



AS4902-2000

Special Conditions of Contract



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Special Conditions of Contract

The following AS4902-2000 Special Conditions of Contract must be read and construed with the AS4902-2000 RFT General Conditions of Contract as amended, as if they were incorporated in the AS4902-2000 General Conditions of Contract as tendered and amended. In so far as the AS4902-2000 Special Conditions of Contract may conflict or are inconsistent with the RFT AS4902-2000 General Conditions of Contract as amended, the AS4902-2000 Special Conditions of Contract shall prevail.

1 Definitions

Below is a summary of some of the important defined terms used in this Part:

<p>Separate Contractors</p>	<p>Means all contractors, consultants and other persons engaged to carry out any works or services of whatever nature at or in the vicinity of the Site (other than the Contractor and its Subcontractors).</p>
<p>Site</p>	<p>Means the land 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, or as described per Purchase Order or as directed by the Superintendent or Superintendent’s Representative which may include but not be limited to the following:</p> <ul style="list-style-type: none"> • Water Services Centre; • Water Treatment Plants; • Reservoirs; • Remote Bores; • Large Pumps; • Booster Pump Stations; and/or • Remote Pressure Monitoring Stations; <p>which are all located within the Bunbury Region.</p>

1.1 Prerequisites for Site Entry

The Principal is not obliged to give the Contractor or its subcontractors access to the Site unless the Contractor satisfies the Principal or the Superintendent or Superintendent’s Representative that:

- a) All terms and conditions of contract/engagement have been fully executed and/or purchase order raised and issued.
- b) Respondents Aqwest online supplier registration is current and active and remains so for the period of WUC.
- c) Construction methodologies must be approved by the Superintendent or Superintendent’s Representative.
- d) Site and safety management plans must be approved by the Superintendent or Superintendent’s Representative.

- e) Contractors shall attend and participate in Contract Risk Assessment Workshops as required and/or directed by the Superintendent or Superintendent's Representative.
- f) Where required, WAIPS Participation Plans (either Core or Full) must be submitted to the Superintendent or Superintendent's Representative in accordance with the WAIPS clauses contained within the Aqwest General Terms and Conditions of Contract
- g) Contractor personnel must undertake inductions
- h) All insurances which the Contractor must effect under this Contract have been effected.
- i) All the Contractor's Personnel that will enter upon Site satisfy requirements that they have the appropriate skill, experience, police clearances, professional qualifications and membership of appropriate professional organisations and have completed the appropriate paperwork, permits (including Clearance to Work), training and competency assessments in order to work on the Site.
- j) All the Contractor's Personnel that will enter upon the Site have met and complied with the site Induction requirements.
- k) Any other directions as required or advised by the Superintendent or Superintendent's Representative.

1.2 Drinking Water Quality

1.2.1 Free Issue Materials

Generally, materials used in construction and maintenance of the Principal's Distribution and Reticulation System will be supplied by the Principal. Where materials required by the scope of the contract are held in stock by the Principal they shall be used from stock. All stock shall be recorded on the appropriate documentation (usually the day works book or parts book out sheets) and submitted daily. Where not held in the Principal's stock they shall be charged out at the agreed on cost rate. No alternate or substitute suppliers, sizes, brands, specification or materials shall be used without express authorisation from the Principal and approved for use by the Department of Health circular "Materials and Substances in contact with Drinking Water".

1.2.2 Department of Health MOU

The Contractor shall, within fourteen (14) days from the execution of the Formal Instrument of Agreement, notify the Superintendent or Superintendent's Representative of the brand or make of materials it intends to use for which the Contractor has a choice of brand or make and which can affect the colour selections such as PE pipe.

The Contractor shall not depart from the brands or makes nominated in its advice to the Superintendent or Superintendent's Representative unless he has been authorised by the Superintendent or Superintendent's Representative to do so.

If the Contractor fails to notify the Superintendent or Superintendent's Representative within the specified time of the brand or make of materials he intends to use, the Superintendent or Superintendent's Representative may, in such cases, nominate the brand or make of materials to be used and the Contractor shall then use that brand or make nominated by the Superintendent or Superintendent's Representative and shall add no claim for any extra costs incurred.

1.3 Trade Names

Where a trade name, brand or catalogue number is referred to in the Contract, the Contractor may substitute equivalent material or equipment provided that in the opinion of the Superintendent or Superintendent's Representative the characteristics of type, quality, finish, appearance, method of

construction and performance are not less than that specified and are approved by the Superintendent or Superintendent's Representative.

Such approval shall not be anticipated because of similar approval having been given in a previous contract.

1.4 Escalation of Works

Approvals shall be obtained from the Principal to increase the scope of any allocated Work or Task. Works requiring hard surface reinstatement, driveway cutting, tree removal, road cutting, footpath damage, planned Road Traffic Management or other cost that are borne by the Principal as a result of the Work or Task shall be approved by the Principal before Works commence.

