



Government of **Western Australia**  
Department of **Finance**

# **SERVICE ALLIANCE 2012**

# **GENERAL CONDITIONS OF CONTRACT**

**November 2021**

## AMENDMENTS LOG

No.	Clause	Amendment	Version Date
1	A.1	Updated definition of 'Date of Practical Completion' Included definition of term 'Event of Default'	July 2021
	A.15 and subclauses	Updated payments and invoices clause	
	A.18	Updated clause to include phoenix entities	
	A.19(d)	Updated dispute resolution clause regarding arbitration	
	A.20	Inclusion of new clause, Termination	
	A.21.4 and subclauses	Inclusion of new clause, COVID-19	
	A.22 and subclauses	Inclusion of new clauses relating to Contractor Performance	
	A.26.3.2	Additional clause regarding new criminal screening for access to school premises	
2	Whole document	Formatting and renumbering through entire document Terminology updated throughout to align with the WA Procurement Rules and other contract suites	November 2021
	A.1	Updated title to Definitions (Previously Interpretation) Updated definition of 'Superintendent' Included definition of terms 'Business Day', 'Maintenance Advice Form', 'Maintenance Supplier Invoicing Portal', 'Site', 'Superintendent's Representative'	
	A.12	Inclusion of new clause, Shared Access and Possession of Site	
	A.13	Inclusion of new clause, Exclusive Access and Possession of Site	
	A.17.5.2 and 17.5.3	Inclusion of new clause relating to use of the Maintenance Supplier Invoicing Portal	
	A.17.5.4	Inclusion of new clause relating to maximum mark up on subcontractor invoices	
	A.23.4.7	Inclusion of new clause relating to access to Remote Aboriginal Communities	

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## CONDITIONS OF CONTRACT

### A.1 DEFINITIONS

In this Contract, unless the contrary intention appears:

<b>Business Day</b>	means any day other than Saturday, Sunday or a day wholly or partly observed as a regional public holiday or statutory public holiday throughout the State of Western Australia. Where the definition for Business Day may differ to the meaning ascribed to it in the <i>Building and Construction Industry (Security of Payment) Act 2020</i> (WA), the Act prevails.
<b>Contract</b>	means this Contract for works between the Principal and the Contractor.
<b>Contractor</b>	means the successful Respondent; and party to this Contract.
<b>Date of Practical Completion</b>	means the date on which the Contractor achieves Practical Completion.
<b>Day or Days</b>	means calendar days.
<b>Defects Liability Period or DLP</b>	means the Defects Liability Period nominated by the Principal in the Department's Form of Request BC SA12; or a six month period from Works completion if no DLP is nominated.
<b>Department</b>	means the Department of Finance.
<b>Event of Default</b>	means a default in the performance of this Contract, including: <ul style="list-style-type: none"> <li>(a) by failing to commence, carry out and complete the Works within the time specified and at a rate of progress satisfactory to the Principal's Representative;</li> <li>(b) by neglecting or omitting to carry out any instructions of the Principal's Representative in respect of the Works;</li> <li>(c) by expressing or demonstrating an unwillingness or inability to complete the Works;</li> <li>(d) by committing an act of bankruptcy or becoming insolvent;</li> <li>(e) by failing to carry out the Works to a satisfactory standard or neglecting to use the materials or methods specified;</li> <li>(f) by committing any substantial breach of the Code of Ethics;</li> <li>(g) by claiming for works not completed;</li> <li>(h) by over charging for works performed;</li> <li>(i) by carrying out works which have not been authorised by the Principal's Representative;</li> <li>(j) by sub-contracting any part of the work under the Contract without the prior written approval of the Principal;</li> <li>(k) by committing any major breach of any employment related Statutory Requirements, Awards, Registered Workplace Agreements or Industrial Agreements;</li> <li>(l) by failing to take out and maintain required insurances during the term of the Contract; or</li> <li>(m) by breaching any other provision of the Contract and failing to make good that breach within seven (7) days of receipt of notice in writing to remedy.</li> </ul>
<b>Maintenance Advice Form</b>	means a form, in a format determined by the Principal, to be completed by a Contractor and signed off by the Site Representative, to notify that a service visit has been completed for the hours stated.

<b>Maintenance Supplier Invoicing Portal</b>	means an online portal used by a Contractor to submit its invoices and Maintenance Advice Forms to the Department of Finance.
<b>Practical Completion</b>	means the works under Contract are at the stage where any existing minor defects and/or omissions: do not prevent the reasonable use of the works; do not significantly inconvenience the Principal; and can reasonably be remedied within 14 days of a Superintendent's direction to remedy.
<b>Principal</b>	means the body corporate identified as the Principal in the Department's Form of Request BC SA12; and party to this Contract.
<b>Principal's Representative</b>	means the person authorised to act on behalf of the Principal.
<b>Site</b>	means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract
<b>Statutory Requirements</b>	means any applicable statute, regulation, by-law, order or subordinate legislation whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity where applicable.
<b>Superintendent</b>	means the person appointed by the Principal to be the Superintendent (and in the absence of any appointment shall be the Office of the Superintendent, Buildings and Contracts within the Department).
<b>Superintendent's Representative</b>	means any person notified to the Contractor as the Superintendent's Representative for Contract purposes.
<b>Works</b>	means the whole (or any part) of the work to be performed by the Contractor under this Contract including all remedial work.
<b>WHS</b>	means work health and safety.
<b>WHS Legislation</b>	means: <ul style="list-style-type: none"> <li>(a) <i>Occupational Safety &amp; Health Act 1984 (WA) (OSH Act)</i>; and</li> <li>(b) <i>Occupational Safety &amp; Health Regulations 1996 (WA) (OSH Regulations)</i>; and</li> <li>(c) any corresponding National WHS legislation applicable.</li> </ul>
<b>Safety Management Plan</b>	means a plan prepared or revised by the Contractor in accordance with applicable WHS legislation that addresses the Safety Management Plan requirements specified in this Contract.

## **A.2 RISE AND FALL ADJUSTMENT**

The Contract is not subject to rise and fall adjustment in costs.

## **A.3 SERVICE OF NOTICES**

A Notice, request or other communication must be given in writing and dealt with as follows:

- (a) if given by the Contractor to the Principal: addressed and forwarded to the Principal, for the attention of the Principal's Representative at the address specified in the Form of Request or as otherwise notified by the Principal's Representative; and
- (b) if given by the Superintendent (or Principal) to the Contractor: signed by the Superintendent (or Principal's Representative) and forwarded to the Contractor at the address specified in the Form of Request or as otherwise notified by the Contractor's Representative.

Any such Notice, request or other communication must be sent by email to the address of the intended recipient party.

Any Notice, request or other communication will be deemed to be received, if transmitted electronically, on the day of dispatch providing the sender does not receive an email delivery failure notification in respect of the email.

## **A.4 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT**

The Contractor must provide all materials, labour, plant, equipment, tools and everything else necessary for the Works.

The Contractor:

- (a) is responsible for the execution, completion and maintenance of the Works in accordance with the Contract, the Drawings and Specification (if any) and such directions as the Superintendent may issue; and
- (b) is solely liable for any loss or damage to the Works from any cause whatsoever until the Superintendent has certified that the whole of the Works has been satisfactorily completed by the Contractor.

Notwithstanding subclause (b) above, the Contractor is not liable for any loss or damage caused by any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal.

## **A.5 ASSIGNMENT AND SUBCONTRACTING**

The Contractor must not, without the Principal's prior written approval, assign or subcontract the performance of any part of the Works.

The Contractor acknowledges and agrees it must not subcontract any part of the Works unless:

- (a) it made a prior written application to the Principal giving full details of:
  - i. the part of the Works the Contractor wishes to subcontract; and
  - ii. the proposed subcontractor(s); and
- (b) it received the Principal's written approval to subcontract; and
- (c) it complies with any conditions imposed by the Principal on that approval.

