the addressee set out in Schedule 1 of this Contract or subsequently notified.

### 32.3 Particulars for delivery of notices

The particulars for delivery of notices are initially as set out in **schedule 1**. Each party may change its particulars for delivery of notices by notice to each other party.

### 32.4 Deemed receipt

- (a) All notices must be treated as given to and received by the party to whom it is addressed:
  - (i) If delivered by the electronic management system set out in **schedule 1**, at the time that the electronic management system generates a confirmation of the date and time sent;
  - (ii) if delivered, upon delivery, and otherwise on the next Business Day at the place of delivery;
  - (iii) if sent by prepaid post, three days after posting (or seven days after posting if sent to or from a place outside Australia;
  - (iv) if sent by email:
    - (A) at the time shown in the delivery confirmation report generated by the sender's email system; or
    - (B) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent (unless the sender receives a return email notification that the email was not delivered, undeliverable or similar) at the

time which is 12 hours from the time the email was sent.

- (b) Despite **clause 32.4(a)**, if a notice is received (or taken to be received) after 5.00pm in the place of receipt or on a non-Business Day, it is to be taken to be received at 9.00am on the next Business Day.

### 33 Taxes and customs duty

#### 33.1 Taxes

- (a) Unless otherwise expressly provided in the Contract, the Contractor must pay all taxes, charges and other payments including payroll tax, levies, duties (including customs duty) and assessments of every nature due in connection with the work under the Contract and the performance of the Contractor's other obligations under the Contract. The Contractor must indemnify the Principal from any liability for those taxes, charges and other payments which has arisen or may arise.
- (b) The Contractor warrants that it is not a foreign resident within the meaning of the *Taxation Administration Act 1953* (Cth).
- (c) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under this Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (d) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax, including as a result of the warranty provided in paragraph (b) being untrue at any time during the Term of this Contract.

#### 33.2 Customs clearance and Australian customs duty

- (a) Where any equipment, materials, plant or other items are to be imported into Australia by the Contractor:
- (i) subject to **clause 33.2(b)**, the party stated in **schedule 1** will pay any Australian customs duty that may be payable on the importation of those items; and
- (ii) the Contractor must co-operate with and provide reasonable assistance to the Principal in seeking exemptions from or reductions in any Australian customs duty (including under the Australian "Enhanced Project By-Law Scheme"), and if such exemptions or reductions are obtained, then to the extent (if any) that the Principal has already paid or reimbursed the Contractor the amount of the exemption or reduction, the Contractor must repay that amount to the Principal.
- (b) The Contractor must bear and pay for any Australian customs duty that may be payable in connection with the importation into Australia of:
- (i) any plant or equipment used in the performance of the work under the Contract; and
- (ii) the equipment, materials, plant, or other items required to repair, replace or rectify any loss, damage or defect that the Contractor is required to repair, replace or rectify at its cost.
- (c) Regardless of whether the Principal or the Contractor pays for Australian customs duty, the Contractor is responsible for handling and clearing through customs in all applicable jurisdictions (including Australia), all overseas sourced equipment, materials, plant, and other items that are to be supplied by the Contractor under this Contract.

### 34 GST

#### 34.1 Interpretation

- (a) Definitions  
In this clause:  
'GST' means GST within the meaning of the GST Act and includes penalties and interest.

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

- (b) Construction  
Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

#### 34.2 Recipient of supply to pay GST

Except where this Contract specifies otherwise, an amount payable by a party under this Contract in respect of a taxable supply by the other party represents the value of the supply or the net amount under **clause 34.3**. The recipient of the supply must, in addition to that amount and at the same time, pay to the Contractor the amount of GST payable in respect of the supply.

#### 34.3 Reimbursement of expenses

If this Contract requires a party to pay for, reimburse or indemnify against any expense or liability (**reimbursable expense**) incurred by the other party (**payee**) to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (**net amount**).

#### 34.4 Contractor to provide tax invoice

A party is not obliged, under **clause 34.2**, to pay an amount for GST in respect of a taxable supply to it, until given a valid tax invoice for the supply.

### 35 Financing co-operation

The Contractor:

- (a) acknowledges and agrees that:
- (i) the Principal may have entered into, or may be entering into, financing agreements for the purpose of financing the work under the Contract, the project for which the work under the Contract is being performed and/or part thereof;
- (ii) the Principal's financiers may appoint representatives and/or engineers to monitor the work under the Contract;
- (iii) such representatives and/or engineers have no authority to relieve the Contractor of any of its obligations or liabilities under the Contract, nor to increase, decrease or otherwise alter the Contractor's obligations under the Contract; and
- (iv) the financiers may require the Contractor to enter into a tripartite agreement with the Principal and the financiers' agent, the form and substance of which is acceptable to the financiers;
- (b) must comply with all reasonable requests from the Principal in connection with the requirements of the financiers; and
- (c) without limiting paragraph (b), must:
- (i) provide such information and documentation as may reasonably be required by the financiers;
- (ii) negotiate in good faith with the Principal and the financiers any amendments to this Contract that the financiers may require; and
- (iii) where required by the financiers, enter into a direct agreement with the Principal and the financiers' agent, the form and substance of which is acceptable to the financiers.

### 36 Personal Property Securities Act

#### 36.1 Interpretation

In this clause 36:

- (a) financing statement, proceeds and verification statement have the meanings given to them by the PPSA;
- (b) Collateral means the materials and equipment incorporated into the Works; and
- (c) PPSR means the Personal Property Securities Register established under section 147 of the PPSA.

#### 36.2 Security Interest

To secure all of its obligations under this Contract, the Contractor grants to the Principal a Security Interest in the Collateral.



### 36.3 Continuing Security

The Security Interest created under this clause:

- (a) will continue in the Collateral until title passes to the Principal pursuant to this Contract; and
- (b) attaches to any proceeds of the Collateral.

### 36.4 Registration

The Contractor acknowledges that the Principal is entitled to register a financing statement on the PPSR to perfect the Principal's Security Interest in the Collateral.

### 36.5 Assurances

The Contractor must do all things required by the Principal to:

- (a) ensure that the Principal's Security Interest is perfected, enforceable and has the highest priority possible under the PPSA;
- (b) ensure that the Principal has all information necessary to register a financing statement on the PPSR to perfect its Security Interest; and
- (c) enable the Principal to exercise its rights in connection with the Security Interest.

### 36.6 Restrictions

The Contractor must not:

- (a) grant, allow to exist or agree to any Security Interest in the Collateral other than the Security Interest created under this Contract; or
- (b) sell, lease or otherwise deal with the Collateral except in accordance with this Agreement.

### 36.7 Enforcement

The Principal may enforce its Security Interest in the Collateral and any proceeds immediately upon the occurrence of a default by the Contractor or a termination event described in clause 27 and the Contractor grants to the Principal a license to enter onto any premises of the Contractor for the purpose of enforcing the Security Interest.

### 36.8 Verification Statement

The Contractor waives its right to receive any notice under the PPSA (including the right to receive a verification statement in accordance with section 157 of the PPSA) unless the notice is required by the PPSA and the right to receive it cannot be waived by the Contractor, or otherwise excluded.

### 36.9 Confidentiality

The Principal and the Contractor each agree not to disclose:

- (a) information about the terms of this Contract;
  - (b) information about the obligations secured by any Security Interest under this Contract or the terms of payment or performance in respect of any obligation under this Contract at any particular time; and
  - (c) without limitation to the above, any information of the kind described in section 275(1) of the PPSA, including:
    - (i) information about this Contract including a copy of it;
    - (ii) information about the amount or the obligation secured by any Security Interest created by or under this Contract and the terms of such payment or performance at any time; or
    - (iii) information about Relevant Collateral at any time,
- except:
- (d) to its officers, employees, legal and other advisers and auditors;
  - (e) with the consent of the other party; or
  - (f) to the extent it is necessary for either party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.

## 37 General

### 37.1 Legal Costs

Except as expressly stated otherwise in this Contract, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Contract.

### 37.2 Assignment and novation

- (a) The Contractor must not assign or deal with any right under this document without the prior written consent of the Principal.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) The Principal may assign or deal with its interest under this document at any time by notice in writing to the Contractor. The Contractor must enter into a deed of novation if requested by the Principal in a form reasonably required by the Principal.

### 37.3 Amendment

This Contract may only be varied or replaced by a document duly executed by the parties.

### 37.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Contract does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 37.5 Rights cumulative

Except as expressly stated otherwise in this Contract, the rights of a party under this Contract are cumulative and are in addition to any other rights of that party.

### 37.6 Consents

Except as expressly stated otherwise in this Contract, a party may conditionally or unconditionally give or withhold any consent to be given under this Contract and is not obliged to give its reasons for doing so.

### 37.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Contract and to perform its obligations under it.

### 37.8 Governing law and jurisdiction

- (a) This Contract is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Subject to **clause 31**, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### 37.9 Liability

An obligation of two or more persons binds them separately and together.

### 37.10 Counterparts

This Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### 37.11 Relationship of parties

This Contract is not intended to create a partnership, joint venture or agency relationship between the parties.

### 37.12 Native Title

The Contractor shall deliver to the Principal an indigenous employment and business opportunities plan to the reasonable satisfaction of the Principal which identifies opportunities for indigenous people including the native title party.

### 37.13 Breach of other agreements

- (a) The Contractor acknowledges that any breach by it of the Contract may result in the Principal committing breaches of and being liable for losses, damages, costs and expenses under Project Documents.
- (b) The parties agree that those losses, damages, costs and expenses in **clause 37.13(a)** are within the contemplation of the parties as being the direct result of any breach by the Contractor of this Contract.

### 37.14 Construction

Unless expressed to the contrary, in this Contract:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;

- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' or 'including' means includes without limitation or including without limitation (as applicable);
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
  - (v) a right includes a benefit, remedy, discretion or power;
- (g) if the date on or by which any act must be done under this Contract is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of the event is excluded.
- (i) Headings do not affect the interpretation of this Contract.  
The special conditions (if any) set out in any schedule to this Contract form part of this Contract.
- (j) If there is any inconsistency or ambiguity between any special condition and any other provision of this Contract, the special condition prevails to the extent of the inconsistency.