1.5 Ownership

Without limiting the General Conditions of Contract, all works, items, materials, objects, articles, inventions, designs, plans, documents, records or information whatsoever produced, created, made or developed by the Contractor or under the direction of the Contractor pursuant to or in the course of providing the Works shall forthwith be and become the sole and absolute property of the Principal whether such property is tangible, intangible or is in the nature of industrial or intellectual property rights (including copyright, designs, patents and rights of confidential information). The Contractor shall not use any such works, items, materials, objects, articles, inventions, designs, plans, documents, records or information otherwise than for the purpose of performing the Works without the prior written consent or licence of the Principal first had and obtained.

1.6 Risk

The Principal has developed a Risk Management Framework (RMF) to enable effective management of its risks. This framework is directly based on the AS/NZS/ ISO31000:2009 Risk Management Standard and has been customised for the Principal's activities.

It is a requirement (where appropriate) when undertaking the Work for the Principal that all key planning, investigation and risk analysis is consistent with the Principal's RMF, and that key risks are able to be directly entered and managed within the Principal's Risk Register.

1.7 Keys

Access to the Principal's facilities, premises and properties by the Contractor may be required during the performance of the Work, and the Principal may supply the Contractor with Keys for the purpose of entering and securely locking nominated work sites. The Contractor shall be responsible for the safeguarding of such keys in a manner satisfactory to the Principal. The Contractor agrees it shall only use the Keys for the purpose of fulfilling its obligations under the Work and this Contract and will keep the Keys in good order and condition, except for fair wear and tear.

Keys lost or stolen must be reported immediately to the Principal. If any keys are lost or stolen then a fee of \$200.00 may be levied upon the Contractor for replacement and administration costs.

Keys shall remain the property of the Principal and be returned upon completion or termination of the contract or at any other time as requested by the Principal to comply with periodic key audits. The Contractor shall fill out the Site Log Book (where provided) on entry and exit from each site.

The Contractor agrees to compensate the Principal for any loss or damage to the Principal's facilities, premises or property caused by wilful misconduct or negligent act or omission of the Contractor or the Contractor's Personnel as a result of being in possession of such Keys.

1.8 Performance Guarantee

Any proposed adjustment to the Performance Guarantee submitted with the Tender shall be finalised for acceptance by the Superintendent or Superintendent's Representative prior to commencement of any performance or acceptance testing.

1.9 Other Insurance Requirements

In addition to the insurances required in the General Conditions of *Contract* and the Part A Annexure, the *Contractor* shall also effect and maintain the following insurances with insurers and on terms approved by the *Principal* in writing:

- a) Motor vehicle insurance;
- b) Information technology (cyber) liability insurance; and
- c) Insurance covering the *Contractor's* own property, goods, materials owned, hired, leased or used by the *Contractor*, for an amount not less than the market value of those insured items.

The motor vehicle insurance must:

- a) cover all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the *Contract*;
- b) be effected and maintained as required by any applicable Australian, State or Territory legislation;
- c) cover legal liability for property loss or damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the *Works* for an amount of not less than \$30 million; and
- d) be maintained until the end of the last Defect Liability period.

The information technology (cyber) liability insurance must:

- (a) be for an amount of not less than \$1,000,000 any one claim and in the annual aggregate;
- (b) cover liability arising from any actual or alleged:
 - i. breach of public disclosure or personal or corporate information;
 - ii. liability, loss of, damage or destruction to any property (including data) whilst in the care, custody or control of the *Contractor*;
 - iii. breach of confidentiality or privacy;
 - iv. act or omission by an unauthorised person or entity resulting in loss of, damage or destruction to the computer system (including hardware, software and data) owned or used by the *Contractor*;
- (c) be maintained for the entire duration of the *Contract*; and
- (d) be maintained for a period of at least 7 years after termination or end of the last Defect Liability period.

In relation to all the insurance policies required to be maintained by the *Contractor* under the *Contract*, the *Contractor* must:

- (a) pay all premiums and deductible applicable to the insurance policies when due;
- (b) promptly reinstate any insurance if it lapses or if cover is exhausted;
- (c) comply with and observe all of the terms of the insurance policies and not do anything which could result in any insurance policy being rendered void; and

- (d) as soon as practicable, notify the *Principal* in writing of the occurrence of any event relating to *the Works* that may give rise to a claim under any of the insurance policies and keep the *Principal* informed of all subsequent action and developments concerning the claim.

If the *Contractor* subcontracts any part of *the Works*, then the *Contractor* must ensure that every *subcontractor* effects and maintains all of the insurances required under this Insurance clause, the General Conditions of *Contract* and Part A Annexure, as appropriate having regard to the work being performed by that *subcontractor*, before the *subcontractor* commences any of *the Works*.

The adequacy of the amounts and the scope of cover provided by each of the insurances referred to in this Insurance clause, the General Conditions of *Contract* and Part A Annexure shall be reviewed during the term of the *Contract* at the discretion of the *Principal*. If the *Principal* considers an increase or amendment in cover is necessary to reflect the level of cover recommended by the *Principal's* insurers or insurance consultant, then the *Contractor* shall use reasonable endeavours to increase the relevant insurance amount that is consistent with the *Principal's* insurer's or insurance consultant's recommendations.