## **A.6 STATUTORY REQUIREMENTS**

The Contractor must, in carrying out the Works:

- (a) comply with:
  - i. all applicable laws and codes including any State, Territory and national building codes, licensing obligations and WHS Legislation;
  - ii. all statutory notice requirements; and
- (b) pay all statutory fees and charges that applied at time of Offer.



## **A.7 INSURANCE**

### **A.7.1 Insurance requirements**

The Contractor must have and maintain the following insurance policies:

- i. **Public Liability insurance** covering the legal liability of the Contractor and the Contractor's personnel for an amount of not less than \$5 million, or as required by the Contract, for any one occurrence and unlimited in the aggregate.
- ii. **Workers' Compensation insurance** obtained from a WorkCover WA approved insurer (or insurance broker) that covers the full amount of the employer's liability under the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **\$50 million** for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.
- iii. **Motor Vehicle Third Party insurance** covering legal liability against property damage and bodily injury to, or death of, persons (including bodily injury gap protection) caused by motor vehicles used in connection with the Works for an amount of not less than \$20 million for any one occurrence and unlimited in the aggregate.
- iv. **Compulsory Third Party insurance** as required under any statute relating to motor vehicles used in connection with the Works.

Where applicable, the insurance policies must:

- (a) be in the joint names of the Contractor and the Principal;
- (b) extend coverage to each party for their respective rights, interests and liabilities; and
- (c) be subject to a cross liabilities clause and waiver of rights of subrogation.

The Contractor must have all insurances required by this clause in place prior to commencement of the Works and maintain them until the end of the Defects Liability Period.

### **A.7.2 Evidence of insurance**

The Contractor must on request by the Principal or Superintendent provide current relevant confirmation of insurance documentation certifying it has the insurance required by this clause. This includes certificate(s) of currency and full policy terms and conditions (including schedules).

### **A.7.3 Subcontractor insurance requirements**

The Contractor must ensure that its subcontractors (if any) are appropriately insured (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, consistent with the insurance requirements of this clause, as if they were the Contractor.

## **A.8 CONFLICT OF INTEREST**

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Contract award date no conflict of interest (actual or perceived) not previously disclosed to the Principal exists or is likely to arise in its performance of the Works.

The Contractor must not, and must ensure its personnel do not, engage in any activity likely to give rise to a conflict of interest.

A conflict of interest may exist if:

- (a) the Respondent or any of its personnel have a relationship (whether professional, commercial or personal) with any Department personnel; or
- (b) the Respondent has a relationship with, and obligations to, an organisation which would affect the performance of the Works or would bring disrepute to or embarrass to the Department/Principal; or
- (c) the Respondent or any of its personnel have a relationship or association which could affect Site security.

If a conflict of interest arises, or appears likely to arise, during the Contract period, the Contractor agrees to:

- (d) notify the Principal immediately;
- (e) make full disclosure of all relevant information relating to the conflict of interest; and
- (f) take such reasonable steps as directed by the Principal to resolve or otherwise deal with the conflict of interest.

If a Respondent has or may have an actual or potential conflict of interest, the Principal may at its discretion:

- (g) enter into discussions to seek to resolve the conflict of interest;
- (h) impose conditions on the Respondent for management of the conflict of interest; or
- (i) take any other action it considers appropriate.

If the Respondent is unwilling or unable to enter into discussions, comply with conditions imposed or otherwise resolve the actual or potential conflict of interest in accordance with this clause and to the Principal's reasonable satisfaction, the Principal may exclude the Offer from further consideration (including terminating any contract negotiations).

#### **A.9 TIME FOR COMPLETION**

The Contractor must complete the Works within the time specified or within any extended time allowed or determined by the Superintendent.

#### **A.10 MATERIALS**

Materials used in the Works and standards of workmanship must conform to the Contract requirements. Any materials not otherwise specified must be new and where applicable, materials and workmanship must conform to relevant Australian standards and be used in accordance with the manufacturer's specifications.

The Superintendent may, at any time before Contract finalisation, reject any non-compliant material or work and direct its replacement, correction or removal. All such replacements, corrections and removals will be at the Contractor's cost.

#### **A.11 CONTRACTOR'S REPRESENTATIVE**

The Contractor or their approved representative (**Contractor's Representative**) must personally supervise the execution of the Works.

Subject to the Superintendent's written approval, the Contractor's Representative must be:

- (a) employed by the Contractor; and
- (b) reasonably skilled, experienced and qualified to supervise the Works.

The Contractor or its authorised representative must be onsite whenever the Works is proceeding to supervise its execution.

Any direction given by the Superintendent to the Contractor's Representative is deemed to be a direction given to the Contractor.

#### **A.12 SHARED ACCESS AND POSSESSION OF SITE**

##### **A.12.1 Application**

Unless the Contract provides the Contractor with exclusive possession of, or access to, the Site or relevant part of the Site where Works are to be performed, then this clause 12 forms part of the Contract.

##### **A.12.2 Access to Site**

The Contractor acknowledges and agrees that it shall not have exclusive possession of, or access to, the Site or relevant part of the Site where Works are to be performed, unless otherwise agreed in writing by the Principal.

### **A.12.3 Care of the Works, People and Property**

The Contractor must take all reasonable steps to ensure that no loss or damage occurs to:

- (a) the Works;
- (b) unfixed materials;
- (c) any items which have been provided by the Principal, including the Principal's facilities; and
- (d) any of the Contractor's own facilities and equipment,

and must promptly make good any loss or damage that occurs. The cost of making good shall be at the Contractor's cost where such loss or damage is caused by the Contractor or should reasonably have been prevented by the Contractor. If the loss or damage is not caused by the Contractor and could not reasonably have been prevented by the Contractor, the Contractor may submit a claim for a variation for the cost.

## **A.13 EXCLUSIVE ACCESS AND POSSESSION OF SITE**

### **A.13.1 Application**

Where the Contract provides for exclusive access to the Site, or the relevant part of the Site where Works are to be performed, then this clause 13 forms part of the Contract.

### **A.13.2 Possession of Site**

The Contractor acknowledges that:

- (a) the Contractor may only access the Site from the date stated in the Contract until the Works reach Practical Completion for the sole purpose of performing the Works; and
- (b) it must allow the Principal, the Principal's Representative, the Superintendent or any person nominated by the Principal, access to the Site, or the relevant part of the Site, upon the receipt of reasonable notice; and
- (c) any person on the Site is required to comply with all occupational health and safety requirements of the Contractor and comply with all reasonable directions or instructions related to the Contractor's Site rules.

### **A.13.3 Care of the Works, People and Property**

- (a) The Contractor is responsible for the care of:
  - (i) the whole of the Works;
  - (ii) any unfixed materials;
  - (iii) any items which have been provided by the Principal, including the Principal's facilities; and
  - (iv) any of the Contractor's own facilities and equipment,

from the time it is given access to or possession of the Site until the Date of Practical Completion.

(b) The Contractor must take all reasonable steps to ensure that third parties do not cause loss or damage to any items for which the Contractor is responsible under subclause (a).

(c) Should any loss or damage occur to anything for which the Contractor is responsible under subclause (a), the Contractor, at its own cost, must promptly make good such loss or damage, except to the extent that the loss or damage is caused or contributed to by the Principal, the Principal's Representative, or the Superintendent.

Where a party listed in the above paragraph, other than the Contractor, has partly caused or contributed to the loss or damage, the Contractor must promptly make good such loss or damage and shall only be liable for the costs of such make good to the extent the Contractor caused or contributed to the loss or damage. Where the Contractor and Principal are unable to agree on the party's proportional contribution to the loss or damage, the Superintendent shall assess the extent of each party's liability with respect to the cost of making good the loss or damage.

Notwithstanding anything in the above, the Principal shall only be liable for actuals costs reasonably and necessarily incurred by the Contractor in making good any such loss or damage arising under this clause 13.3.