# Schedule 1

## Contract Details

Clause No	Information Sought	Details
1, 17.1	Commencement Date	[Insert]
1	Documents which form part of the Contract	<ul style="list-style-type: none"> <li>This document (including schedules)</li> <li>Scope of Work</li> <li>Drawings</li> </ul> [Insert details of other documents which form part of the Contract] *Delete if not applicable
1	Contractor's Representative	Name [Insert Contractor's Representative name] Delivery Address [Insert Contractor's Representative delivery address] Postal address: [Insert Contractor's Representative's PO box details/Same as delivery address] Email address: [Insert Contractor's Representative email address]
1, 5.1(a)(iii)	Deed of Guarantee and Indemnity (definition of Legal Opinion)	Required/not required* [Insert name of guarantor who will be providing the Deed of Guarantee and Indemnity] *delete as appropriate
1, 17.1, 17.2	Expiry Date	[Insert]
1, 17.2	Further Term	[Insert]
1, 13.4	Latent Ground Condition	If nothing stated, there are no latent ground conditions
1	Principal's Representative	Name [Insert Principal's Representative: name]

Clause No	Information Sought	Details
		Delivery Address <b>[Insert Principal's Representative Delivery address]</b> Postal address: <b>[Insert Principal's Representative PO box details/Same as delivery address]</b> Email address: <b>[Insert Principal's Representative email address]</b>
1	Site	<b>[Insert details about Site]</b>
16(d) 17.5	Maximum rate for delay costs	<b>[Insert maximum rate for delay costs]</b>
12.2	Principal to supply flights and camp accommodation?	<b>Yes/No*</b> <b>*Delete whichever is not applicable</b>
12.3	Principal to supply fuel?	<b>Yes/No*</b> <b>*Delete whichever is not applicable</b>
17.2	Maximum number of Further Terms	<b>[Insert]</b>
20.1	Defects liability period	<b>[Insert duration after the Date of Practical Completion]</b> after the Date of Practical Completion
23.1(a)	Amount of public and product liability Insurance	<b>\$50,000,000</b> any one occurrence (in the aggregate with respect to products liability)
23.1(b)	Contract Works Insurance	limit of liability of not less than the full reinstatement or replacement value of the Works, together with costs of demolition and removal of debris and consultants' fees
23.1(c)	Amount of workers compensation insurance	\$50,000,000 in relation to any one occurrence and unlimited as to the number of occurrences
23.1(d)	Amount of motor vehicle insurance	\$30,000,000
23.1(e)	Amount of Contractor's plant, property and equipment insurance	<ul style="list-style-type: none"> <li>• Not less than market value of plant and equipment.</li> <li>• Legal liability for road registered plant and equipment not less than \$20,000,000 any one occurrence and unlimited as to the number of occurrences any one period of insurance.</li> </ul>

Clause No	Information Sought	Details
23.2(a)(i)	Professional indemnity insurance required  Amount	<i>[Insert whether required]</i>  <i>[If required, insert amount- \$10,000,000 any one claim and \$10,000,000 in the aggregate for all claims arising from the same event]</i>
32	Must Notices be sent by an electronic management system	<b>Yes/No*</b> <i>[If Yes, insert name of relevant electronic management system]</i> <b>*Delete whichever is not applicable</b>
33.2	Party to pay Australian customs duty	<b>Contractor / Principal*</b> <b>*Delete whichever is not applicable</b>
37.14	Special Conditions	<b>See Schedule 1A</b> <i>[if none write Not applicable]</i>

# Schedule 2

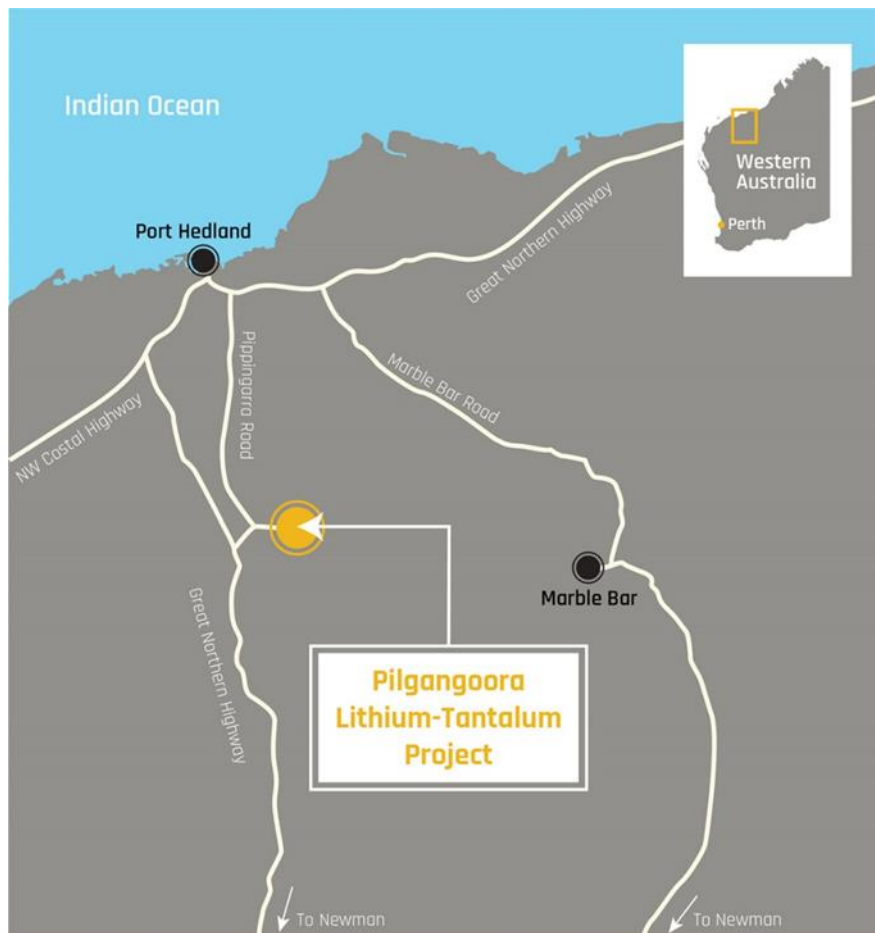
## Scope of Work

(clause 1)

### 1. BACKGROUND

The Principal (a wholly-owned subsidiary of Pilbara Minerals Limited) owns and operates the Pilgangoora Lithium-Tantalum Project (**Pilgan Project**), with a current resource of 226Mt and existing JORC compliant reserves of 108Mt. The resource is geographically situated approximately 120km South South-East of the major port of Port Hedland in Western Australia's Pilbara Region.

**Figure 1 – Project Location**



### 2. SCOPE OF WORK

The work under the Contract which may be completed by the Contractor through the Work Order process includes various operational and construction requirements to the Principal's Plants at Pilgangoora Project.

2.1 The Works may include, but are not limited to, the following:

- (a) non-process infrastructure including supply, fabrication and installation;
- (b) survey works;
- (c) trenching, miscellaneous civil works and detailed earthworks;

- (d) concreting works;
- (e) structural works;
- (f) underground and above ground piping, conduits, and cabling;
- (g) mechanical installation;
- (h) miscellaneous electrical and instrumentation works;
- (i) supply, procurement and transport of materials, prefabricated items and or equipment;
- (j) debottlenecking, stability, and redundancy related brownfield works as part of continued improvement to operational performance of the processing facility;
- (k) design works, if necessary; and
- (l) commissioning works as required.

**2.2** The provision of the following general services are excluded from this scope of work unless specifically stated in the Work Order:

- (a) bulk earthworks and Site drainage;
- (b) geotechnical investigations and interpretative analysis;
- (c) environmental and heritage clearance applications;
- (d) establishment of initial survey control points;
- (e) land use certificates;
- (f) control system programming; and
- (g) commissioning (unless otherwise stated).

### **3. DELIVERABLES AND DOCUMENTS**

The Principal's required deliverables and documents in respect of each Work Order issued under this Contract include but are not limited to the following:

- (a) Prior to mobilisation
  - baseline schedule;
  - documents submission schedule;
  - project execution plan;
  - construction management plan;
  - health, safety & environment management plan;
  - quality management plan;
  - site traffic management plan;
  - emergency management plan;
  - journey management plan;
  - human resources / industrial relations management plan;
  - inspection & test plans;
  - manufacturer's data report (MDR) index;
  - equipment datasheets;
  - weld procedure specifications;

- weld procedure qualification records; and
  - others, as required.
- (b) Prior to completion
- manufacturer's data report (MDR);
  - as-built drawings;
  - installation, operation and maintenance manual (IOM); and
  - others, as required.
- (c) Weekly report
- safety / incidents;
  - update of the baseline schedule;
  - progress s-curves;
  - progress photographs;
  - Work Order priced statement; and
  - others, as required.

The deliverables and documents requirement for the work under a Work Order will be defined in the relevant Work Order.

## 4. APPLICABLE STANDARDS

### 4.1 General

The Contractor shall perform the work under the Contract in accordance with the Principal's technical documents, applicable statutory requirements of federal, state and local authorities of Australia, and shall comply with the nominated codes, standards and referenced standards within the document. The hierarchy of the documents is listed below:

- (a) general arrangement drawings;
- (b) detailed drawings;
- (c) standard specifications; and
- (d) local, national and international standards.

Where there is a discrepancy or omission within the documents this shall be brought to the Principal's attention for clarification.

### 4.2 Policies and Procedures

The Contractor shall comply with all the Principal's guidelines, management plans, procedures, policies and standards listed in **Schedule 7** of the Contract.