The insurance policies required to be effected and maintained by the *Contractor* are primary and not secondary to the indemnities in the *Contract*. The *Contractor* acknowledges that regardless of the whether the insurance policies respond or not, and regardless of the reason why the insurance policies respond or fail to respond, the *Contractor* is not released (in whole or part) from any of its obligations under the indemnities referred to under the *Contract*.

1.10 Plant, Equipment and Consumables

The *Contractor* must provide (at its cost) all Plant and Equipment, tools, consumables, labour and haulage necessary for the performance of the *Contractor's* obligations under this *Contract* and efficiently carry out the *Work*.

The *Contractor* must ensure that all Plant and Equipment and any other items which the *Contractor* uses or supplies in conjunction with the *Works* are of merchantable quality, comply with this *Contract* and all Legal Requirements, and are fit for their usual and intended purpose.

The *Contractor* shall ensure that operators of mobile plant involved in performing the *Works* have been trained and are competent.

The *Contractor* shall maintain their plant and equipment in serviceable order. No claim for additional costs incurred by the *Contractor* due to failure of the *Contractor's* plant and/or equipment shall be recognised by the *Principal*. The *Principal* reserves the right to reject any plant or equipment deemed to be unsuitable, at no cost to the *Principal*.

1.11 Safety Matters

1.11.1 Induction

Employees of the *Contractor*, the *Contractor's* subcontractors and employees of Separate *Contractors* shall not commence work for the *Principal* until they have been inducted, this includes successful completion of the *Principal's* online induction.

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

1.11.2 Alcohol and Other Drugs

The *Contractor* shall ensure that all persons on the *Site* under the control of, or allowed on the *Site* by, the *Contractor* including persons employed, otherwise engaged or allowed on the *Site* by any subcontractor under the *Contract* shall not:

- (a) Use, sell or be in the possession of drugs of abuse while on the Site;
- (b) Consume alcohol on the Site;
- (c) Present to work on the Site or continue to work on the Site while impaired as a result of alcohol or other drugs; or
- (d) Present to work on the Site or continue to work on the Site when in excess of the cut-off levels for drugs as per AS4308:2001.

1.11.3 Plant Operator Competency Guidelines

The *Contractor* shall ensure that operators of mobile plant involved in performing *the Works* have passed a competency assessment based on the “National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Loadshifting Equipment and Other Types of Specified Equipment” (NOHSC:7019) unless the *Principal* grants an exemption in writing.

This clause is in accordance with Water Corp requirements and applies to front end loaders (FEL), FEL/Backhoe, FEL or skid-steer type (Bobcat), Excavator, Dragline, Dozer (wheeled and tracked) graders, rollers, scrapers, haul trucks, tip trucks.

1.11.4 Chemical Information

The use of chemicals specified or required during the currency of this Contract shall comply with the requirements of the Act and associated Regulations concerning information on chemical substances.

The Contractor shall ensure manufacturers, importers and suppliers of chemical substances for use on the works, are responsible for providing information on those substances to be used, refer to Section 23(3) of the Act.

Copies of all information supplied shall be kept on the Site.

The Contractor is responsible for passing on information supplied by manufacturers; importers and suppliers of chemical substances to workers on Site refer to Section 19(1)(B) of the Act.

1.11.5 Pre-Job Planning

Where legislation or codes of practice identify particularly hazardous activities including but not limited to work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights, the Contractor shall supply to the Superintendent or Superintendent’s Representative a Safe Work Method Statement prior to the commencing such activity or type of work on the Site.

1.11.6 Site and Public Security

Notwithstanding the Contractors’ obligations to Site and public security as stated elsewhere in this Contract the Contractor shall maintain site security to the satisfaction of the Principal at all times which may include but not be limited to monitor and control wherever practical, the access of all persons to the Site.

The Contractor shall ensure that no persons, including without limitation friends and relatives (particularly children) of employees and the representative of organisations unrelated to the Contractor, enter the Site without the express permission of the Contractor.

1.11.7 Occupied Sites

In the event of the Site being a partially occupied Site, the Contractor is to liaise with the occupier regarding Safety and Health requirements.

The Superintendent or Superintendent’s Representative may arrange or may direct the Contractor to arrange a safety co-ordination meeting between the occupiers and the Contractor. The occupiers will

provide to the Contractor their occupation requirements on and/or adjacent to the Site to assist the Contractor in the development of a Site specific Safety Management Plan addressing the Contractors and occupiers operational interface requirements.

The Safety Management Plan shall incorporate the Contractor's own operations and the interface with the occupiers operations.

The Contractor shall be responsible for the implementation of the Safety and Health standards on the occupied Site for the duration of the Contract and shall co-ordinate and integrate the Works.

The *Contractor* must:

- a) co-operate with all Separate Contractors and co-ordinate its work with the Separate Contractors' work to eliminate or, if it is not possible to eliminate, minimise any delays to completion of *the Works*; and
- b) not obstruct, delay or interfere with or damage the Separate Contractors' work or property.