#### **A.14 CLEANING UP**

The Contractor must always keep the Site clean and tidy and regularly remove and dispose of all rubbish and surplus material created by the Works from the Site.

On the Date of Practical Completion, the Contractor must:

- (c) clear away and remove from the Site all constructional plant, surplus material, rubbish and temporary works;
- (d) where necessary fill, compact and level off all excavations (other than those forming part of the work) made by the Contractor on the Site; and
- (e) leave the Site and work in a clean and tidy condition to the approval of the Superintendent.

#### **A.15 DEFECTS RECTIFICATION**

The Contractor must use the materials and standards of workmanship required by the Contract.

If the Superintendent (or Principal) discovers any work or materials which is not in accordance with the Contract, it may direct the Contractor to:

- (a) demolish, remove and reconstruct the work; or
- (b) rectify or replace the material.

The Superintendent (or Principal) may specify the times within which the Contractor must commence and complete such work.

If:

- (a) the Contractor fails to comply with any direction given under this clause within the time specified in the direction; and
- (b) provided the Superintendent (or Principal) gave the Contractor notice in writing that after the expiry of 7 days from the date the Contractor receives the notice the Principal intends to have the work carried out by other persons,

the Principal may have the defect rectification work carried out by other persons, with the Principal's costs for engaging that other person(s) to complete the work being a debt due from the Contractor to the Principal.

#### **A.16 VARIATIONS**

- (a) If the Superintendent (or Principal) determines that the form, quality or quantity of the Works should be varied, it may order the Contractor to:
  - (i) increase, decrease or omit any part of the Works; or
  - (ii) change the character or quality of any material or Works.
- (b) The rate or price payable for the variation will be determined by agreement between the Contractor and the Superintendent (or Principal) and accounted for in the final contract sum.

#### **A.17 PAYMENTS & INVOICES**

##### **A.17.1 Contract Sum**

The Contractor warrants that the Contract Sum includes all costs, expenses and charges necessary for it to complete the Works in accordance with this Contract.

##### **A.17.2 Travel Charges**

The Contractor may only charge for travel when travelling to another location outside of a 20km radius from their business location/community.

Labour costs incurred whilst travelling must be itemised as part of travel costs (not labour costs).

Costs are to be itemised in accordance with A.17.5.4.

### **A.17.3 Payment**

The Principal reserves the right to determine and elect in its sole discretion, the mode of payment under the Contract.

These modes of payment include:

#### **A.17.3.1 Lump Sum**

Where payment is to be made by way of Lump Sum:

- (a) The Principal must pay the Contractor within 20 days after receipt of a Tax Invoice in accordance with clause A.17.5.
- (b) **Payments shall only be made by the Principal upon receipt of a Tax Invoice in accordance with clause A.17.5.**

#### **A.17.3.2 Progress Payments**

Where payments are to be made progressively:

- (a) The Contractor must submit to the Superintendent a monthly progress claim, annotated as a Tax Invoice pursuant to clause A.17.5.
- (b) Unless the Contract provides otherwise, the Principal must:
  - i. pay the Contractor within 20 days after receipt by the Superintendent of its progress claim equal to 95% of the value of Works completed as determined by the Superintendent; and
  - ii. retain the remaining 5% as retention monies.
- (c) During the Defects Liability Period, the retention monies retained by the Principal will be reduced to 2.5% of the final Contract Sum.
- (d) Interest is not payable on retention monies.
- (e) The retention monies retained by the Principal will be held until the Superintendent certifies:
  - i. that the works have been fully completed; and
  - ii. the Contract obligations as to the Defects Liability Period have been fulfilled.
- (f) No certificate of the Superintendent shall be deemed to signify approval or acceptance of any complete works.
- (g) **Payments shall only be made by the Principal upon receipt of a Tax Invoice in accordance with clause A.17.5.**

#### **A.17.3.3 Recipient Created Tax Invoice**

Where payment(s) are to be made by way of Recipient Created Tax Invoice (“**RCTI**”):

- (a) The Contract Sum shall be inclusive of all applicable GST at the rate in force for the time being:
  - i. The Principal must issue a RCTI in respect of GST payable on each instalment of the Contract Sum and shall provide a copy of the RCTI to the Contractor. The RCTI shall contain all information required for a tax invoice under the GST Act and shall bear the ABN of the Contractor.
  - ii. The Principal must issue an adjustment to the Contractor in relation to any adjustment events as they occur.
  - iii. The Contractor must not issue Tax Invoice(s) in respect of the work under the Contract or any part thereof.

#### **A.17.4 Set Off**

The Principal may set off any amount claimed by the Principal under this or any other Contract from:

- (a) any amount due to the Contractor from the Principal; and
- (b) any security or retained monies held by the Principal under this Contract.

#### **A.17.5 Invoices**

##### **A.17.5.1 Tax Invoice**

A **'Tax Invoice' which is correctly rendered** means an invoice that:

- (a) is submitted in arrears;
- (b) is correctly addressed;
- (c) is correctly calculated;
- (d) identifies the amount(s) claimed and the Works or related expenses for which the amount(s) is claimed;
- (e) is accompanied by documentation substantiating the amount(s) claimed;
- (f) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (g) is for one Department purchase order only and contains the following information:
  - i. the Department purchase order number and work order number and/or approval reference number(s) for additional work(s)/cost(s) (where applicable);
  - ii. title of the Works;
  - iii. name of the Principal's Representative; and
  - iv. details of the Works for which payment is being claimed including the location(s) and date(s) work commenced and was completed (if not provided on a Maintenance Advice Form submitted with the invoice).

##### **A.17.5.2 Submission of Tax Invoices – Breakdown Repairs**

The Contractor must ensure that all Tax Invoices:

- (a) are submitted to the Principal within 14 days of the completion of the breakdown repair;
- (b) include an itemised breakdown of costs detailing labour, materials, travel and any other costs such as the hiring of equipment or subcontractor costs;
- (c) comply with clause A.17.5.1; and
- (d) attach the completed and signed Maintenance Advice Form and any supporting documentation, subcontractors' invoices, claims for specialised equipment etc (refer clause A.17.5).
- (e) where possible, are submitted through the Maintenance Supplier Invoicing Portal

##### **A.17.5.3 Submission of Tax Invoices – Non-Breakdown Repairs**

- (a) Subject to the Superintendent's agreement otherwise, the Contractor must submit a Tax Invoice(s) in accordance with clause A.17.5.1 to the Principal within 14 days of the relevant Works completion.
- (b) Where possible, Tax Invoices should be submitted through the Maintenance Supplier Invoicing Portal
- (c) The Contractor must not submit invoices for Works (or works related services) not completed, delivered or required under the Contract.

#### A.17.5.4 Cost details

- (a) Subject to this clause, the Principal must pay the Contractor's claimed costs for Works completed subject to the Contractor satisfying the Principal that it has met the Contract requirements.
- (b) The Contractor's progress claim is taken to include all costs, resources and expenses required or incurred by the Contractor in providing the Works in accordance with the Contract, including:

##### **I. For Cost Plus Work:**

- i. Itemised labour costs including number of hours worked, labour travel costs where applicable (refer A.17.2), the skill of the person (e.g. tradesman, apprentice, technician) and the rates applied (GST exclusive);
- ii. Labour costs subtotal (GST exclusive);
- iii. Itemised material costs (GST exclusive);
- iv. Material costs subtotal (GST exclusive);
- v. Travel costs including Kilometres (KMs) travelled, vehicle type and the rates applied (GST exclusive);
- vi. Travel labour costs subtotal (GST exclusive);
- vii. Itemised subcontractor and equipment hire costs (GST exclusive) subject to A.17.5.4 (c);
- viii. Other costs not listed above (GST exclusive);
- ix. GST shown separately; and
- x. Total cost (GST inclusive).

When calculating costs, the Contractor must use previously agreed Departmental rates where applicable.