### 4.3 Legislative and Regulatory Compliance

The Contractor must comply with the requirements of all government acts and regulations applicable to the work under the Contract, including but not limited to:

Item	Document Title
1	Work Health and Safety Act 2020 (WA)
2	Work Health and Safety (Mines) Regulations 2022 (WA)
3	Work Health and Safety (General) Regulations 2022 (WA).
4	Western Australia Mining Act 1978 (WA)



Item	Document Title
5	Environmental Protection Act 1986 (WA)
6	National Parks and Wildlife Act 1972 (WA)
7	Wildlife Conservation Act 1950 (WA)
8	Aboriginal Heritage Act 1972 (WA)
9	Worksafe Western Australia Commission: Code of Practice – Manual Handling Dec 2000
10	Machinery Safety Act 1974 (WA) and Regulations
11	Electricity Act 1945 (WA)
12	Electricity Act Regulations 1947 (WA) and Subsequent Amendment
13	Electricity (Licensing) Regulations 1991 (WA)
14	Office of Energy document 'Western Australia Electrical Requirements'
15	WA Electrical Requirements 1995
16	Dangerous Goods Safety Act 2004 (WA)
17	Dangerous Goods Safety (Explosives) Regulations 2007 (Explosives Regulations) WA

#### 4.4 Statutory Approval

The Principal will obtain high-level statutory approvals to facilitate work on the Project. The approvals will include:

- (a) mining proposal approval from the WA Department of Mines, Industry Regulation and Safety (DMIRS);
- (b) vegetation clearing via the mining proposal; and
- (c) groundwater abstraction (5C) licence.

The Contractor must obtain any other statutory and regulatory approvals deemed necessary to carry out and complete the Work Order Scope. These may include, but are not limited to;

- (a) building licence applications as required;
- (b) Department of Health applications as required; and
- (c) clearing and any other permits to work as required.

#### 4.5 Aboriginal Sites

The Contractor shall note it is an offence under Section 17 of the *Aboriginal Heritage Act 1972 (WA)* to excavate, damage, conceal or in any way alter an aboriginal site, unless permission to use the land containing it has been granted, in writing, under Section 18 of the Act.

In the event that any site or artefact is discovered during the performance of the Work Order work that may come under the scope of the *Aboriginal Heritage Act 1972 (WA)*, the Contractor must immediately cease work in the area and notify the Principal.

Known sites designated for protection shall be identified and fenced by others.

The Contractor must adhere to the state requirements for monitoring and clearing activities in accordance with the native title agreement.

# Schedule 3

## Rates for Calculation of Work Order Price and/or Valuation of Variations

(clause 16)

### 1 GENERAL

The purpose of this **Schedule 3** is to set out the method of calculation of each Work Order Price and/or valuation of Variations.

This **Schedule 3** does not determine the nature or extent of the Scope of Work and must be read in conjunction with the rest of the Contract.

The currency for accounting and payment of the contract sum detailed herein is Australian Dollars (AUD).

### 2 WORK ORDER PRICE

#### 2.1 Generally

Pursuant to clause 2.3(b)(iii) of the Contract, the Work Order Price must not exceed the sum calculated by applying the rates, prices and/or lump sums detailed in this **Schedule 3**.

All rates and prices are fixed and firm for the duration of the Contract and no fluctuations shall be permitted for any changes in any of the Contractor's costs, escalation or inclusions or any other reason, except as specifically provided in this Contract.

The Work Order Price is fully inclusive cost in respect of the Work Order work and performance of all the obligations set out in the Contract, and shall constitute full and complete compensation due to the Contractor for the Work Order work and all things necessary to complete the Work Order work, regardless of difficulty, access to and congestion to the workplace, location, height, elevation and depth, complexity of execution, hours worked or materials and equipment required.

#### 2.2 Schedule of Compensation

##### 2.2.1 Daywork

In the event the Principal approves and directs a Work Order on a daywork basis, the rates and prices contained in this Section 2.2.1 of **Schedule 3** will be applied.

The Contractor shall during the continuance of such Work Order deliver each day to the Principal two (2) copies of complete and exact lists stating names, occupation and time expended by all labour including equipment employed on such Work Order, herein referred to as **Daywork Sheet**.

One (1) copy of the Daywork Sheet will, if correct or when agreed, be signed by the Principal Representative and returned to the Contractor.

During the performance of a Work Order, the Contractor must submit to the Principal a weekly priced statement of the agreed Daywork Sheet summarising the labour, equipment, plant and/or materials used until the Work Order work under the Work Order are completed.

##### 2.2.1.1 Labour

The labour rates included in Table 3.1 are deemed to be fully inclusive rates and are applicable for the duration of the Contract and shall include all applicable costs arising from corporate overhead and profit together with all technical support, administration, clerical and secretarial services, head office charges and expenses, and establishment charges.

The labour rates shall include but not be limited to salaries, wages, bonuses, daily travelling allowances, payroll tax, superannuation guarantee levy, sick leave, annual leave, long service

leave, public holidays, medical benefits, all statutory charges, insurances, industrial levy, training and verification of competency requirements, subsistence, consumables, documentation requirements and the like.

Only the actual worked hours will be reimbursed for a Work Order as reflected in the Daywork Sheets. The labour rates are inclusive of overtime and apply to day shifts and all days worked including holidays.

The labour rates exclude accommodation, messing costs and flights.

**Table 3.1 – Labour Rates**

Item	Classification / Position / Trade	Normal Rate	Normal Rate Night Shift (A\$/hr)	Stand Down (A\$/hr)
		Day Shift (A\$/hr)		
1	Area Manager			
2	Senior Project Manager			
3	Project Manager			
4	Construction Manager			
5	Site Superintendent			
6	Project Engineer			
7	Planner / Scheduler			
8	Contracts Engineer			
9	Project Coordinator			
10	HSE Advisor			
11	HSE Manager			
12	QAQC Inspector			
13	Site Administrator			
14	Document Control			
15	Site Supervisor			
16	Material Controller			
17	Concreter			
18	Boilermaker			
19	Pipe Welder			
20	Structural Welder			
21	Electrician			
22	Electrical Leading Hand			
23	Electrical Supervisor			
24	Pipe Fitter			
25	Mechanical Fitter			
26	Instrument Fitter			
27	Scaffolder			

Item	Classification / Position / Trade	Normal Rate	Normal Rate Night Shift (A\$/hr)	Stand Down (A\$/hr)
		Day Shift (A\$/hr)		
28	Plant Operator			
29	Rigger			
30	Trade Assistant			
31	Driver			
32	Peggy			
33	Spotter			
34	Crane Operator <100t			
35	Rigger Leading Hand			
36	Metal Trades Lead/ Hand			

The all-inclusive rates provided in Table 3.2 shall apply should the Principal direct the Contractor to mobilise additional manpower subject to a Variation of a corresponding Work Order.

**Table 3.2 – Mobilisation Rate**

Item	Description	Mobilisation Rate (AUD)
1	Indirect Personnel (Management, Admin, HSE, Engineer)	
2	Direct Personnel (Supervisor, Labour, Trades)	

### 2.2.1.2 Plant and Equipment

The plant and equipment rates are set out in Table 3.3 of this Schedule 3. The use of any plant and equipment must be authorised in writing by the Principal prior to mobilisation to Site and the commencement of such use through the Work Order.

The plant and equipment rates are deemed to be fully inclusive rate and shall include but not be limited to all running costs, oil, grease, and any other consumables, insurances, spares, repairs, maintenance, depreciation, mobilisation and demobilisation costs and expenses, any other costs and expenses in any way connected with the plant and equipment use, profit, overheads and all other things of whatever nature required for the efficient and safe working of the plant.

The plant and equipment rates do not include any labour costs for plant operators or drivers, which shall be paid separately under the labour rates. Reasonable time for movement of plant to and from the place of operation, as determined by the Principal, will be paid for at normal time rates.

No reimbursement shall be made for downtime due to breakdown, maintenance or repair. Plant and equipment may only be reimbursed for the time it is required on Site, with 12 hours as the maximum hours that can be claimed per day, for the performance of the work under a Work Order. The 'Operating' hourly rates in Table 3.3 will apply only to the time where the plant and equipment is being utilised and the 'Standby' hourly rates in Table 3.3 will apply where the plant and equipment is not being utilised during the normal working hours (being the hours set out in Table 3.5 of this Schedule 3).

For clarity, plant and equipment that are on hire from a third-party, not owned by the Contractor, shall be charged on a cost plus basis, in accordance with section 2.2.1.3 of this Schedule 3, and the rates in Table 3.3 will not apply.

The Principal may issue an instruction to demobilise plant and equipment at any time (a ‘**Demobilisation Notice**’). Upon issuing a Demobilisation Notice, the Principal will only reimburse the Contractor for a maximum of five (5) further days in respect of all plant and equipment to be demobilised in accordance with the Demobilisation Notice, or the period for which the relevant plant and equipment remains on Site, whichever is less.

Fuel shall be free issued by the Principal.

**Table 3.3 – Plant and Equipment Rates**

Item	Plant and Equipment	Mob (AUD)	Demob (AUD)	*Daily Rate (AUD)	
				Operating	Standby
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

\*Note: To establish the ‘Operating’ and ‘Standby’ hourly rates in this section 2.2.1.2 of Schedule 3, divide the Daily Rates in Table 3.3 by 12 hours which is the maximum hours that can be claimed per day.

**2.2.1.3 Cost Plus Services**

Material purchase and or third-party services required for each Work Order will be paid for on the basis of the net quantities actually used in the performance of the Work Order and authorised by the Principal.

Payment will be based on the prices stated in the Work Order or if price is not stated in the Work Order, on evidence of purchase price, cost of transport where applicable, plus the percentage mark-up specified in Table 3.4.

For any material purchase and/or third-party services with a value likely to exceed AUD50,000, the Contractor shall submit a quotation with a minimum of three (3) suppliers where possible, including recommendation for the preferred supplier. Following approval of the recommendation by the Principal, the Contractor shall award the material purchase and or third-party services to the recommended supplier.

**Table 3.4 – Contractor’s Mark-up**

Item	Materials and or Third-Party Services Value (AUD)	Contractor’s Mark-up
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1	Any amount	
---	------------	--

### 2.2.2 Measured Works Unit Rates

The unit rates are firm and fixed for the duration of the Contract and shall include overheads and profit.

All materials required in the measured works shall be deemed to include for collection from designated storage area, transport, all necessary loading, lifting, hoisting, craneage, handling, multiple handling, transport, delivery and unloading and disposal of all packaging materials.

The work under a Work Order forming the measured portion of the Work Order Price is based on estimated quantities and subject to adjustment according to **clause 16** of the Contract Agreed terms and this Schedule 3.

The final measured portion of the Work Order Price will be determined by multiplying the final quantities and unit rates defined in the Work Order.

Applicable method of measurement will be defined in the Work Order.

Construction equipment costs shall exclude fuel.

### 2.2.3 Lump Sum

Where the Work Order instructed the Work to be executed in a Lump Sum, the amount is deemed fixed.