1.11.8 Temporary Safety Fence and Barricading

When and where required, the Contractor shall provide a temporary fence and/or barricading as required by the Occupational Safety and Health Act 1984 and the Occupational Safety and Health Regulations 1996 and with any amendments that may be made to the Act and the Regulations.

1.11.9 Excavation Management and Supervision

Unless otherwise advised by the Superintendent or Superintendent's Representative, the Contractor shall manage all Works involving excavation work in accordance with the Excavation Code of Practice published by Worksafe WA and shall engage competent persons, as defined in that code (and named in the Contract) to be responsible for the design and supervision of such excavations through the term of the Contract. If the Contractor is working with multiple excavations at different locations simultaneously, the Contractor must have a nominated competent person supervising the Work at each location.

Before commencing excavation, the Contractor shall strip topsoil or other surface material and stockpile stripped material.

The Contractor shall support or protect trees, shrubs, pipes and structures in or adjacent to trenches. The Contractor shall avoid cutting roots and damage to trees wherever possible.

1.12 Visual Record

The *Contractor* is required to maintain a comprehensive visual record of construction progress. Photographs and video recordings are to be collated weekly and submitted to the *Superintendent or Superintendent's Representative* by the first working day of each following week.

Still digital photos are required to show a date and time record stamp on each photograph. Each photograph is required to be of sufficient resolution to ensure the detail in each photograph is clear. For general guidance, each photograph should be at least 1600 x 1200 pixels.

Digital video recordings (also showing date and time integral to the recording) should be collected where procedural records are advantageous, e.g. for a major lift or during testing.

1.13 Site Daily Record

The *Contractor* shall maintain a Daily Record for every day of construction, Testing and Commissioning works. The Daily Record is required to include:

- Personnel and visitor daily attendance records
- Induction records

- Mobile and construction equipment (on-site/standby and in-use records)
- Weather records (photographic evidence of *Site* impacts to be submitted to *Principal* on each day for which a delay may be claimed)
- Delivery receipts and dispatch records (including bulk materials and waste)
- Confined space access records

As well as any other information that the *Superintendent or Superintendent's Representative* may reasonably require.

1.14 Contractors Site Area

The *Contractor* will be allocated a *Site* area on the WTP *Site* in which to set up a *Site* office, crib room, toilet and ablution facilities. Space for equipment laydown areas will also be nominated.

1.15 Quality, Materials & Work

1.15.1 Quality Assurance

Without limiting the General Conditions of Contract, the *Contractor* agrees to maintain its Quality Management Systems during the performance of the Works and shall provide the *Principal* with a copy of its quality assurance, certification, quality management systems and/or statements of progress currently achieved towards attaining certification within seven (7) days of a request from the *Principal*.

1.15.2 Audits of Quality Plans

The *Contractor* shall audit *Site* implementation of each of the following on a monthly basis during construction, testing and commissioning, and provide the Audit Reports to the *Principal's Representative*:

- Construction Environmental Management Plan
- OHS Management Plan
- Quality Management Plan
- Construction *Program*
- Project Plan(s).

1.15.3 Manufacturer/Supplier Warranties

The *Contractor* shall obtain all warranties specified in this Contract including any warranties that are obtained by any Subcontractor, and shall ensure that the *Principal* will have the benefit of the said warranties.

Attention is drawn to the requirement to supply manufacturers/suppliers "Material Safety Data Sheets". These sheets should be consistent with the "Work Safe" information and format.

A copy of all "Material Safety Data Sheets" shall be supplied to the Superintendent or Superintendent's Representative with another copy kept on Site by the *Contractor*.

1.15.4 Schedule of Warranties

The *Contractor* shall obtain and ensure that the *Principal* will have the benefit of all warranties specified in the Contract.

1.15.5 Principal Supplied Materials (Free Issue Materials)

The materials stated in the specification to be supplied by the *Principal* will be supplied free of charge to the *Contractor* for use only in the execution of the work under the Contract.

The *Contractor* shall be responsible for the pick-up of all *Principal* supplied free issue materials from the nominated storage location(s) and the transportation of those supplied materials to the *Site*, unless notified otherwise. The free issue materials are as specified in the *Scope of Works*.

The *Contractor* shall store the materials:

- (a) in accordance with the *Principal's* reasonable instructions;
- (b) in accordance with any storage instructions; and
- (c) safely and securely protect it from any form of damage including by reason of theft, mishandling, fire or other detrimental act or incident.

The materials shall be at the *Contractor's* risk from the time of issue to the *Contractor* until the materials have been installed and *work* completed in respect of the *WUC*.

In the event that the *Contract* is terminated for any reason, the *Contractor* shall return all free issue materials immediately to the *Principal* in merchantable condition and original packaging.

1.15.6 Care of Free Issue Material

- (a) *Contractor* shall be responsible for the care of the free issue material until it is used or returned to the *Principal*.
- (b) On receipt of the free issue material the *Contractor* must inspect and check the material. Any defects or otherwise are to be notified with full details of defect to the *Principal* immediately.
- (c) Disposal of any packaging is the responsibility of the *Contractor*.
- (d) If loss of or damage occurs to the free issue material while the *Contractor* is responsible for its care, the *Contractor* shall immediately notify the *Principal*.