##### **II. For Quoted Work:**

- i. Quoted value (GST exclusive);
- ii. Itemised approved variations (GST exclusive);
- iii. GST shown separately; and
- iv. Total cost (GST inclusive).

If required, the Contractor must also provide a Maintenance Advice Form with each invoice.

- (c) The Contractor must not include a markup of greater than 10% on subcontractor invoices (GST exclusive).

#### **A.17.6 Maintenance Advice Forms**

- (a) Where applicable, Contractors will be provided with booklets of Maintenance Advice Forms.
- (b) At Works completion, the Contractor must complete an advice form in triplicate and have it signed by a representative of the Site.
- (c) The Contractor must:
  - i. Retain a copy for its records;
  - ii. Submit a copy attached to its invoice; and
  - iii. Leave a copy with the occupant of the Site.

#### **A.18 CONDITIONS OF EMPLOYMENT**

- (a) The Contractor must comply with all applicable workplace relations laws, conditions of industry awards and enterprise agreements and codes of practice including (but not limited to):
- (i) the *Fair Work Act 2009* (Cth),
  - (ii) the *Industrial Relations Act 1979* (WA);
  - (iii) WHS Legislation; and
  - (iv) worker's compensation laws.

#### **A.19 PAYMENT OF WORKERS WAGES AND ALLOWANCE**

The Principal may require the Contractor to make and deliver to the Principal a statutory declaration that all workers who are or at any time have been engaged on the work under the Contract have been paid in full all amounts which have become payable to them under any statute, ordinance of subordinate legislation, or by any relevant, determination, judgment or order of any competent court, board commission or other industrial tribunal. If the Contractor fails to discharge this requirement the Principal is entitled to withhold all payments due and payable to the Contractor. At the written request of the Contractor and out of the moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

#### **A.20 CONTRACTOR DEFAULT, BANKRUPTCY, INSOLVENCY OR PHOENIX ENTITIES**

If:

- (a) the Superintendent certifies to the Principal that the Contractor has:
- (i) failed to commence the Works within the period specified;
  - (ii) failed to carry out the Works at a rate of progress satisfactory to the Superintendent;
  - (iii) failed, neglected or omitted to carry out any directions of the Superintendent in respect of the Works;
  - (iv) failed to complete the whole of the Works within the time specified for completion or such extended time as the Superintendent may approve,
- and the Contractor has received at least 7 days' notice from the Superintendent or the Principal of the existence of these failures; or
- (b) the Contractor has intimated to the Superintendent or the Principal that it is unwilling or unable to complete the works; or
- (c) the Contractor:
- (i) has committed an act of bankruptcy or insolvency;
  - (ii) becomes bankrupt or insolvent;
  - (iii) presents with a bankruptcy petition;
  - (iv) proposes a scheme of arrangement or composition;
  - (v) is subject to a meeting of creditors;
  - (vi) proposes or enters into a deed of company arrangement;
  - (vii) has a controller or administrator appointed;
  - (viii) resolves to apply for a winding up order or a winding up order is made or applied for;
  - (ix) has a liquidator, receiver or manager appointed;
  - (x) a mortgagee takes possession of any property; or
  - (xi) is an illegal or fraudulent phoenix entity or entities,

then the Principal may, by giving notice in writing, terminate the Contract and all moneys held by the Principal may be utilised by the Principal for the purpose of completing the Works.



The Principal may utilise all moneys held under the Contract to deduct or set-off any debt or money due, or any amount that the Principal considers will become due, from the Contractor to the Principal otherwise than under the Contract.

## **A.21 DISPUTE RESOLUTION**

The parties agree that any dispute or difference arising out of the Contract whether raised during execution of the Works or after its completion will be dealt with as follows:

- (a) The party claiming there is a dispute or difference must provide the other party with notice setting out the nature of the dispute (**notice of dispute**);
- (b) the parties will attempt to resolve the dispute by direct negotiation/conferral meeting in the first instance;
- (c) the parties have 14 days from the date of the notice of dispute (or such other time as mutually agreed) to reach a resolution or to agree to refer the dispute to arbitration;
- (d) If both parties agree, the dispute may be referred to arbitration on the following basis:
  - (i) The disputes or differences being referred to an arbitrator for a determination must be issues within the Contract and include those concerning the performance or non-performance by either party of their respective obligations under the Contract.
  - (ii) The selection of the Arbitrator will be made according to the following:
    - a. mutually agreed upon by the parties in writing; or
    - b. if the parties cannot agree, by an arbitrator appointed by the Institute of Arbitrators & Mediators, Australia (by the President of the WA Chapter) to deal with the dispute in accordance with the provisions of the *Commercial Arbitration Act (2012)* (WA).
  - (iii) For the avoidance of doubt, and should both parties agree to arbitration, this clause must be construed as an 'arbitration agreement' as that term is defined in the *Commercial Arbitration Act (2012)* (WA).
- (e) If the parties fail to resolve the dispute through direct negotiation/conferral or to mutually agree to refer it to arbitration, either party may commence legal proceedings (by notice in writing) if:
  - (i) there is no resolution or agreement within the 14-day period referred to above and the parties have not agreed to refer the dispute to arbitration; or
  - (ii) the other party is not making reasonable efforts to resolve the dispute.
- (f) Despite the existence of a dispute, the Contractor must continue to provide the Works unless directed otherwise by the Principal.

## **A.22 TERMINATION**

### **A.22.1 Termination or Suspension**

- (a) Upon the occurrence of an Event of Default the Principal may, in its absolute discretion by giving notice in writing, suspend or terminate the Contract.
- (b) All monies held by the Principal may be utilised by the Principal for the purpose of making good any defects and completing the Works.
- (c) The Principal may end a suspension at any time by notice to the Contractor. At the end of the suspension, the rights and obligations of the Principal and the Contractor under the Contract recommence.

### **A.22.2 Consequences of Termination**

- (a) The termination of the Contract does not affect any rights, liabilities or obligations of the Principal or the Contractor as a result of anything occurring before the termination.
- (b) On termination of the Contract, the Contractor must:
  - (i) deliver to the Principal all Records required by the Principal as soon as practicable after the date of termination;
  - (ii) vacate the Site as soon as practicable;

- (iii) allow the Principal to use at the Principal's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Site if required in connection with the Contract. However, the Principal must pay the Contractor for any materials or consumables used by the Principal as a result of using that property; and
- (iv) in every other respect, cooperate with the Principal as reasonably required by the Principal in order to minimise any loss, damage or inconvenience to the Principal resulting from the termination of the Contract.

## **A.23 W.A. GOVERNMENT SPECIAL CONDITIONS OF CONTRACT**

### **A.23.1 Disclosure of Contract Documents and Information**

The Principal is subject to certain disclosure requirements under applicable laws and government policies. Contract documents and related information may be disclosed when required or authorised by law, under the *Freedom of Information Act 1992* (WA), under the *Building Act 2011* (WA), required for tabling of documents in Parliament or under court order or subpoena.

### **A.23.2 Access by the Auditor General**

The Parties acknowledge and agree that the Auditor General's powers and responsibilities for the State of Western Australia under both the *Auditor General Act 2006* (WA) and the *Financial Management Act 2006* (WA) are not limited or affected by the terms of this Contract.

The Contractor must allow the Auditor General reasonable access to inspect and copy all relevant documents and records however stored, for purposes associated with this Contract or review of performance under this Contract.

### **A.23.3 Subcontractor and Supplier Arrangements**

#### **A.23.3.1 Security of Payment**

It is a fundamental Contract term that the Contractor comply with all payment obligations under agreements between the Contractor and its subcontractors and/or suppliers in respect of the carrying out of the work under this Contract.

The Contractor's failure, without reasonable cause, to comply with its subcontractor and/or supplier payment obligations constitutes a default under clause A.20 of the General Conditions irrespective of clause A.19.

#### **A.23.3.2 Privity of Subcontract**

The Contractor must inform all subcontractors that the relationship between the Contractor and the subcontractor (contract or otherwise) does not confer rights or impose legal obligations upon the Principal (express or implied) in contract or otherwise.