Any quantities and descriptions stated in the corresponding Work Order are for guidance only and it is the Contractor's responsibility to verify such quantities, work extent, and descriptions against the drawings and specifications. No claim shall be entertained pursuant to the Contractor's failure in this respect, and there shall be no adjustment to the fixed lump sum Work Order Price.

The Contractor must perform all work that is not specifically mentioned in the Work Order but can be reasonably inferred from the Work Order as being required for the proper performance of the Work Order as if that work was expressly mentioned in the Work Order, that price is deemed to be included in the fixed lump sum.

## 3 VARIATIONS

### 3.1 Generally

Any adjustment to a Work Order Price due to Variations will be administered in accordance with **clause 15** and **clause 16** of the Contract Agreed terms.

The Contractor shall comply with all obligations under the Contract in respect of the Variation.

The rates and prices shall apply equally to additions to and deletions from the Scope of Work defined in the Work Order.

### 3.2 Valuation

Valuing of Variations shall be either on Daywork, measured work or Lump Sum basis, whichever is applicable.

## 4 WORKING HOURS

Payment for labour, plant and equipment is made on the basis of time worked on the Work Order within the normal working hours. There shall be no work beyond the normal working hours except within the specific prior approval of the Principal.

The normal working hours are detailed in Table 3.5. Any deviation to the normal working hours shall be defined in the Work Order. The Principal at its sole discretion may alter the working hours depending on the Site operational requirements. The Contractor acknowledges and agrees that it will comply to such working hours changes.

The maximum hours that can be claimed within the normal working day, inclusive of any travel to/from the Site during fly in and fly out day, is 12 hours. No payment shall be made beyond the maximum daily 12 hours, not unless it has prior approval from the Principal.

**Table 3.5 – Normal Working Hours**

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	6:00 am	6:00 am	6:00 am	6:00 am	6:00 am	6:00 am	6:00 am
Finish	6:00 pm	6:00 pm	6:00 pm	6:00 pm	6:00 pm	6:00 pm	6:00 pm

## 5 STANDBY

Standby rates for labour, plant and equipment shall only be applicable if the Principal instructed and authorised work stoppages in accordance with **clause 17.5** and provided that the standby was not necessary because of an act, default or omission of the Contractor, in accordance with the below:

- a) Standby rates for labour are provided in Table 3.1 of this Schedule 3. Standby rates for labour do not include costs of overtime work and any premium. The Contractor will be entitled to claim standby rates for labour on the following basis:
  - i. If the Principal has directed the personnel to remain on Site during any period of suspension, and those personnel have remained on Site, the Contractor may claim standby rates for each day of suspension subject to sub-section (c) of this provision; or
  - ii. If the Principal has directed personnel to demobilise from Site and if the Contractor has an obligation to pay the relevant personnel during the suspension (whether direct or indirect labour), the Contractor may make a claim for standby rates, subject to sub-section (c) of this provision, in respect of such personnel until the date the Principal directs the Contractor to recommence works.
- b) The Contractor may claim standby rates for plant and equipment in accordance with Table 3.3 of this Schedule 3. Standby rates for plant and equipment do not include for running costs.
- c) Standby rates shall not be charged for the rest and travel time.

The maximum hours that can be claimed daily if a suspension occurs in accordance with **clause 17.5** is 8 hours.

Other than a claim for an extension to the Date for Practical Completion in accordance with **clause 17.9**, the standby rates and terms set out in this Schedule 3 are the Contractor's sole remedy for suspension and the Contractor is not entitled to make any other claim for any loss, cost or expense suffered in the event of a suspension.

## 6 BACKCHARGE

Camp accommodation, flights and fuel (herein referred to as Principal supplied items) shall be provided by the Principal in accordance with **Schedule 11** of the Contract. Each Work Order shall define the required cap for Principal supplied items. Any Principal supplied item requests in excess of the cap in a Work Order shall be subject to **Schedule 11** of the Contract and in the event the Contractor exceeds the Work Order defined Principal supplied items cap, the Contractor acknowledges and agrees to reimburse the Principal.

The backcharge process shall be administered under the provisions of **clause 15** and **clause 16** of the Contract.

For the purpose of backcharge, the applicable, all-inclusive, unit rates are detailed in Table 3.6 of this Schedule 3.

**Table 3.6 – Backcharge Unit Rates**

Item	Description	Unit	Rate (AUD)
1	Camp Accommodation	Manday	\$120.00
2	Flight – Perth to Port Hedland or any other airport as defined by the Principal (or reverse)	One-way	\$400.00
3	Flight – Perth to Port Hedland or any other airport as defined by the Principal	Return flight	\$800.00
4	No Show – Flight	Each person	\$400.00
5	Fuel	Litre	at cost
6	All other backcharges	Lot	at cost



# Schedule 4

## Approved Form of Unconditional Undertaking

(clause 5 - security)

### Details

Bank	## (ABN ##)
Principal	Pilgangoora Operations Pty Limited ACN [Insert]of [insert address]
Contractor	## (ABN ##) of ##
Agreement	The General Works Contract between the Principal and the Contractor dated ##
Amount	##

### Agreed terms

#### 1 Details

The terms defined in the Details section above apply when used in this undertaking.

#### 2 The undertaking

At the request of the Contractor and in consideration of the Principal accepting this undertaking by way of security to the Principal for the performance by the Contractor of its obligations under the Agreement, the Bank undertakes unconditionally and irrevocably to pay the Principal on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate of the Amount.

#### 3 Duration of undertaking

This undertaking is to continue until the first to occur of the following:

- (a) a written notification has been received from the Principal that such sum is no longer required by the Principal;
- (b) this undertaking is returned to the Bank; or
- (c) payment to the Principal by the Bank of the whole of the Amount.

#### 4 Payment to the Principal

- (a) The Bank must make payment of the Amount or any part or parts of the Amount to the Principal:
  - (i) immediately upon the Bank receiving at any place where the Bank carries on business a written demand from the Principal;
  - (ii) so that it is immediately available and freely transferable in Australian dollars clear of and without any deductions;
  - (iii) without reference by the Bank to the Contractor;

- (iv) despite any notice given to the Bank by the Contractor not to pay the Principal any part of the Amount; and
- (v) irrespective of the performance or non-performance by the Contractor or the Principal of the Agreement in any respect.

The Bank acknowledges its obligations under this undertaking constitute direct primary, irrevocable and unconditional obligations. The Bank further acknowledges its obligations under this undertaking will not be abated, suspended, abrogated, varied, discharged or otherwise prejudiced or affected by any matter or thing which, in the absence of this provision, would or might have that effect, except for a discharge or amendment expressly made or agreed to in writing by the Principal.

The Bank may at any time, without being required to do so, pay to the Principal the Amount less any amount or amounts it has previously paid under this undertaking and when it has done so the liability of the Bank under this undertaking will immediately cease and determine.

If two or more persons are named as the Principal, this undertaking takes effect for the benefit of them jointly and a demand under this undertaking by any one or more of them is deemed to be a demand by both or all of them jointly.

The Principal may assign this undertaking to any person and upon receipt of notification to the Bank in writing, the Bank undertakes to make payment claimed under this undertaking to the person specified in the notice which will constitute a full and valid discharge to the Bank in relation to the payment.

## **5 Governing law**

This unconditional undertaking is governed by and is to be construed in accordance with the laws of Western Australia.

**Executed** as a deed.

# Schedule 5

## Form of Deed of Guarantee and Indemnity

(clause 5.1(a)(iii))

### Date

### Parties

[Insert Guarantor Name, ACN] of [Insert Address] (Guarantor)

[Pilgangoora Operations Pty Limited] ACN [Insert] of [Insert Address] (Secured Party)

### Background

The Secured Party has entered into, or agreed to enter into, the Contract with the Contractor at the request of the Guarantor and subject to the condition that the Guarantor enters into this Deed.

## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this Deed:

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Perth, Western Australia.

**Contract** means the [Insert description of contract] between the Secured Party and the Contractor dated on or around the date of this Deed and any agreement or instrument created under it.

**Contractor** means the Contractor under the Contract.

**Insolvency** means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) the winding up, dissolution, provisional liquidation or administration of a corporation;
- (c) the appointment of a receiver, controller, administrator, provisional liquidator or liquidator to a corporation;
- (d) any arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of that person's creditors or members or a moratorium involving any of them; and
- (e) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

**Tax** means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Secured Party) and any interest, penalty, fine or expense relating to any of them.

## 1.2 Construction

Unless expressed to the contrary, in this Deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation; and
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

## 1.3 Headings

Headings do not affect the interpretation of this Deed.

## 2 Consideration

The Guarantor acknowledges that:

- (a) it enters into this Deed in consideration of the Secured Party entering into the Contract at the Guarantor’s request; and
- (b) the Secured Party relies on the guarantee and indemnity provided by this Deed in entering into the Contract.

## 3 Guarantee and indemnity

### 3.1 Guarantee and indemnity

The Guarantor:

- (a) unconditionally and irrevocably guarantees to the Secured Party on demand the due and punctual performance by the Contractor of its obligations under the Contract;
- (b) separately unconditionally and irrevocably indemnifies, and at all times keeps indemnified, the Secured Party against all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Secured Party in connection with a failure by the Contractor to duly and punctually perform its obligations or satisfy its liabilities under the Contract or as a result of the Contract being void, voidable or otherwise unenforceable; and
- (c) for the avoidance of doubt, acknowledges that the Contractor is jointly and severally liable to the Secured Party for the performance by all parties comprising the Contractor of all obligations under the Contract.

### 3.2 Separate and principal obligation

The indemnity contained in **clause 3.1(b)** is a separate and distinct obligation and will not be restrictively interpreted by reason of the guarantee set out in **clause 3.1(a)**. The Guarantor’s liability under **clause 3.1(b)** is that of *principal* debtor.