If loss of or damage of the free issue material is attributed to the *Contractor*, then the cost of replacement becomes a debt due and payable by the *Contractor* to the *Principal*. Any delay attributed to the neglect, loss or damage of the free issue material by the *Contractor* will not entitle the *Contractor* to an *EOT*.

1.15.7 Insurance of Free Issue Material

The *Contractor* shall insure against loss of or damage to free issue material while it is in the *subcontractor's* care.

1.15.8 Services Installation

The mechanical, electrical, plumbing, and similar service installations, equipment and their associated services shall be installed in such order that will ensure they are located as shown on the drawings and that all essential components and parts are accessible for the purposes of maintenance and replacement.

The *Contractor* shall be responsible for co-ordination between the various service installers in attaining the required locations and tolerances.

1.15.9 Rework

Without limiting the General Conditions of Contract, any *Work* not to the standard required of the *Principal* shall be made good at no cost to the *Principal*. Rework due to unsatisfactory tools, techniques, workmanship or systems of work that are the responsibility of the *Contractor* shall be at the *Contractor's* cost.

1.16 Incidental Works

The *Contractor* is directed to the fact that no separate items are included in the schedule of items for incidental works, materials and requirements. It is to be distinctly understood that the cost of all such

works, materials and requirements which are required for the proper performance, completion and maintenance of the work in the contract (whether or not they are specially mentioned in the Specification), which should reasonably have been anticipated by an experienced and competent Contractor at the time of Tender, to be necessary for the satisfactory completion and performance of the works, shall be included in the items within the schedule to which they are incidental or in the schedule generally.

1.17 Existing Improvements

Where, within the Site there are a range of existing improvements, roads, drainage and other services, the Contractor shall protect and maintain the same throughout the Contract.

The Contractor shall allow for all traffic and pedestrian control measures to maintain the roads in a safe trafficable condition.

1.18 Protection of Existing Utilities

The Contractor shall be responsible for carefully determining the location of all mains, pipes, cables and other equipment belonging to Public Utility Authorities in the vicinity of the Works

The Contractor shall arrange the provision and maintenance of all temporary works necessary to support exposed mains, pipe and cables to the satisfaction of the relevant Public Utility to ensure that the operation of such services is not interrupted in any way.

1.19 Environmental Protection

The *Contractor* shall conduct all activities in a manner that will not endanger the environs surrounding either *Site*, which shall at all times be kept clean and tidy by the *Contractor*.

The *Contractor* shall make provision, including the use of bunds for the storage and handling of fuels and/or contaminants, so that spillage or contamination of soil is prevented. All waste oils and fuels shall be collected and disposed of at an approved waste disposal *Site*. No oil, grease, fuel or liquid and solid waste containing pollutants shall be permitted to discharge on the *Site*.

There shall be no contamination of the soil. Any contaminated soil shall be removed from the *Site* at the cost of the *Contractor*.

The *Contractor* shall not fell or remove any trees or shrubs on the *Site* and its surrounds without the written approval of the *Superintendent*.

1.19.1 Noise Control

The Contractor shall, at all times, take adequate measures to control noise on the Site. Noise attributable to the execution of *the Works* shall be within the requirements of the Environmental Protection (Noise) Regulations 1997.

The Contractor shall comply with all statutory requirements relating to control of noise levels on the Site and take all necessary precautions to minimise nuisance from noise and vibration and ensure that all sub-contractors observe similar care. The *Contractor* shall demonstrate such compliance through an appropriate noise assessment study and report to the satisfaction of the Department of Water and Environment and Regulation (DWER).

The Contractor shall arrange the operations and shall provide silencing equipment to the plant, at its own expense, to whatever extent it necessary to satisfy the requirements of the local authority in relation to the sound level arising from the Contractor's operations near the boundaries of existing occupied properties.

1.19.2 Soil Erosion

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

1.19.3 Dust, Dirt, Water and Fumes

The Contractor shall prevent any nuisance occurring through the discharge of dust, dirt, water, fumes and the like onto persons or property.

The *Contractor* shall carry out all operations in compliance with the “Dust Control Guidelines” as issued by the Environmental Protection Authority. This requirement shall include the use of watering tankers or carts, temporary windbreak fencing and hydro-mulching such as may be necessitated by the nature of the soil and wind conditions on *Site*. The *Contractor* shall, in writing, submit to the *Superintendent* all details of proposed dust control equipment and working methods at least ten (10) working days prior to any dust control *work* and shall not commence such *work* until a proposal has been accepted by the *Superintendent*.

1.19.4 Vehicles

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

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

1.19.5 Refuse Disposal

All Site refuse (including foodstuffs) shall be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Superintendent or Superintendent’s Representative.

1.20 Building and Construction

1.20.1 Hold & Witness Points

The Contractor shall adhere to the Hold and Witness points that apply during the Contract as outlined in the Specification/Scope of Work.

1.20.2 Advertisements and Promotions on Site

The Contractor may erect on the Site or permit to be erected on Site only those signs:

- a) required by law;
- b) specified in the Contract documents; and
- c) required to identify the Contractor’s premises.