### **A.23.4 COVID-19**

#### **A.23.4.1 Application of this Clause**

This clause applies to the extent that COVID-19 affects the Works under the Contract and only for relief purposes.

Where a conflict and/or inconsistency exists between this clause and any other provision of the Contract, this clause takes precedence.

#### **A.23.4.2 Definitions**

In this clause, the following definitions apply:

- (a) **Change in COVID-19 Law** means a COVID-19 Law that:
  - (i) comes into effect, or ceases to be in effect, after the day being 14 days prior to the date of closing of Offers for the Contract;
  - (ii) necessitates, or results in, a change in the Works or the Contractor's method of working; and
  - (iii) directly results in an increase or decrease in the Costs incurred by the Contractor in carrying out the Works.

- (b) **Costs** means costs necessarily incurred excluding corporate overhead and profit.
- (c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- (d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.
- (e) **COVID-19 Law** means in relation to Western Australia or the Commonwealth of Australia:
  - (i) an act of parliament or statute; and
  - (ii) any subordinate legislation, rules, regulations directions or by-laws, made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and
  - (iii) any document or policy issued under such legislation or delegated legislation made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Contractor is legally required to comply.
- (f) **COVID-19 Relief Event** means:
  - (i) a Change in COVID-19 Law;
  - (ii) a suspension by the Superintendent under clause A.23.4.4; or
  - (iii) a delay arising after the day being 14 days prior to the date of closing of Offers for the Contract caused as a direct result of COVID-19 which:
    - i. has an adverse effect on the supply of labour, equipment or materials required for the Works; and
    - ii. is not related to a COVID-19 Law.
- (g) **Works** means the works to be carried out under the Contract, including temporary works.

#### A.23.4.3 COVID-19 Effects

##### A.23.4.3.1 General

- (a) The parties acknowledge and agree:
  - (i) to the potential for COVID-19 Effects; and
  - (ii) the Contractor is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known) as at the day being 14 days prior to the date of closing of Offers for the Contract.
- (b) The Contractor must:
  - (i) proactively monitor potential COVID-19 Effects;
  - (ii) use its reasonable endeavours to mitigate COVID-19 Effects;
  - (iii) give the Superintendent weekly/fortnightly<sup>1</sup> reports on potential or actual COVID-19 Effects and the Contractor's steps taken to avoid or reduce those effects irrespective of whether the Contractor intends to make a claim;
  - (iv) where an entitlement to time or Costs arises under clause A.23.4.3, clause A.23.4.4 or clause 23.4.5, provide all supporting documentation reasonably requested by the Superintendent (including programming and costing information) on a fully transparent and open basis; and
  - (v) include in all sub-contracts' relief for COVID-19 Effects that is the same or the equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subcontractors have been duly paid by the Contractor to the relevant subcontractors.

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<sup>1</sup> Delete whichever is not relevant, i.e. weekly or fortnightly.

#### **A.23.4.3.2 Notice**

- (a) The Contractor must promptly give notice to the Superintendent if the Contractor becomes aware of any potential or actual COVID-19 Effects that may:
- (i) delay or disrupt the Works;
  - (ii) increase or decrease the costs of carrying out the Works; or
  - (iii) otherwise have an adverse effect on the Contract,
- including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.
- (b) To the extent the Contractor is entitled to relief under this clause A.23.4.3 (COVID-19 Effects), relief applies only from the date notice is given by the Contractor under clause A.23.4.3.2(a) (other than relief for the period between the day being 14 days prior to the date of closing of Offers for the Contract and the date of the Contract).

#### **A.23.4.3.3 Change in COVID-19 Law**

- (a) If there is a Change in COVID-19 Law, the Principal must pay the Contractor, or the Contractor must pay the Principal, as the case may be, the amount of the increased or decreased Costs (as applicable) in carrying out the Works which directly resulted from the Change in COVID-19 Law.
- (b) The Contractor's entitlement to be paid increased Costs under clause A.23.4.3.3(a) is reduced by the extent to which:
- (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under clause A.23.4.3.1(b)(ii); and
  - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (c) The Superintendent will determine the amount payable under clause A.23.4.3.3(a), acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Superintendent (including costing information) to enable a determination to be made under this clause A.23.4.3.3.

#### **A.23.4.3.4 Extension of Time<sup>2</sup>**

- (a) If:
- (i) the Contractor is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;
  - (ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and
  - (iii) the Contractor gives the Superintendent a claim for an extension of time within 14 days of when the Contractor became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,
- the Contractor will be entitled to an extension of time for Practical Completion equal to the period of delay.
- (b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under clause A.23.4.3.4(a)(iii), the Contractor may submit further claims every 14 days.
- (c) The Contractor's entitlement to an extension of time is reduced by the extent to which the Contractor could have avoided or reduced the delay by taking reasonable steps under clause A.23.4.3.1(b)(ii).
- (d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the

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<sup>2</sup> NOTE: The clauses are not intended to be exhaustive as to the State's rights, only the Contractor's rights to relief. Therefore, it remains open to the State to give a direction under any other contract provision (e.g. to accelerate or reprogram works) rather than grant an extension of time.

delay must be apportioned according to the respective causes' contribution.

- (e) The Superintendent will determine the period of the extension of time under this clause A.23.4.3.4, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Superintendent (including an electronic copy of the then current program) to enable a determination to be made under this clause A.23.4.3.4.

#### **A.23.4.3.5 Delay Costs**

- (a) Subject to clause A.23.4.3.5(b), the Contractor will be entitled to the additional Costs that it has incurred in respect of the period of the extension of time granted under clause A.23.4.3.4.
- (b) The Contractor will only be entitled to Costs incurred for demobilising and remobilising the Contractor's personnel, subcontractors and equipment if there is a suspension under clause A.23.4.4 (Suspension for COVID-19 Effects).
- (c) The Contractor's entitlement to be paid Costs under clause A.23.4.3.5(a) or clause A.23.4.3.5(b) is reduced by the extent to which:
  - (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under clause A.23.4.3.1(b)(ii); and
  - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (d) The Superintendent will determine the amount of Costs payable under this clause A.23.4.3.5, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Superintendent (including costing information) to enable a determination to be made under this clause A.23.4.3.5.

#### **A.23.4.4 Suspension for COVID-19 Effects**

- (a) Without prejudice to any other rights the Principal may have under the Contract, the Superintendent may, if the Superintendent determines in its absolute discretion that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Contractor to suspend the performance of the whole or part of the Works for such time as the Superintendent considers appropriate.
- (b) As soon as the reason for any suspension no longer exists, the Superintendent must notify the Contractor in writing.
- (c) Upon notice from the Superintendent, the Contractor must recommence performance of the Works as soon as reasonably possible.
- (d) The Contractor must ensure that its subcontracts contain a suspension clause on the same terms as this clause A.23.4.4.

#### **A.23.4.5 Termination for Convenience for COVID-19 Effects**

##### **A.23.4.5.1 Termination for Convenience**

- (a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion not to continue the Contract due to COVID-19 Effects, by notice in writing to the Contractor (**Termination for Convenience Notice**), terminate the Contract.
- (b) The Contract will terminate on the date and time stated in the Termination for Convenience Notice or, if no such date and time is stated, at the date and time the Termination for Convenience Notice is given to the Contractor.
- (c) Clause A.23.4.5.2 (Procedure on Termination), clause A.23.4.5.3 (Payments on Termination for Convenience) and clause A.23.4.6 (Limit to Contractor's COVID-19 Rights) survive the termination of the Contract.