## 4 Liability unaffected by other events

### 4.1 Liability

The Guarantor shall not be discharged or released or excused from this Deed by:

- (a) any arrangement made between the Secured Party and the Contractor with or without the consent of the Guarantor;

- (b) any alteration, amendment or variation in the obligations assumed by the Contractor;
- (c) any forbearance, waiver or concession whether as to payment, time, performance or otherwise or failure or neglect to enforce any right or remedy against the Contractor;
- (d) any laches, acquiescence or other act, neglect, default, omission, fraud, duress, unconscionable conduct or mistake by the Secured Party, the Contractor or any other person;
- (e) the total, partial or conditional release or discharge of the Contractor's obligations or any security held for the performance of the Contractor's obligations;
- (f) the transfer, assignment or novation by any of the Secured Party or the Contractor of all or any of its rights or obligations under the Contract;
- (g) the occurrence of any substantial breach of the Contract applicable to the Contractor; or
- (h) any transaction or agreement between the Contractor and the Secured Party (including any collateral security) or any obligation owed by the Contractor to the Secured Party being void, voidable or otherwise unenforceable by the Secured Party or the Secured Party being otherwise prevented from requiring the Contractor to comply with its obligations.

#### 4.2 No abrogation

The Guarantor and the Secured Party agree that the guarantee and indemnity given under this Deed will not be abrogated, prejudiced or affected by the existence or occurrence of any of the following events or states of affairs:

- (a) any lack of capacity or legal disability on the part of the Secured Party or the Contractor;
- (b) the insolvency or winding up of the Secured Party or the Contractor; or
- (c) the Secured Party agreeing to an assignment of the Contractor's property to a trustee for the benefit of its creditors or to a scheme of arrangement or other form of compromise or composition with the Contractor's creditors.

#### 4.3 No prior enforcement

The Guarantor's obligations under this Deed are *principal* obligations and may be enforced against the Guarantor without the Secured Party first being required to exhaust any remedy it may have against the Contractor or enforce any security it may hold relating to the provisions of the Contract.

#### 4.4 Insolvency of Contractor

- (a) The Guarantor must not, until discharged from its obligations by the Secured Party in accordance with **clause 5**:
  - (i) directly or indirectly claim or receive the benefit of any distribution, dividend or payment; or
  - (ii) prove or claim for any distribution, dividend or payment in competition with the Secured Party,
 in the Insolvency of the Contractor so as to diminish any distribution, dividend or payment which, but for that claim or proof, the Secured Party would be entitled to receive.
- (b) The Guarantor appoints the Secured Party to be its attorney with authority to:
  - (i) prove, in the name of the Guarantor, for all for which the Contractor is liable to the Guarantor;

- (ii) retain and carry to a separate account and appropriate at the Secured Party's discretion any distribution, dividend or payment received thereunder towards performance of the Contract and neither the Secured Party nor any such attorney will be obliged to account to the Guarantor for any balance in such account the Guarantor has been discharged from its obligations by the Secured Party in accordance with **clause 5**; and
- (iii) do anything and exercise all rights which the Guarantor could lawfully do or exercise in such Insolvency.

## 5 Continuing guarantee and indemnity

- (a) This Deed:
  - (i) extends to cover the Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and
  - (ii) is a continuing guarantee and indemnity and, despite expiry or termination of the Contract, remains in full force and effect for only so long as the Contractor has any actual, contingent or prospective liability or obligation to the Secured Party under the Contract and until all of those liabilities or obligations have been fully discharged.
- (b) The Secured Party shall release the Guarantor from its obligations under this Deed once it is satisfied that all actual, contingent and prospective liabilities or obligations of the Contractor and the Guarantor have been fully discharged.

## 6 No inducements

The Guarantor acknowledges that it has not entered into this Deed as a result of, or by reason of, any promise, representation, warranty, inducement or information of any nature given to it, the Guarantor or the Contractor or to any person on their respective behalf by, or on behalf of, the Secured Party.

## 7 Limitation of liability

The obligations and liability of the Guarantor under this Deed shall not exceed the obligations and the aggregate liability of the Contractor under the Contract (assuming for the purposes of ascertaining the level of such liability that the Contract is valid, binding and enforceable in accordance with its terms).

## 8 Notices

A notice given under this Deed will be taken to be duly given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting; and
- (c) in the case of email:
  - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
  - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent (unless the sender receives a return email notification that the email was not delivered, undeliverable or similar) at the time which is 12 hours from the time the email was sent.

However, if the result is that a notice would be taken to be given or made on a day that is not a business day in the place to which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at 9.00am on the next business day in that place.

The Secured Party's details for notices are as follows:

Attention: [insert]

Address: [Insert]

Email: [Insert]

The Guarantor's details for notices are as follows:

Attention: [insert]

Address: [Insert]

Email: [Insert]

Each party may amend their notice details by providing written notice to the other party.

## 9 Marshalling

The Secured Party is not obliged to marshal or appropriate in favour of the Guarantor or to exercise, apply, perfect or recover any encumbrance that the Secured Party holds at any time or any funds or property that the Secured Party may be entitled to receive or have a claim on.

## 10 Void or voidable transactions

If a claim that a payment or transfer to the Secured Party under the Contract or this Deed is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Secured Party is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed as if the payment or transfer has not occurred.

## 11 The Guarantor's rights are suspended

As long as any obligation is required, or may be required, to be complied with in connection with this Deed, the Guarantor may not, without the Secured Party consent:

- (a) reduce its liability under this Deed by claiming that it or the Contractor or any other person has a right of set-off or counterclaim against the Secured Party;
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Contract or any other amount payable under this Deed;
- (c) claim an amount from the Contractor under a right of indemnity; or
- (d) claim an amount in relation to this guarantee in the liquidation, administration or insolvency of the Contractor.

## 12 Representations and warranties

### 12.1 Representations and warranties

The Guarantor represents and warrants to the Secured Party that:

- (a) it has full corporate power to enter into and give effect to this Deed and to complete the transactions contemplated by this Deed;

- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Deed;
- (c) at the date of this Deed, the execution, delivery and performance of this Deed by it does not contravene any contractual, legal or other obligations that apply to it;
- (d) on execution of this Deed, its obligations under this Deed will be valid, binding and enforceable;
- (e) its most recent audited accounts give a true and fair view of the matters with which they deal and there has been no subsequent change in its state of affairs which may have a material adverse effect on its financial condition, assets or business; and
- (f) the entry into and performance by it of its obligations under this Deed is for its commercial benefit and is in its commercial interests.

## 12.2 Continuing warranties and representations

Each warranty and representation set out in **clause 12.1** survives the execution of this Deed and is taken to be repeated with reference to the facts and circumstances existing on each day that the Secured Party makes a demand under this Deed.

## 13 GST

### 13.1 Definitions

- (a) Capitalised expressions which are not defined in this **clause 13** but which have a defined meaning in the GST Law have the same meaning in this **clause 13**.
- (b) In this **clause 13**:

**GST** means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed but does not include any interest or penalty, fine, or other charge imposed on the Secured Party after it has received the relevant guarantee or indemnity payment due under this Deed.

**GST Amount** means, in relation to a Payment, an amount arrived at by the multiplying the Payment (or the relevant part of a payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Payment** means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this **clause 13**); and
- (b) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

### 13.2 Payment exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;



- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Secured Party to the Guarantor, the GST Amount in respect of the Payment must be paid to the Secured Party as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the Secured Party will provide to the Guarantor a Tax Invoice, before any GST Amount is payable under this **clause 13**.

### **13.3 Adjustment**

If a payment (including a Payment as defined in this **clause 13**) to the Secured Party is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Secured Party, then the payment will be reduced by the amount of any input tax credit to which the Secured Party is entitled for that loss, cost or expense.

## **14 General**

### **14.1 Assignments and transfers**

- (a) The Guarantor acknowledges and agrees that the Secured Party may assign, novate or otherwise transfer all or any part of its rights under this Deed, where the Contract is assigned, novated or otherwise transferred to the same party.
- (b) The Guarantor must not assign, novate or otherwise transfer all or any part of its rights or obligations under this Deed without the prior written consent of the Secured Party provided that such consent will not be unreasonably withheld where the Secured Party is reasonably satisfied that the proposed transferee has the capacity to meet the obligations of the Guarantor under this Deed.

### **14.2 Costs**

The Guarantor agrees to pay or reimburse the Secured Party on demand for all costs, duties, fees, Taxes and charges which are payable in connection with this Deed or a payment or receipt or other transaction contemplated by it.

### **14.3 No merger**

This Deed is in addition to and is not in any way prejudiced by any collateral security, judgment, order or other thing and the Secured Party's rights under this Deed will not merge with any collateral security, judgment, order or other thing.

### **14.4 Payments**

The Guarantor agrees to make payments under this Deed:

- (a) on demand and at a place and in a manner reasonably required by the Secured Party;
- (b) in immediately available funds and without set-off, counter claim, or condition, unless required by law, deduction or withholding; and
- (c) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

### **14.5 No withholding**

- (a) If:
  - (i) the Guarantor is required to make a deduction or withholding in respect of any Tax from any payment it is required to make under this Deed; or
  - (ii) the Secured Party is required to pay any Tax in respect of any payment made by the Guarantor under this Deed,

then the Guarantor:

- (iii) indemnifies the Secured Party against that Tax; and
  - (iv) must pay to the Secured Party an additional amount which the Secured Party determines to be necessary to ensure that the Secured Party receives when due a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount it would have received had a deduction or withholding or payment of that Tax not been made.
- (b) If the Guarantor is required to make a deduction or withholding in respect of Tax from any payment to be made by it under this Deed, then:
- (i) the Guarantor must pay the amount deducted or withheld to the appropriate government agency as required by applicable law; and
  - (ii) the Guarantor must use reasonable endeavours to obtain official receipts or other documentation from that government agency and, within 10 Business Days after receipt, the Guarantor must deliver them to the Secured Party.

#### **14.6 Indemnities**

- (a) Each guarantee and indemnity in this Deed:
- (i) is a continuing obligation despite any intervening payment, settlement or other thing;
  - (ii) extends to all of the obligations of the Contractor and the Guarantor;
  - (iii) is separate and independent from the other obligations of the parties; and
  - (iv) survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before claiming under a guarantee or enforcing a right of indemnity conferred by this Deed.

#### **14.7 Severability**

Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

#### **14.8 Variation**

No variation of this Deed will be of any force or effect unless it is in writing and signed by the Guarantor and the Secured Party.

#### **14.9 Waivers**

- (a) A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

#### **14.10 Liability**

An obligation of two or more persons binds them separately and together.