The Contractor shall not erect on Site, or permit to be erected on site, any other sign, advertisement, promotion or other display without the written approval of the Superintendent.

1.20.3 Copies of Documents

Where the Contractor requires copies of the documents in addition to its entitlements, such additional copies of the documents will be available to the Contractor at the charge current at the time of request.

1.20.4 Site Amenities and Facilities

The Contractor shall provide all statutory and necessary amenities and sanitary facilities for workmen and other persons lawfully upon the Site and remove them on practical completion of the works, including *Site* office, crib room and toilet and ablution facilities

Occupation of any part of the works and Site for the provision of Site Amenities and Facilities shall not be permitted without the prior written approval of the Superintendent or Superintendent's Representative.

1.20.5 Power Supply for Site Facilities

Power is available on the Site.

The *Principal* will provide a 415 V three-phase and neutral supply with a capacity of not more than 160 amps from the existing Main Switchboard.

Electric power will be supplied free of charge to the *Contractor*.

The *Contractor* at its own cost shall reticulate power and lighting from the point of supply provided by the *Principal* as is necessary for carrying out the *work under the Contract*.

All electrical installations carried out by the *Contractor* shall comply in all respects with AS 3000, any Codes of Practice for temporary electrical installations for building and construction sites, and the requirement of the local electricity supply retailer.

If necessary, to prevent damage to *the Works* or delays to the *date for practical completion* the *Contractor* shall provide stand-by electricity generating plant. The provision and use of this plant shall comply with all current regulations and Codes and shall be at no extra cost the *Principal*.

1.20.6 Water Supply for Site Facilities

The *Principal* will make available the water supply and the use of the water throughout the term of the *Contract*.

The *Contractor* shall be responsible for the reticulation of the water supply from the point of supply to all points of the *Site*.

1.20.7 Telecommunications

The *Contractor* shall make its own arrangements for the provision of its telecommunications requirements.

The *Contractor* shall be deemed to have satisfied itself that any mobile telecommunication device operates satisfactorily over the whole of the *Site*.

The *Contractor* shall make due allowance for the amount of time required to provide fixed telecommunications at the *Site* as no extension to the *date for practical completion* will be allowed on the basis of any claimed delay.

1.20.8 Housekeeping

The *Contractor* is required to maintain a tidy and clean site at all times.

1.20.9 As Constructed Information

As Constructed Drawings and Asset Condition information shall be complete and returned to the *Principal* promptly for updating.

As Constructed Drawings shall be marked up for all work underground. The mark up shall be from an obvious and fixed datum point. The detail shall be sufficient to update the *Principal's* Graphical Information Systems.

Asset Condition information shall be collected whenever an asset is changed. The detail shall be on the prescribed form and in the prescribed format supplied by the Principal. The detail shall be sufficient to update the Principal's Asset Database.

1.20.10 WA Construction Training Fund (CTF)

The *Contractor* shall pay, on behalf of the *Principal*, the prescribed levy in accordance with the *Building and Construction Industry Training Levy Act 1990*, on construction work over the value of \$20,000 (including GST) irrespective of whether or not a building licence is required. Prior to the commencement of work under the *Contract*, the *Contractor* shall provide to the *Principal* evidence that the appropriate sum has been paid to the CTF.

If at contract completion of the *Contract* the sum paid to the *Contractor* under the *Contract* exceeds the *Contract Sum* by \$25,000 or more, the *Contractor* shall pay to the CTF any additional levy due in accordance with the rules of the CTF. The *Principal* shall reimburse the *Contractor* for any additional levy paid on its behalf. If at *Contract* completion the sum paid to the *Contractor* under the *Contract* is less than the *Contract Sum* by \$25,000 or more, the *Contractor* shall recover any reduction in the levy to which the *Principal* may be entitled and return it to the *Principal* as a sum due under the *Contract*.

1.21 Industrial Awards

With respect to all work done in Western Australia under this *Contract*, the *Contractor* shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to *the Works* and this *Contract*.

Failure by the *Contractor* to comply with this Clause hereof shall entitle the *Principal* by notice in writing to the *Contractor* to immediately terminate this *Contract*, but without prejudice to any other rights or remedies of the *Principal*.

1.22 Personal Property Securities Act

For the purposes of this Clause 48:

- a) the '**Principal's Personal Property**' means all personal property the subject of a security interest granted under this *Contract*; and
- b) words and phrases used in this Clause 48 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

If the *Principal* determines that this *Contract* (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the *Contractor* agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the *Principal* asks and considers necessary for the purposes of:

- a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- b) enabling the *Principal* to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- c) enabling the *Principal* to exercise rights in connection with the security interest.

The *Principal* need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

The *Contractor* must notify the *Principal* as soon as the *Contractor* becomes aware of any of the following:

- a) if any personal property which does not form part of the *Principal's* Personal Property becomes an accession to the *Principal's* Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or

- b) if any of the *Principal's* Personal Property is located or situated outside Australia or, upon request by the *Principal*, of the present location or situation of any of the *Principal's* Personal property.