##### **A.23.4.5.2 Procedure on Termination**

Upon receipt of a Termination for Convenience Notice, the Contractor must:

- (a) make safe and cease performance of the Works;
- (b) after ensuring the Site is secure and safe, leave the Site;

- (c) provide the Superintendent with any information requested by the Superintendent relating to the Works or the Contract, including Design Documents and any other drawings;
- (d) novate to the Principal any subcontracts relating to the Works that the Principal requires to be novated (and the Contractor must include in its subcontracts a corresponding novation clause);
- (e) transfer to the Principal any entitlement to receive unfixed plant or materials that are in transit but have not yet been delivered to Site, free from encumbrances;
- (f) do all things and execute all further documents necessary to give full effect to this clause A.23.4.5.2; and
- (g) take any other action relating to the termination of the Contract which the Principal reasonably requires.

**A.23.4.5.3 Payments on Termination for Convenience**

- (a) If the Principal terminates the Contract under clause A.23.4.5.1, the Principal must pay the Contractor:
  - (i) the amount due under the Contract for the Works performed up to the date of termination;
  - (ii) Costs incurred by the Contractor under any subcontract as a direct consequence of the Principal's termination, provided that the Contractor has taken all reasonable steps to mitigate and minimise these costs and expenses, including having a corresponding termination for convenience clause in the subcontract;
  - (iii) the Cost of materials reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept (subject to exercise of any termination rights by the Contractor if the Principal so directs), but only if the materials become property of the Principal upon payment;
  - (iv) the reasonable Costs of demobilisation; and
  - (v) the reasonable Costs of complying with any directions given by the Principal upon, or subsequent to, termination.
- (b) The Contractor must submit a payment claim for the amount it claims is payable in accordance with clause A.23.4.5.3(a) within 20 Business Days of the date of termination.
- (c) If the Costs are not fully ascertainable at the time of submitting a payment claim under clause A.23.4.5.3(b), the Contractor must identify the Costs that are not yet able to be quantified and the date by which they can be quantified. If the Principal consents to the timing of the provision of the quantified Costs, the Contractor may submit a further payment claim in accordance with the agreed timetable.
- (d) The Superintendent will determine the amount payable by the Principal under clause A.23.4.5.3(a), acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Superintendent (including costing information) to enable a determination to be made under this clause A.23.4.5.3.

**A.23.4.6 Limit to Contractor's COVID-19 Rights**

- (a) The Contractor's entitlements under clause A.23.4.3 (COVID-19 Effects), clause A.23.4.4 (Suspension for COVID-19 Effects), and clause A.23.4.5 (Termination for Convenience for COVID-19 Effects) are the Contractor's sole remedy in respect of COVID-19 Effects and under no circumstances will the Contractor be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any redundancies or any other economic loss.
- (b) Except for a breach of clause A.23.4.3, clause A.23.4.4 or clause A.23.4.5 by the Principal, the Contractor is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Contractor against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID-19 Effects.

#### A23.4.7 Remote Aboriginal Communities

- (a) The Contractor must adhere to [Remote Aboriginal Communities Directions No. 3](#) and any subsequent variations to the Direction in relation to restrictions on travel to remote Aboriginal communities.

### A.24 CONTRACTOR PERFORMANCE

#### A.24.1 Contractor Performance Reporting

The Principal may, at various stages during the Contract, prepare reports for the sole use of the Principal in respect to aspects of the Contractor's performance.

The Contractor is entitled to the opportunity to respond to the contractor performance report and any update or review of the report.

The Contractor is to be aware that their performance will be ranked relative to other contractors and the outcome of these contractor performance reports will be used by the Principal in consideration of the Contractor's membership of SA12 and any Work Allocation Plan preference, and in future tendering and contracting opportunities with the Principal.

#### A.24.2 Key Performance Indicators for Breakdown Repair Work

The Principal at its sole discretion will periodically assess the Contractor against the following key performance indicators (KPI):

(a) **KPI 1: Average value of Breakdown Repairs under \$1,500 (Exc. GST)**

*Description:* This KPI measures the average value of Breakdown repairs under \$1,500 carried out by a Contractor over a period of time, for a particular trade category.

*Measurement:* (Total value of Breakdown Repairs under \$1,500 (Exc. GST) carried out by the Contractor during the period for a particular trade category) / (Total number of Breakdown Repairs under \$1,500 carried out by the Contractor during the period for a particular trade category).

*Target:* No specific target applies. The performance of the Contractor will be monitored relative to other Contractors within a trade category for an equivalent period.

(b) **KPI 2: Attendance Rate**

*Description:* This KPI measures the frequency at which Contractors meet specified priority response times for Breakdown Repairs, during a period of time.

*Measurement:* (Number of Breakdown Repairs the Contractor has responded to within the required response time, during the period) / (Total number of Breakdown Repairs the Contractor has responded to during the period) \*100 expressed as a percentage.

*Target:* The target attendance rate for Priority 1, 2 and 3 Breakdown Repairs is 90% for each priority category. This target rate acts as a benchmark for acceptable performance however the Contractor will also be monitored relative to other Contractors.

(c) **KPI 3: Completion Rate Priority 1**

*Description:* This KPI measures the frequency at which Contractors meet specified target completion times for Priority 1 Breakdown Repairs during a period of time.

*Measurement:* (number of Priority 1 Breakdown Repairs the Contractor has completed with the target completion times for Priority 1 Breakdown Repairs during the period) / (Total number of Priority 1 Breakdown Repairs the Contractor has responded to during the period) \* 100 expressed as a percentage.

*Target:* The target completion rate for Priority 1 Breakdown Repairs is 80%. This target rate acts as a benchmark for acceptable performance however the Contractor will also be monitored relative to other Contractors.

(d) **KPI 4 Completion Rate Priority 2 and Priority 3**

*Description:* This KPI measures the frequency at which Contractors meet specified target completion times for Priority 2 and Priority 3 Breakdown Repairs during a period of time.

*Measurement:* (Number of Priority 2 and Priority 3 Breakdown Repairs the Contractor has completed within the target completion times for Priority 2 and Priority 3 Breakdown Repairs during the period) / (Total number of Priority 2 and Priority 3 Breakdown Repairs the Contractor has responded to during the period) \* 100 expressed as a percentage.

*Target:* The target completion rate for Priority 2 and 3 Breakdown Repairs is 75% for each priority category. This target rate acts as a benchmark for acceptable performance however the Contractor will also be monitored relative to other Contractors.

**(e) KPI 5: Invoicing**

*Description:* This KPI measures the degree of compliance by a Contractor with the invoicing requirements of the Panel.

*Measurement:* (Number of jobs completed during a period of time for which invoices were submitted in compliance with contractual requirements) / (Number of jobs completed during the period) \* 100 expressed as a percentage.

*Target:* 100% of invoices to be submitted in a compliant manner.

**(f) Other Performance Monitoring**

In addition to the KPIs outlined above, a number of other factors will be monitored in considering Contractor performance. These are areas which are relevant and for which data may be gathered. The monitoring of these areas will not be restricted to Breakdown Repairs but will also include (where relevant) information on Planned Maintenance.

**(i) Volumes of Works Undertaken**

*Description:* This is a measure of the number of jobs (separated out by Breakdown Repairs and Planned Maintenance) undertaken by a Contractor within a particular trade category during a given period.

*Measurement:* Number of jobs undertaken by a Contractor within a particular trade category during a given period.

*Review Consideration:* This measure is to be considered in the context of Contractor capacity, availability of work, and relative performance of other Contractors in the trade category and other relevant factors.

*Complaints, Compliments, Feedback and Audit Results*

*Description:* As a qualitative measure of Contractor performance, any verified complaints, compliments and other feedback such as audit results will be recorded and considered when reviewing Contractor feedback.

**A.24.3 Supplier Demerit Scheme**

The Contractor agrees to be subject to the operation of the Department's "Supplier Demerit Scheme" (Scheme) set out on the WA Government's webpage [www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects](http://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects).

If the Contractor fails to meet Departmental requirements (as a defined "Infraction" for the purposes of the Scheme) the Department will, unless it determines otherwise, apply one or more demerits to the Contractor under the Scheme depending on the severity of the "Infraction".