#### **14.11 Rights cumulative**

The rights of the Secured Party under this Deed are cumulative and are in addition to any other of its rights.

#### **14.12 Further assurances**

The Guarantor must promptly execute all deeds and do all things that the Secured Party from time to time reasonably requires of the Guarantor to:

- (a) effect, perfect or complete the provisions of this Deed and any transaction contemplated by it; and
- (b) give to the Secured Party any collateral security agreed to be given by the Guarantor to the Secured Party.

#### **14.13 Survival**

Unless the Secured Party expressly agrees otherwise in writing, this Deed, and all obligations and liabilities under or arising out of this Deed, continue after termination or expiry of the Contract.

#### **14.14 Governing law and jurisdiction**

- (a) This Deed is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**Executed as a deed**

Executed by [Insert Guarantor name  
and ACN] )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed** by Pilgangoora Operations )  
Pty Limited ACN **[Insert]** )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

# Schedule 6

## Key Performance Indicators

(clause 2.8)

### 1 PERFORMANCE MEASUREMENT

Key performance Indicators (KPI's) will be set out in each of the Work Order Requests and the applicable Work Orders and be assessed on a case-by-case basis. KPI's will normally include but not be limited to the following criteria:

- a) Health, Safety and Environment (HSE);
- b) Cost;
- c) Schedule;
- d) Continuous improvement;
- e) Sustainability; and
- f) Stakeholder relationship / communication / site leadership.

### 2 KPI PERFORMANCE REVIEW MEETINGS

The Contractor must provide a performance measurement report (**Report**) to the Principal's Representative each month (or any other frequency as set by the Principal) setting out the Contractor's performance against the KPI'S.

This Report is intended as a joint management tool and will form a basis for performance management meetings (**KPI Meetings**) between the Principal and Contractor's Representatives.

The KPI's will be reviewed at each **KPI Meeting**. The frequency and timing of these KPI Meetings will be set by the Principal's Representative. KPI's may be amended from time to time at the sole discretion of the Principal.

Where KPI's are trending away from the performance management the Contractor must provide some comment as to why and recommended corrective actions for both the Principal and the Contractor as applicable.

# Schedule 7

## Policies

(clause 2.6(d))

At the date of this Contract, the Principal's Policies are as follows:

Item	Document Control	Policy
1	POL-ABC	Anti-Bribery & Corruption Policy
2	POL-COD	Code of Conduct
3	POL-COM	Community and Stakeholder Relations Policy
4	POL-DIV	Inclusion and Diversity Policy
5	POL-ENV	Environmental Policy
6	POL-MSL	Modern Slavery Policy
7	POL-SMD	Social Media Policy
8	POL-WHS	Health and Safety Policy
9	POL-WSB	Whistle-blower Policy
10	n/a	Pilgangoora Village Code of Conduct

The Principal may amend or replace the policies above or introduce new policies from time to time, and those amended, replacement or new policies will be treated as part of the Principal's Policies for the purposes of this Contract.

[Insert description of how the Contractor will receive copies of the Principal's policies and procedures – the Contractor **MUST** be provided copies of all relevant policies and procedures (i.e. PLS may provide copies as further Annexures to this contract or via email sent to Contractor's Representative or any other applicable method)]

The Contractor hereby acknowledges that it has received, read and understood and agrees to comply with the Principal's Policies.

# Schedule 8

## Industrial Relations

<b>Industrial Action</b>	Industrial action of any description including any action of the following kinds: <ul style="list-style-type: none"><li>(a) the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;</li><li>(b) a ban, limitation or restriction on the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors, or on the acceptance of or offering for work by such a person;</li><li>(c) a failure or refusal by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors to attend for work or to perform any work; or</li><li>(d) picketing or protest which interferes with the performance of the Contractor's obligations under this Contract, or hinders the mobilisation of personnel, equipment or supplies required for the Contractor's obligations under this Contract.</li></ul>
<b>Industrial Legislation</b>	Industrial legislation of the Commonwealth or State of Western Australia, including, but not limited to, the Fair Work Act, <i>the Industrial Relations Act 1979 (WA)</i> , the <i>Long Service Leave Act 1958 (WA)</i> , the <i>Minimum Conditions of Employment Act 1993 (WA)</i> , and any regulations made thereunder, or any legislation passed in replacement or substitution.
<b>Industrial Relations Issues</b>	Any issues arising out of or pertaining to the relationship between: <ul style="list-style-type: none"><li>(a) the Contractor, and the Contractor's or the Principal's employees, agents or subcontractors;</li><li>(b) any persons employed or engaged by the Contractor or the Contractor's agents or subcontractors;</li><li>(c) an industrial association (as that term is defined in section 12 of the <i>Fair Work Act</i>) and the persons referred to in paragraph (a) or (b);</li><li>(d) an officer, employee or agent of an industrial association and the persons referred to in paragraph (a) or (b); or</li><li>(e) any representatives of the persons in paragraph (b).</li></ul>

The Contractor must, and must ensure that its subcontractors, comply with all applicable Industrial Legislation.

The Contractor:

- (a) must assume sole responsibility for, and manage, all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under this Contract;

- (b) must keep the Principal's Representative regularly informed of any Industrial Relations Issues or Industrial Action which will, or is likely to, affect the performance of the Contractor's obligations under this Contract;
- (c) must immediately notify the Principal's Representative of:
  - (i) any Industrial Relations Issues or Industrial Action which causes the Contractor or a subcontractor engaged by the Contractor to suspend or cease carrying out all or any part of the Contractor's obligations under this Contract; and
  - (ii) what action or measures (including settlement) the Contractor has taken or proposes to take to overcome, or minimise the effects of, such Industrial Relations Issues or Industrial Action;
- (d) must, not less than 28 days before commencing any work on the Site, submit to the Principal for its approval, and have approved, an Employee Relations Management Plan. The Contractor must review and update its Employee Relations Management Plan at the times requested by the Principal and in any event no less than annually. The Contractor must implement and comply with and must ensure all its subcontractors implement and comply with the Employee Relations Management Plan;
- (e) must ensure that its subcontractors, not less than 28 days prior to the subcontractor performing any work on the Site, also submit to the Principal for its approval, and have approved, an Employee Relations Management Plan. The Contractor must ensure that the subcontractor implements and complies with the Employee Relations Management Plan; and
- (f) must not carry out any of the Contractor's obligations under this Contract on or about the Site until:
  - (i) it has enterprise agreements that apply (as that term is defined in section 12 of the *Fair Work Act*) to the Works with all Contractor employees, including those who will be working on the Site, all on terms acceptable to the Principal; and
  - (ii) it has ensured that its subcontractors have enterprise agreements that apply (as that term is defined in section 12 of the *Fair Work Act*) with all of the subcontractors employees, including those who will be working on Site, all on terms acceptable to the Principal.

The Principal has a right to direct the Contractor in relation to the management of all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under this Contract, including but not limited to with respect to the commencement and conduct of proceedings in any court or tribunal, and any negotiations and dealings with an industrial association (as that term is defined in section 12 of the *Fair Work Act*).



# Schedule 9

## Work Order Request

CONTRACTOR INFORMATION			
Work Order Request No. (obtain from Contract Administrator):	_____	Date issued to Contractor:	_____
Contract No:	_____ ('the Contract')	Response to Work Order Request Date:	_____
Contract title:	_____		
Contractor:	_____		
DETAILED SCOPE OF WORK			
<p><b>Details of Works to be undertaken:</b></p> <p>[Include or attach Scope of Work if necessary]</p> <p>[Consider CDRL requirements]</p> <p>[Applicable drawings]</p> <p><b>Details of Site:</b></p> <p>[As prescribed in the Works]</p> <p><b>Key Performance Indicators (KPI's) as per Schedule 6 of the Contract:</b></p> <p>[Individually assessed as per separate Work Order]</p>			
DETAILS (to be completed by the Principal)			
Date for Works to commence:	_____	Date for Practical Completion (if applicable):	_____
Daily rate of liquidated damages (if applicable):	\$ _____ per day	Maximum amount of liquidated damages (if applicable)	[Insert]
Time for payment claims	[include either – last day of each calendar month or milestone payments]		
List of Principal Supplied Materials (if applicable):	_____	Defects Liability Period (if applicable):	[Insert duration after the Date of Practical Completion] after the Date of Practical Completion
Professional Indemnity Insurance Required	[YES / NO] [Insert value or N/A]	Maximum rate for delay costs	\$ _____ per day

<b>Approved Subcontractor/s:</b>	[Insert details or N/A]	<b>Key Personnel:</b>	[Insert names or N/A]
<b>Unconditional Undertaking (if applicable):</b>	[Insert value of bank guarantee]	<b>Retention (if applicable):</b>	[[10% of each monthly payment to a maximum of (insert a dollar figure as there is no contract sum as such)]]

**THE CONTRACTOR SHALL PROVIDE THE PRINCIPAL WITH THE FOLLOWING**

<b>Contractor's price to carry out the work:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Detailed breakdown of price (based on the rates/prices in schedule 3):</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Diesel fuel forecast (Fuel Histogram):</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Man-Power Histogram:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**DOCUMENTS AND DELIVERABLES**

[Requirements to be defined by Principal in the Work Order Request]

- Contract requirements/ Contractor's obligations
1. The Contractor's price to carry out the work may not exceed the sum calculated by using the rates and prices in Schedule 3 of the Contract.
  2. The Contractor must not perform any work in relation to the Work Order Request unless and until it receives a Work Order, if work is urgent, the Principal will instruct the Contractor to proceed under clause 2.5.
  3. The Work Order will set out the final price for the work.
  4. If the Contractor is not required to mobilise to or demobilise from Site due to it already being mobilised to Site in relation to previous work, or work under this Work Request, the amount for mobilisation or demobilisation as applicable will not be paid by the Principal.
  5. No other written document, including any provision by the Contractor of any terms and conditions, will have any contractual effect.