The *Contractor* must not:

- a) create any security interest or lien over any of the *Principal's* Personal Property whatsoever (other than security interests granted in favour of the *Principal*);
- b) sell, lease or dispose of its interest in the *Principal's* Personal Property;
- c) give possession of the *Principal's* Personal Property to another person except where the *Principal* expressly authorises it to do so;
- d) permit any of the *Principal's* Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
- e) change its name without first giving the *Principal* 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

Everything the *Contractor* is required to do under this Clause 48 is at the *Contractor's* expense.

Neither the *Principal* nor the *Contractor* will disclose information of the kind mentioned in section 275(1) of the PPSA and the *Contractor* will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Clause 48 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

1.23 The Western Australian Jobs Act 2017 (WA)

In this clause 49, the following terms have the following meanings, unless the context otherwise requires:

Annual Report has the meaning given in this clause 1.23.

Final Report has the meaning given in this clause 1.23.

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

Participation Commitments means the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in Section B of the Participation Plan.

Participation Plan means the *Western Australian Industry Participation Strategy – Participation Plan* document attached to the Contract and marked Attachment 4.

Participation Plan Obligations means the Contractor's obligations in this clause 1.23.

State means State of Western Australia.

1.23.1 The Participation Plan

- a) The Contractor must, in performing its obligations under the Contract, comply with the Participation Commitments.
- b) The Contractor acknowledges and agrees that its Participation Plan Obligations apply during the *date for practical completion*, and any extension of the *date for practical completion* and until all of its reporting obligations are fulfilled.

- c) The Contractor acknowledges and agrees that the Participation Plan Obligations include the Contractor ensuring its sub-contractors (at any tier) do what is necessary to enable the Contractor to comply with this clauses 1.23.

1.23.2 Variation or revision of Participation Plan

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

1.23.3 Participation Plan Reporting

- a) The Contractor must submit to the Principal a report as to the matters covered by the Participation Plan:
 - (i) in every year of the *date for practical completion* in respect of that year (**Annual Report**); and
 - (ii) after the end of the *date of practical completion*, in respect of the whole of the *practical completion* (**Final Report**), in accordance with this clause.
- b) Each report submitted under clause 49.4(a) must use the form of, and must address the matters outlined in, the Participation Plan Report Template which is available to download from the Industry Link portal. Ctrl + Click on this link to download the reporting template
- c) The Contractor must submit:
 - (i) an Annual Report the Principal on each anniversary of the commencement of the *Contract*, or on such other date each year as is notified by the Principal to the Contractor; and
 - (ii) a Final Report no later than 2 months after the end of the *date of practical completion*.
- d) Where the *date for practical completion* is 12 months or less, only one report from the Contractor is required, which the Contractor must lodge within 2 months after the end of the *date of practical completion*.
- e) Each report required under clause 1.23 report must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

1.23.4 Verification of Contractor's compliance with Participation Plan

- a) The Contractor must:
 - (i) permit the Principal or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Contractor for the purposes of this Contract;
 - (ii) permit the Principal, or its duly authorised representative, from time to time to undertake a review of the Contractor's performance of the Participation Plan Obligations; and
 - (iii) ensure that its employees, agents and sub-contractors (at all tiers) give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection.
- b) If the Principal requests from the Contractor information or access to documentation in connection with the Participation Plan or the Participation Plan Obligations, or information or documentation in connection with any report referred to in this clause 1.23, the Contractor must promptly comply with such request, ensuring that the information or documentation

provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

- c) The Contractor authorises the Principal, and any duly authorised representative of the Principal, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Participation Plan Obligations.
- d) The obligations set out in this clause are in addition to and do not derogate from any other obligation under this Contract.

1.23.5 Verification of Participation Plan

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

1.23.6 Use of Information

Both the Principal and the State may use or disclose the Participation Plan, any report provided under clause 1.23, or any information or documentation referred to in clause 1.23 for the legitimate purposes of or relating to government or the business of government.

1.23.7 Compliance with Participation Plan

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

1.24 Construction Contracts Act 2004 (WA)

1.24.1 Notice of communication

The *Contractor* must:

- (a) promptly and without delay, give the *Principal* and *Superintendent* or *Superintendent's Representative* a copy of any written application or notice under *CCA* of whatever nature in relation to the *CCA*; and
- (b) When it receives an application or notice under the *CCA* relating to the *WUC* from a third party (including any *subcontractor*) immediately forward a copy of the application or notice to the *Principal* and the *Superintendent* or *Superintendent's Representative* providing the circumstances giving rise to the *subcontractor's* right or alleged right to suspend or take other action.

1.24.2 Contractor's remedies limited

Nothing in the *Contract* shall be construed to:

- (a) Make any act or omission of the *Principal* in convention of the *CCA* (including failure to pay an amount becoming due under the *CCA*) a breach of the *Contract* unless the *Principal* would have been in breach of the *Contract* had the *CCA* had no application; or
- (b) Give the *Contractor* rights or remedies under the *Contract* which extend or are in addition to the rights or remedies given to the *Contractor* by the *CCA* any act or omission of the *Principal* in convention of the *CCA*.