When the Contractor has received three demerits under the Scheme within a three-year period, the Department will, unless it determines otherwise, apply a sanction set out under the Scheme to the Contractor.

The Department's operation of the Scheme is in addition to and does not limit any other rights the Principal itself may have under the Contract or at law in relation to any act, matter or thing that may be treated as an "Infraction" for the purposes of the Scheme.

The Contractor's agreement to be subject to the operation of the Scheme pursuant to this clause will survive the performance, expiration frustration, rescission, novation, assignment or termination of the Contract for any reason for as long as the Department operates the Scheme in its sole discretion.



## **A.25 MEDIA PUBLICATION**

The Contractor must not make or permit any media publication about or in connection with this Contract or the Works without the Principal's prior written approval.

For the avoidance of doubt, this includes providing any information, publication, document or article for media publication that includes details of the Works.

If the Principal approves the media publication, the Contractor must comply with any conditions attached to that approval.

## **A.26 GST**

### **A.26.1 Definitions**

In this clause, the following terms have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**):

- (a) **GST**;
- (b) **Supply**;
- (c) **Taxable supply**; and
- (d) **Tax invoice**.

### **A.26.2 Application**

Unless otherwise indicated, all consideration for any supply made under this Contract is inclusive of any GST imposed on the supply.

If one party (**Supplier**) makes a taxable supply under this Contract to the other party (**Recipient**), on receipt of the Supplier's progress claim annotated as a tax invoice, the Recipient must pay:

- (a) the amount determined by the supplier as the GST; or
- (b) the amount that equals 10% of the supply charge in question.

Neither party may claim any amount from the other for which it may claim an input tax credit.

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a correctly rendered tax invoice for the relevant supply.

## **A.27 ENVIRONMENTAL PROTECTION**

The Contractor must:

- (a) take adequate measures to control noise on the Site and comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* (WA), applicable local government requirements and/or Superintendent's directions (if any) relating to noise from construction sites;
- (b) comply with all statutes, regulations and by-laws relating to environmental protection;
- (c) take all steps necessary to prevent soil erosion and the discharge of dust, dirt, water, fumes and the like from any land used or occupied by the Contractor in the execution of the Works under the Contract;
- (d) handle, transport and dispose of asbestos containing materials in accordance with the *Environmental Protection (Controlled Waste) Regulations 2004* (WA);
- (e) handle and dispose of Site refuse (including foodstuffs) in accordance with relevant statutes and to the Superintendent's approval; and
- (f) Ensure all workers and visitors on the Site comply with the policy on smoking.

## **A.28 RESTRICTIONS ON ACCESS**

### **A.28.1 All Sites**

Persons admitted onto Site must be of good character and conduct.

Persons seeking Site access must always be identifiable with their name and employer clearly displayed. This information may be contained on an identification badge or embroidered onto the person's uniform.

## **A.28.2 Schools**

The *School Education Regulations 2000 (WA)* (**Regulations**) empower the school principal to regulate persons who enter or are on school premises. Accordingly, the school principal is responsible for overall control of occupied school premises. Under the Regulations, a school principal can direct the Contractor, its employees, subcontractors, suppliers and the like in respect to school access.

In determining access to school premises, the school principal is guided by the Regulations and other Department of Education policies. Persons admitted onto school premises must be of good character and conduct. The following conduct is prohibited on school premises and any offending person may be directed to leave the premises:

- (a) Causing disruption to or likely to cause disruption to the good order on the school premises;
- (b) Using threatening or insulting language;
- (c) Using threatening or violent behaviour;
- (d) Adversely affecting the safety and welfare of persons on the school premises;
- (e) Causing damage to property that comprises or is located at the school premise;
- (f) Smoking;
- (g) Defacing school premises;
- (h) Lighting fires or bringing explosives onto school premises;
- (i) Bringing animals onto school premises;
- (j) Having intoxicating liquor;
- (k) Driving vehicles off roadways and parking areas;
- (l) Exceeding speed limits or driving in a dangerous or inconsiderate manner; or
- (m) Disobeying traffic signs.

## **A.28.3 Site Access Screening**

### **A.28.3.1 All Sites**

All persons working on the Site are subject to criminal record screening and must hold a National Police Certificate (**NPC**) no more than two years old evidencing previous criminal history (if any).

The Contractor must undertake Site access screening and not permit any employees, subcontractors, suppliers and other persons Site access, unless:

- (a) that person(s) holds a current NPC; and
- (b) Subject to that person(s) NPC and previous criminal history (if any), the Principal or relevant client agency (where applicable) has approved their access.

The Contractor must inform the Principal's Representative immediately upon becoming aware that any person(s) has an adverse criminal history or are subject to any current charges or court proceedings that may affect their suitability for Site access.

Upon request the Contractor must provide the Principal with copies of police criminal record certificates for persons under the control of the Contractor who have entered the Site.

Once the Contractor ceases to maintain a controlled Site, or where the nature of the work makes a controlled Site impractical, all access to the premises will be through the premise reception and the Contractor must follow all log in and log out procedures in place.

The Contractor must cooperate with the officer in charge of the premises to maintain effective access control to the premises throughout the term of this Contract.

### **A.28.3.2 Criminal Screening for Access to School Premises**

The Department of Education policy requires that all persons working on occupied school Premises be screened for previous convictions for certain types of offences. The Contractor must screen all

Contractor Personnel that attend Department of Education Premises for previous criminal convictions by ensuring that that such Contractor Personnel:

- (a) hold a National Police Certificate that is no more than two years old and obtained through a State or Commonwealth government agency and not a third party or commercial provider; and
- (b) complete the relevant Department of Education “Confidential Declaration” form for each Premises to be attended, a copy of which can be obtained from the school principal and the Department of Education website.

Access to Department of Education Premises will not be granted to any person whose National Police Certificate discloses criminal convictions that relate to:

- (c) crimes of a violent or sexual nature; or
- (d) dealing or trafficking in illegal drugs.

Other serious criminal convictions that result in a sentence of imprisonment may also disqualify access.

**The Contractor must cooperate with the school principal to maintain effective control of access to school premises and the Site.**

#### **A.29 ONSITE SECURITY**

At the Principal’s request, the Contractor must maintain Site security at the premises when carrying out the Works and comply with the Principal’s or Superintendent’s reasonable directions relating to current procedures and Site security in effect.

If, in the Superintendent’s opinion, Site security cannot be continuously maintained during the Contract period including non-working hours, the Contractor must employ an approved static guard security service for onsite security.

#### **A.30 PUBLIC SAFETY**

The Contractor must use all types and methods of protection (such as temporary safety fencing and warning signage) that are reasonably practicable and necessary to protect the public from hazards associated with the Works under the Contract.

Protection provided must be consistent with the WorkSafe WA recommendations on the ‘Construction work and the public’ page of their website: <https://www.commerce.wa.gov.au/worksafe/construction-work-and-public>. Where a safety fence is used, it cannot be less than 1.8 metres in height.

#### **A.31 MATERIALS AND WORK**

##### **A.31.1 Workplace Health and Safety**

###### **A.31.1.1 General Requirements**

The Contractor must:

- (a) carry out the Works in a safe manner;
- (b) where reasonably practicable, ensure the Works are undertaken in a manner that is without risk to the health and safety of any person;
- (c) comply with all WHS Legislation requirements and other related Contract requirements;
- (d) ensure all workers, subcontractors and other contractors comply with these WHS requirements;
- (e) consult, cooperate and coordinate with the Principal and all other persons with WHS duties in relation to its duties under WHS Legislation; and
- (f) promptly notify the Principal of any event or circumstance that it becomes aware of that has, or is likely to have, any adverse effect on the health or safety of persons to whom the Principal has a duty under WHS Legislation.

###### **A.31.1.2 WHS Compliance**

The Contractor must comply with the WHS Legislation and Codes of Practice, accessible from the WorkSafe WA website at [www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au).