# Schedule 10

## Work Order

CONTRACTOR INFORMATION			
Work Order (WO) No. (obtain from Contract Administrator):		Date issued to Contractor:	
Contract No:	('the Contract')		
Contract title:			
Contractor:			
DETAILED SCOPE OF WORK			
<b>Details of Works to be undertaken:</b> [Include or attach Scope of Work if necessary] [CDRL requirements] [Applicable drawings]			
<b>Details of Site:</b> [Insert]			
<b>Key Performance Indicators (KPI's) as per Schedule 6 of the Contract:</b> [Individually assessed as per separate Work Order]			
DETAILS (to be completed by the Principal)			
Date for Works to commence:		Date for Practical Completion (if applicable):	
Daily rate of liquidated damages (if applicable):	\$      per day	Maximum amount of liquidated damages (if applicable)	
<b>Time for payment claims</b>	[include either – last day of each calendar month or milestone payments]		
List of Principal Supplied Materials (if applicable):		Defects Liability Period (if applicable):	[Insert duration after the Date of Practical Completion after the Date of Practical Completion]
Professional Indemnity Insurance Required	[YES / NO] [Insert value or N/A]	Maximum rate for delay costs	\$      per day
Approved Subcontractor/s:	[Insert details or N/A]	Key Personnel:	[Insert names or N/A]

Unconditional Undertaking	[Insert value or N/A]	Amount which may be retained	[10% of each payment certificate up to a maximum of # or N/A]
<b>PRICE</b>			
[Insert price for Works and, if relevant, breakdown into lump sums and rates in accordance with Schedule 3]	Work Order Price	Lump sum	<input type="checkbox"/>
		Rates	<input type="checkbox"/>
		Lump Sum and rates	<input type="checkbox"/>
<b>DOCUMENTS AND DELIVERABLES</b>			
[Requirements defined by Principal in the Work Order Request]			
Diesel fuel forecast (Fuel Histogram):	<input type="checkbox"/> Yes <input type="checkbox"/> No	Manpower Histogram:	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Contract requirements/ Contractor's obligations:</p> <ol style="list-style-type: none"> <li>The Works shall be performed in accordance with the Contract and this Work Order.</li> <li>No other written document, including any provision by the Contractor of any terms and conditions, will have any contractual effect.</li> </ol>			

**[Insert applicable execution clause in accordance with Company policies]**

# Schedule 11

## Camp accommodation, flights and fuel

(clauses 12.2 and 12.3)

### Part 1: Camp accommodation and flights

- (a) For the purposes of Part 1 of this **schedule 11**, Camp Accommodation means:
- (i) a reasonable standard of accommodation, breakfast, crib lunch and evening meal and all reasonable ancillary or related services including messing, servicing of the rooms, either at the accommodation camp on the Site (if applicable) or such other reasonable location determined by the Principal; and
  - (ii) return flights between Perth and Port Hedland, or other airport as defined by the Principal.
- but excludes all transport other than return flights between Perth and Port Hedland (including, without limitation, other airports, interstate and overseas flights) (**Other Transport**).
- (b) Subject to **paragraph (e)** of Part 1 of this **schedule 11**, the Principal agrees to provide the Camp Accommodation free of charge to the Contractor for the Contractor's personnel who are necessarily involved in performing the Works, provided that:
- (i) the Contractor is not entitled to Camp Accommodation which falls outside that set out in the relevant Man-Power Histogram provided by the Contractor to the Principal in respect of the relevant work under a Work Order;
  - (ii) the Contractor's personnel comply with any rules and policies and terms and conditions as the Principal may from time to time decide in relation to the Camp Accommodation, including the Principal's accommodation rules;
  - (iii) all occupants of the Principal's accommodation or provided accommodation that are Contractor's personnel comply with the Principal's relevant lease or occupancy documents;
  - (iv) the Principal may, at the Contractor's cost, evict or refuse to accommodate any person whose conduct is, in the sole discretion of the Principal, inappropriate, or whose behaviour is such as to make their continued presence undesirable; and
  - (v) the Contractor will make good any damage to the Principal supplied accommodation beyond normal wear and tear, or pay the Principal for the damage caused, and the Principal may claim the cost as a debt due from the Contractor to the Principal.
- (c) If the Contractor requires Camp Accommodation above that set out in the Man-Power Histogram in respect of any work under a Work Order, the Contractor must make a request to the Principal in writing for the extra Camp Accommodation immediately (**Extra Room Request**).
- (d) The Principal may, at its absolute discretion, agree to provide all or any such Camp Accommodation in an Extra Room Request. If the Principal rejects all or any part of an Extra Room Request, the Contractor will be liable for all costs, delays and other risks arising from or in connection with the rejection and cannot make any claims against the Principal in connection with such rejection.
- (e) The Principal may charge the Contractor under paragraph (f) of Part 1 of this Schedule 11

:

- (i) for any Camp Accommodation provided as a result of an Extra Room Request;
  - (ii) if the Contractor or its subcontractors book(s) any Camp Accommodation with the Principal under Part 1 of this **schedule 11**, but does not utilise the relevant service, unless the reason for the failure to utilise the service is approved in writing by the Principal as a Variation, or to mitigate a delay for which the Contractor would be entitled to claim delay costs under the Contract; and
  - (iii) for any Other Transport costs which in some way accrue to the Principal.
- (e) The fees which the Principal may charge under **paragraph (e)** of Part 1 of this **schedule 11**, and which are recoverable from the Contractor as a debt due from the Contractor to the Principal, are as follows:
- (i) accommodation = daily rate for accommodation+ messing+ transport via bus to Site at direct cost + 20%;
  - (ii) flights = cost per round trip flight from Perth/Site or vice versa at direct cost + 20%; and
  - (iii) Other Transport = direct cost + 20%.

## **Part 2: Fuel**

- (a) Where directed by the Principal's Representative from time to time, the Contractor must provide to the Principal for approval a monthly rolling forecast of its requirements for diesel fuel for its plant and equipment necessary for performing the Works (**Fuel Histogram**). The Contractor must provide any other information or breakdown that the Principal requires so that the Principal can identify how the diesel fuel is to be used by the Contractor including the relationship between the estimated fuel usage and the Works to which that usage relates.
- (b) Where stipulated in the applicable Work Order, the Principal shall supply to the Contractor diesel fuel, at no cost, to be collected by the Contractor from the Principal's designated fuel farm on Site for use by the Contractor in operating its plant and equipment used in performing the Works, but only up to the volume of diesel fuel nominated in the Contractor's current Fuel Histogram and approved by the Principal. If the Contractor requires any diesel fuel in excess of this volume, it must obtain the written approval of the Principal and the Principal may charge the Contractor for this diesel fuel at a price to be determined by the Principal.
- (c) The Contractor acknowledges and agrees that it will maintain detailed records regarding all diesel fuel supplied by the Principal to the Contractor including records which show that all diesel fuel supplied was used by the Contractor in the performance of the Works. The Principal has a right to audit the Contractor's records to verify that all diesel fuel supplied by the Principal was used in the performance of the Works.

# Schedule 12

## Native Title Key Obligations

(clause 37.13)

The Contractor must comply with the following obligations in respect of the Native Title Agreement in performing this Contract:

Item	Detail
<b>Recognition of the Native Title Party</b>	The Contractor must conduct themselves in a way that avoids or minimises disturbance or damage to Aboriginal Sites, complies with the Law and respects the heritage and culture of the Native Title Party.
<b>Contracting and Employment</b>	<p>The Njamal Contractors are to be recognised as an Approved Subcontractor.</p> <p>The Contractor must demonstrate that it has contacted the Native Title Party (through its authorised agent who at the date of the native title agreement is Indigenous Services Pty Ltd (ACN 610 924 840)) and give the Njamal Contractors who meet the relevant requirements of any tender for the works the opportunity to participate in the tender process for the works.</p> <p>The Contractor shall deliver to the Principal an indigenous employment and business opportunities plan to the reasonable satisfaction of the Principal which identifies opportunities for indigenous people including primarily the Native Title Party. If the Contractor is a permanent on-Site contractor, it shall adopt and implement policies and strategies which endeavour to maximise direct contracting opportunities for the Njamal Contractors.</p> <p>The Contractor acknowledges the following obligations of the Principal in respect of the Native Title Agreement:</p> <ul style="list-style-type: none"> <li>(a) The Principal must give the Native Title Party preliminary written notice of any upcoming tenders for contracts or work packages relating to the construction and operation of the Project.</li> <li>(b) If requested by a Njamal Contractor, the Principal will introduce that Njamal Contractor to the Principal's existing contractors and tenderers.</li> <li>(c) The Principal must give preference to Native Title Party endorsed tenderers if they can demonstrate they meet the requirements of the tender and contract at least as well as any other tenderer and are priced competitively.</li> <li>(d) The Principal shall view favourably and where possible actively encourage commercially competitive and genuine joint</li> </ul>

	ventures or partnering charters with Native Title Party contractors.
<b>Cultural Heritage</b>	<p>If the Contractor finds an Aboriginal Object it shall:</p> <ul style="list-style-type: none"> <li>(a) stop work;</li> <li>(b) immediately report to the Principal the location of the Aboriginal Object; and</li> <li>(c) comply with the requirements of any applicable Law or direction by the Principal.</li> </ul>
<b>Cross Cultural Awareness</b>	The Contractor must comply with the obligations set out in “ <b>Annexure 1: Cross Cultural Awareness Protocol</b> ” to the extent they relate to the Contract.
<b>Environmental Protection</b>	<p>Where applicable, the Contractor shall provide the Principal with a copy of:</p> <ul style="list-style-type: none"> <li>(a) every application for an Environmental Approval;</li> <li>(b) all Environmental Approvals it obtains; and</li> <li>(c) any document the Contractor is required to prepare pursuant to an Environmental Approval.</li> </ul>
<b>Direction by the Principal</b>	The Contractor must comply with any reasonable direction made by the Principal which is expressly issued with respect to compliance with the Native Title Agreement.
<b>Relevant defined terms</b>	<p><b>Aboriginal Object</b> means:</p> <ul style="list-style-type: none"> <li>(a) any natural or created object of spiritual, sacred, ritual or ceremonial importance to persons of Aboriginal descent, or which is or was used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people past or present; or</li> <li>(b) any natural or created object of ethnographical, archaeological or other special national or local interest, or of outstanding aesthetic value.</li> </ul> <p><b>Aboriginal Site</b> means land or waters which are of cultural, social, or spiritual significance to Aboriginal persons traditionally responsible for that land or those waters, and includes:</p> <ul style="list-style-type: none"> <li>(a) any “Aboriginal Site” as defined in the Aboriginal Heritage Act; or</li> <li>(b) any “Significant Aboriginal Area” or “Significant Aboriginal Object” as defined in the Federal Heritage Act;</li> </ul> <p>whether recorded or not.</p> <p><b>Claim</b> means the Njamal claimant applications (Federal Court numbers WAD6028/1998 and WAD6003/2000), as amended from</p>