1.24.3 Suspension by the Contractor

If the *Contractor* at any time is entitled to and does suspend the whole or any part of the *WUC* under the *CCA*:

- (a) The suspension shall not be a qualifying cause of delay unless the underlying basis for the suspension would have been a qualifying cause of delay had the CCA had no application; and
- (b) Except to the extent (if any) expressly provided under the CCA, the *Principal* shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or included by the *Contractor* as the result of the suspension and, for the avoidance of doubt, the suspension should not be a compensable cause.

1.24.4 Suspension by the Subcontractor

If the *Superintendent* or *Superintendent's Representative* becomes aware that a *subcontractor* engaged by the *Contractor* is entitled to suspend or has suspended *WUC* pursuant to the CCA:

- (a) the *Principal* may in its absolute discretion pay the *subcontractor* such money that may be owing to the *subcontractor* in respect of that work and any amount paid by the *Principal* will be a debt due from the *Contractor* to the *Principal*;
- (b) the *Contract* shall not be relieved of any of its obligations under the *Contract* and the suspension or other action by the *subcontractor* shall not entitle the *Contractor* to any claim against the *Principal* (including *EOT* under clause 34).

The *Contractor* must ensure that none of its subcontracts contain terms which are prohibited by the CCA.

1.25 Force Majeure Event

1.25.1 Definition

- (a) An event of "**Force Majeure Event**" is any event or circumstance not within the reasonable control of the party affected ('**Affected Party**') by it (including the following (if and to the extent that they satisfy the preceding requirement):
 - (i) war, whether declared or undeclared, revolution, act of public enemies, embargo or blockade, act of government;
 - (ii) act of terrorism, insurrection, sabotage, riot or civil disturbance;
 - (iii) acts of God including epidemic, tsunami, fire, earthquake, landslide, inclement weather or explosion; or
 - (iv) national or state-wide labour disputes which are not confined to workplaces of the *Contractor*,

which results in or causes a total or substantial failure or delay of the *Affected Party* in the fulfilment of any of its obligations under this *Contract* (except payment of money), but only to the extent that:

- (v) that event cannot be or could not have been prevented, avoided or removed by the *Affected Party*, exercising reasonable diligence;
 - (vi) the *Affected Party* took, or has taken, all reasonable precautions, due care and reasonable alternative measures to avoid the effect of such event on the *Affected Party's* ability to perform its obligations under this *Contract* and to mitigate the consequences of that event;
 - (vii) the event is not, or was not, the direct or indirect result of the breach by the *Affected Party* of any of its obligations under this *Contract*; and
 - (viii) the event is not one of the events set out in clause 45.1(b).
- (b) The following events do not constitute a Force Majeure Event:

- (i) lack of funds for any reason or inability to use available funds for any reason; or
- (ii) failure of either Party to make any payment of money in accordance with its obligations under this *Contract*; or
- (iii) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving employees of the Affected Party) that are specific to the *Contractor* or the Site.

1.26 Obligations

The Affected Party must give timely notice to the other Party of any Force Majeure Event that precludes the Affected Party (whether partially or wholly) from complying with its obligations under this *Contract* ('**Affected Obligations**') and must either:

- (a) to the extent practicable, specify in the notice the length of delay in the Completion Date that will result from the Force Majeure Event; or
- (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplemental notices during the period over which the Force Majeure Event continues.

The Affected Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.

If a Force Majeure Event continues to affect the supply of *the Works* for a continuous period of 180 days, the *Principal* may terminate this *Contract* by serving written notice on the *Contractor* and neither Party has liability to the other except in respect of any event arising prior to the date of this *Contract* being terminated.

1.27 Contract Performance

1.27.1 Performance Based Contract Extensions

A Contract that is offered on the basis to optionally extend the contract based on performance, the *Principal* may use the following criteria and timeframes to make decisions regarding contract extensions:

- a) Review of performance at end of the first year of the contract in order to establish a base line for comparison for future contract performance reviews; and/or
- b) A Review of performance 6 months prior to completion of the contract to determine extension and then again 6 months into each extension to determine another until extensions have been exhausted, or
- c) Review of performance at end of the second last year to determine future extension reviews.
- d) Total possible contract extension periods are 3 years with total contract periods not exceeding 6 years.

The performance based extensions, in no way limit either party from exercising the termination provisions. A termination of the Contract includes termination of all extension periods.

1.27.2 Performance Based Contract Reviews

The *Principal* reserves the right to conduct contract performance reviews regardless of whether they are a performance based optional extension contract or not.

1.27.3 Form of Contract Performance Reviews

The Principal generally bases performance reviews on the following:

- Safety achievement.
- Compliance with performance standards.
- Relationship and Cooperation.
- Risk and reputation.
- Other observations of relevance.

The Contractor is required to achieve an acceptable score in most categories prior to any extension being considered.

The Principal may consider alternative measures in their qualitative judgment to offer an extension or not.

The standard Contractor Performance Review template can be located here: [Terms and conditions | Aqwest](#)