The Contractor is deemed to have control of the Site when executing the Works and must ensure that all persons at or near the Site are not exposed to hazards.

#### A.31.1.3 WHS Legislation requirements

The Contractor must:

- (a) wherever practicable, appoint a safety and health representative or representatives to perform the functions under section 33 of the OSH Act;
- (b) comply with its obligations under section 231(2) of the OSH Act and OSH Regulations 2.4 and 2.5 concerning notification of certain injuries and industrial diseases; and
- (c) pay all fees payable under the OSH Act and OSH Regulations in connection with the execution of the Works.

#### A.31.1.4 Contractor Indemnifies the Principal

The Contractor indemnifies the Principal from and against:

- (a) any loss, damage or injury suffered or incurred by the Principal;
- (b) any claim made against the Principal by reason of the Contractor failing to comply with its obligations under this clause; and
- (c) any fines, penalties, costs and expenses which the Principal incurs as a result of any non-compliance on the part of the Contractor with any of its obligations under this clause.

#### A.31.1.5 Principal Identified Hazards

A WHS Report (or equivalent) will be provided to the Contractor prior to commencing work on Site.

The Contractor must incorporate into its Safety Management Plan these Principal identified hazards<sup>3</sup>:

- (a) demolition work must be carried out in accordance with WHS Legislation and by a person licensed to do the applicable class of demolition work;
- (b) where the Site is part of an occupied premise or facility, the Contractor must liaise with the occupier regarding WHS requirements, including:
  - (i) attendance at a safety co-ordination meeting between the Contractor and the occupier;
  - (ii) addressing how the Contractor and occupier will communicate; and
  - (iii) the Contractor's responsibility for:
    - (1) the co-ordination and implementation of Safety and Health standards on the occupied Site for the duration of the Contract;
    - (2) the co-ordination of the Works to ensure the occupier can safely continue normal activities for the duration of the Contract; and
- (c) Site specific Evacuation Plan to ensure that all persons admitted onto the Site are familiar with the Evacuation Plan and comply with its requirements.

#### A.31.1.6 Material Safety Data Sheets

The Contractor must ensure that:

- (a) a copy of all Material Safety Data Sheets is available in a register on the Site for each hazardous substance used in connection with the Works; and
- (b) all Material Safety Data Sheets are consistent with the format of the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC: 2011 (1994)].

#### A.31.1.7 WHS Information

Prior to the commencement of the Works and at any other time the Superintendent directs, the

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<sup>3</sup> Include under this heading further descriptions of those hazards related to the Works identified by the Principal together with hazard management requirements. The Demolition work and Occupied premises hazards are included as examples only and may be deleted if not applicable to the Contract.

Contractor must consult with the Principal and the Superintendent to minimise risk to the health and safety of any person at or near the Site.

The Contractor must ensure the following information is recorded, updated and retained until the Works are complete:

- (a) The identification of hazards a person at or near the Site is likely to be exposed to;
- (b) An assessment of the risk of injury or harm to any person resulting from those hazards; and
- (c) Strategies to eliminate or mitigate the risk of injury or harm.

If the Contractor becomes aware that a design change in the Works could better eliminate or control a risk of injury or harm to any person who may be at or near the Site, the Contractor must advise the Principal and the Superintendent.

The Contractor must incorporate any WHS information it receives into its hazard identification, risk assessment and risk control measures.

#### A.31.1.8 Safety Management Plan

The Contractor must:

- (a) prepare and implement a Safety Management Plan prior to commencing work onsite and maintain and update it until Works are complete;
- (b) ensure the Safety Management Plan is prepared by a competent person suitably experienced and qualified in safety matters and is appropriate to the risks associated with the Works;
- (c) ensure the Safety Management Plan provides at a minimum (where applicable):
  - (i) WHS induction for new employees;
  - (ii) the competencies required for specialist work;
  - (iii) how to manage WHS incidents onsite including incident reporting and investigation;
  - (iv) the safety rules at the Site and their dissemination;
  - (v) hazard identification and risk identification and management (including plant and equipment inspections);
  - (vi) pre-job planning and Safe Work Method Statements;
  - (vii) emergency response and evacuation procedures;
  - (viii) methods of communicating and consulting with employees about risk management;
  - (ix) hazardous substances management;
  - (x) Site security; and
  - (xi) any other matters that the Superintendent (or Principal) may direct.
- (d) ensure the Safety Management Plan specifically addresses:
  - (i) the person(s) onsite responsible for implementing each element;
  - (ii) the hierarchical structure responsible for performance; and
  - (iii) how each element is performed.

#### A.31.1.9 WHS Induction Training

The Contractor must not permit any person to commence work on the Site until they have been inducted. The induction must include at a minimum:

- (a) familiarisation with the Safety Management Plan;
- (b) reporting of accidents and incidents;
- (c) emergency procedures, including evacuation of the Site;
- (d) the use of personal protective equipment at the Site;
- (e) lifting and manual handling skills;

- (f) sun protection;
- (g) risks associated with hearing loss;
- (h) location of and access to First Aid on the Site;
- (i) legislative framework;
- (j) procedure for the resolution of safety issues at the workplace (in accordance with sections 24 to 28A of the OSH Act); and
- (k) Site security.

The Contractor must induct its employees, the employees of other parties or other persons working on the Site with regard to Safe Work Method Statements and must prepare Training Session Attendance sheets signed by each attendee verifying that such induction has occurred.

Upon commencement of work on the Site, the Contractor must further induct each employee, the employees of other parties or other persons working on the Site regarding all significant hazards associated with their particular activity and area of employment on the Site and where relevant must include the use of powered plant, tools and equipment.

#### A.31.1.10 Site and Public Security

The Contractor must:

- (a) monitor and control the access of all persons to the Site wherever practicable to do so; and
- (b) ensure that no person enters the Site:
  - (i) without the Contractor's approval; and
  - (ii) without being equipped with appropriate personal protection equipment and having received a safety briefing regarding hazards at the Site.

#### A.31.1.11 Safe Work Method Statements

The Contractor must identify high risk construction work as described in Part 3 Division 12 of the OSH Regulations.

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

The Contractor must ensure:

- (a) the Safe Work Method Statement is:
  - (i) adequate and kept up to date; and
  - (ii) covers all high-risk construction work done at the Site;
- (b) the Safe Work Method Statement describes:
  - (i) each high-risk construction work activity that poses a hazard to which any person is likely to be exposed;
  - (ii) the risk of injury or harm to any person resulting from such a hazard;
  - (iii) those safety measures to be put in place to mitigate the risk;
  - (iv) a description of any equipment used in the work activity; and
  - (v) the qualifications and training (if any) required for persons doing the work to do it safely; and
- (c) the high risk construction work is carried out in accordance with the Safe Work Method Statement.

For the purposes of this clause, high risk construction work includes (but is not limited to):

- (a) work involving a risk of a person falling two metres or more (working at heights);
- (b) the demolition of any existing structure;
- (c) disturbing or removing asbestos;

- (d) the alteration to a structure that requires the structure to be temporarily supported to prevent its collapse;
- (e) work within a confined space;
- (f) the excavation to a depth of more than 1.5 metres;
- (g) the construction of tunnels;
- (h) the use of explosives;
- (i) work on or near pressurised gas pipes (including distribution mains);
- (j) work on or near chemical, fuel or refrigerant lines;
- (k) work on or near energised electrical installations and lines (whether overhead or underground);
- (l) work in an area that may have a contaminated or flammable atmosphere;
- (m) work on or adjacent to roads or railways that are in use;
- (n) work on a construction site where there is movement of powered mobile plant;
- (o) work in an area where there are artificial extremes of temperature; or
- (p) work in, over or adjacent to water or other liquids if there is a risk of drowning.

#### **A.32 SCHEDULE OF WARRANTIES**

The Contractor must:

- (a) obtain all warranties for the Works including all components and items of plant and equipment installed under this Contract; and
- (b) ensure the Principal has the benefit of all warranties obtained.