	<p>time to time and also includes the following if they cover any part of the Agreement area:</p> <ul style="list-style-type: none"><li>(a) any replacement claim, and</li><li>(b) any combination of the Claim with any other native title claim.</li></ul> <p><b>Environmental Approval</b> means any approval that relates to Mining Operations (as defined in the <i>Mining Act 1978</i>) in the Agreement area under the <i>Environmental Protection Act 1986</i> (WA), a permit or authority under the <i>Rights in Water and Irrigation Act 1914</i> (WA), approvals under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth), or other approval, licence, authority or permit under State or Commonwealth statutes which provide for the protection of the environment or regulation of pollution, waste, discharge or impact on the environment.</p> <p><b>Native Title Party</b> means, from time to time:</p> <ul style="list-style-type: none"><li>(a) subject to paragraphs (b) and (c) below, all of the persons who it is claimed have Native Title in the Claim area, as identified in the Claim;</li><li>(b) in the event a determination is made in respect of the Claim that Native Title exists in any part of the Claim area, the persons or group of persons holding that Native Title, as identified in the determination; or</li><li>(c) in the event that the Claim no longer exists because it is withdrawn, dismissed, or a determination is made that that no Native Title exists in the Claim area, then the persons who it was claimed had Native Title in the Claim area, as identified in the Claim as it was immediately before the dismissal, withdrawal or determination.</li></ul>
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## **ANNEXURE 1: CROSS-CULTURAL AWARENESS PROTOCOL**

### **1 ACTIVITIES NOT TO AFFECT CULTURAL WELL-BEING**

The Principal will use its best endeavours to ensure that the conduct of the Project by the Principal (including its employees and contractors) will not adversely affect the social and cultural well-being of the Native Title Party.

### **2 PURPOSE OF CROSS-CULTURAL AWARENESS PROGRAM**

The purpose of the cross-cultural awareness program is to ensure that the Project is an inclusive and welcoming workplace for Indigenous people. The cross-cultural awareness program will include the presentation of cross-cultural workshops that provide information about the Native Title Party and their interests in the Agreement Area (Cross-Cultural Workshops).

### **3 WORKERS TO ATTEND A CROSS-CULTURAL WORKSHOP**

All workers on site for longer than 1 week who are involved with the Project or the Principal's other activities in the Agreement area (regardless of their status as Principal employees or contractors, or workers for another party who is providing services to the {Principal}) must attend a Cross-Cultural Workshop.

# Schedule 13

## Key Obligations of the Principal under Pastoral Access and Compensation Deed

(clause 37.13)

Item	Detail
<b>Use of Affected Area</b>	The Principal will ensure that Shared Roads are appropriately sign posted with applicable UHF channels and instructions for their safe use.
<b>Principal's Covenants</b>	<p>The Principal covenants with the Pastoralist that it will:</p> <ul style="list-style-type: none"> <li>(a) comply with the provisions of the Mining Act and any other legislation which may be applicable to its activities on the Tenements, or otherwise in respect of, the Affected Area;</li> <li>(b) ensure all of its activities on the Affected Area are undertaken with due care and diligence and in accordance with good industry practice;</li> <li>(c) ensure its employees, agents and contractors use and only undertake such activities on the Affected Area as are legally permissible for the Principal pursuant to the Tenements;</li> <li>(d) ensure its employees, agents and contractors entering onto the Pastoral Lease are given an induction which includes notification of the obligations set out in the deed as well the general operations of the Pastoral Lease, any specific restrictions that might apply (for example, during mustering times), and any areas that are not to be accessed (being areas outside the Affected Area);</li> <li>(e) ensure all of its vehicles entering onto the Pastoral Lease are fitted with UHF radios;</li> <li>(f) inform, as soon as practicable, the Pastoralist of any incident of a vehicle striking any animal on the Pastoral Lease;</li> <li>(g) subject to compliance with the directions of the Mine Manager, allow the Pastoralist and its Permitted Persons to continue to enter and pass through or over the Affected Area at all reasonable times, together with any vehicles, machinery or equipment which are required by the Pastoralist;</li> <li>(h) conduct its activities so as not to unreasonably prevent, interfere or impede with any access or use of the Affected Area by the Pastoralist as is legally permissible for the Pastoralist to conduct pursuant to the provisions of the Pastoral Lease;</li> <li>(i) use all reasonable endeavours to minimise interference with the activities conducted or propose to be conducted by the Pastoralist and its Permitted Persons on or adjacent to the Affected Area;</li> <li>(j) use all reasonable endeavours to avoid doing anything which will or may cause the Pastoralist to suffer any loss, cost or expense in relation to any performance or security bonds lodged in respect of the Pastoral Lease from time to time;</li> <li>(k) consult with the Pastoralist with respect to the rehabilitation and revegetation of the Affected Area and, unless otherwise agreed by the</li> </ul>

Item	Detail
	<p>Pastoralist, rehabilitate and revegetate such area to the reasonable satisfaction of the Department of Mines and Petroleum;</p> <p>(l) discuss with the Pastoralist the location of any proposed Infrastructure that will have the effect of depriving the Pastoralist of access to any area of the Pastoral Lease;</p> <p>(m) conduct its activities on the Pastoral Lease in accordance with the Code of Conduct for Mineral Exploration on Pastoral Leases published by the Pastoralists and Graziers' Association of WA and the Chamber of Minerals and Energy of Western Australia;</p> <p>(n) if requested by the Pastoralist, and subject to the operations of the Principal and the Pastoralist complying with all directions issued by the Mine Manager, provide access to other tracks, created and/ or maintained by the Principal pursuant to its granted tenements, as required from time to time on the same terms and conditions as the deed, including providing long-term access around the waste dump and tailings storage facility if these facilities block the current tracks being used by the Pastoralist and its Permitted Persons pursuant to the party's rights;</p> <p>(o) if requested by the Pastoralist, erect at the Principal's cost, suitable stock-proof fencing around any dams constructed and used by the Principal on the Affected Area to restrict access by cattle;</p> <p>(p) promptly, at the time of construction, erect suitable stock proof fencing and grids (where reasonably required) around the mine camp, airstrip and any water storage facility, spray field or areas where sprinklers are used so as to prevent access by cattle;</p> <p>(q) promptly erect suitable stock proof fencing around mine pits on the Pastoral Lease that are no longer in use to prevent access by cattle;</p> <p>(r) immediately notify the Pastoralist, in a manner to be determined by the Pastoralist, of every incident of a vehicle striking cattle and provide a quarterly report to the Pastoralist of all cattle strikes;</p> <p>(s) ensure all roads used by the Principal or its Permitted Persons when entering onto the Pastoral Lease, whether from outside of the Pastoral Lease or when exiting the mining camp area, are signposted to notify users that they are entering onto the Pastoral Lease and including speed limits, road rules, call up points and any other relevant requirements from time to time;</p> <p>(t) ensure that all roads exiting the Affected Area onto the Pastoral Lease are signposted with a sign notifying the road user that they are not to proceed unless authorized to do so;</p> <p>(u) ensure all mine roads are signposted at all points of access to notify all Pastoralist Permitted Persons that they are entering onto a mine road;</p> <p>(v) ensure all inductions carried out by the Principal for all Permitted Persons include instructions as to the general day to day running of the Pastoral Lease, mustering and any restrictions that apply to activities on the Pastoral Lease;</p> <p>(w) permit the Pastoralist to access and take water from the Principal's water points, for its own pastoral purposes only;</p> <p>(x) permit the Pastoralist to access and take water from the Principal's water points for the purpose of repairing any road on the Pastoral Lease; and</p>

Item	Detail
	(y) provide access to its camp and services, as required, to assist with any emergency situation that arises on the Pastoral Lease.
<b>Relevant Defined Terms</b>	<p><b>Affected Area</b> means the area of the Tenements which encroaches or will, when the Tenements are granted, encroach on the Pastoral Lease.</p> <p><b>Infrastructure</b> means any excavation or construction including construction of roads and all or any other facilities lawfully constructed on the Affected Area consistent with the purposes applied for.</p> <p><b>Mine Manager</b> means any person from time to time appointed by the Principal as a registered manager in accordance with the <i>Mines Safety and Inspection Act 1994</i> (WA).</p> <p><b>Mining Act</b> means the <i>Mining Act 1978</i> (WA).</p> <p><b>Mining Activities</b> means Mining Operations (as defined under the Mining Act) to build and operate a mine on the Affected Area of a size and nature disclosed in the Feasibility Studies released by the Principal to the Australian Securities Exchange on 20 September 2016, which includes operations associated with the exploration for and extraction of minerals including construction, development and operations of a mine and all acts incident or conducive to any such operations and purposes including, for the avoidance of doubt, all mine closure and rehabilitation activities</p> <p><b>Pastoral Lease</b> means Pastoral Lease N50365 Wallareenya and, as applicable, includes the land the subject of this lease.</p> <p><b>Permitted Persons</b> means a party's representatives, employees, lessees, sublessees, licensees, agents, workmen, contractors and invitees.</p> <p><b>Shared Roads</b> means any shared road used by both parties, in accordance with the parties rights, on the Affected Area.</p> <p><b>Tenements</b> means Miscellaneous Licences 45/388 and 45/396 45/402, 45/403, 45/411, 45/413, 45/414, and 45/417 and Mining Lease 45/1256.</p>



# Execution

**Executed** as a deed.

**Executed by Pilgangoora Operations Pty Limited** ACN [Insert] in accordance with s127 of the *Corporations Act 2001*

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Signature of Director

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Name of Director in full

**Executed by [Contractor's Name and ABN]** in accordance with s127 of the *Corporations Act 2001*

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Signature of Director

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Name of Director in full

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Signature of Secretary/other Director

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Name of Secretary/other Director in full

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Signature of Secretary/other Director

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Name of Secretary/other Director in full