

TENDER

[REGION] REGION

CONTRACT [XXX/XX]

PREQUALIFICATION LEVEL: R[X] ROADWORKS / B[X] STRUCTURES

[Contract Description]

**[Road Name]**

**[Section Details]**

CONDITIONS OF CONTRACT

**BOOK 2**

|  |  |
| --- | --- |
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| **● BOOK 2** | **CONDITIONS OF CONTRACT** |
| ○ BOOK 3 | GENERAL AND MANAGEMENT REQUIREMENTS (100 & 200 Series) |
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AUTHOR’S NOTES

**FOR REFERENCE ONLY – DELETE ALL GUIDANCE NOTES (HIGHLIGHTED BLUE) FROM FINAL DOCUMENT**

All edits to the downloaded Tender Documents must be in tracked changes mode. If all information relating to a clause is deleted then the clause number is retained and the words “NOT USED” inserted against the clause number.

The proposed documents with tracked changes must be submitted for review by an SPM/Project Director, the Superintendent, and a Procurement Manager (refer to Tender Document Procedure 07/4351 Checklist).

When all sections of the Checklist have been signed off, the tracked changes option is to be turned off, all author’s notes (HIGHLIGHTED BLUE) deleted, formatting within the document checked, the Table of Contents refreshed (F9) , and the document made Final and placed on the appropriate TRIM Tendering File.

SLK information – this may be added to the Cover Page after or in place of the “Section Details”.

ANNEXURE PARTS A & B TO AS 2124 – 1992

GENERAL CONDITIONS OF CONTRACT

[INSERT ANNEXURE PARTS A & B HERE]

Main Roads staff may obtain a copy of the Annexure from iRoads (Supply & Transport Branch page). Consultants should contact the Project/Contract Manager for copies.

MAIN ROADS SPECIAL CONDITIONS OF CONTRACT

Amendments to the General Conditions of Contract

1. SCC 1 Interpretation (GC 2)

Insert the following definitions into GC 2 in alphabetical sequence after “In the Contract, except where the context otherwise requires …”

|  |  |
| --- | --- |
| **As Built Information *(alternatively ‘As Constructed Information’)*** | means the completed as-built drawings, survey data, traceability records, commissioning records and operation manuals associated with the work under the Contract. |
| **Business Day** | means a day other than: 1. a Saturday, Sunday or a public holiday in Perth, Western Australia; or
2. any other day that falls between 22 December in any year and 10 January in the following year (inclusive).
 |
| **Change in Control** | means in respect of any entity, a change in the entity or entities who, directly or indirectly, ultimately Control that entity other than as a result of any dealing in securities listed on a stock exchange. |
| **Claim** | means a demand, action or proceeding of any nature whether actual or threatened and includes any claim for payment of money (including damages) or for an increase in the Contract Sum:1. under, arising out of, or in any way in connection with, the Contract, including any direction of the Superintendent;
2. arising out of, or in any way in connection with, work under the Contract or the Works; or
3. arising otherwise under law or in equity including:
4. by statute;
5. in tort for negligence or otherwise, including negligent misrepresentations; or
6. for restitution.
 |
| **Consequential Loss** | means any:1. loss of opportunity;
2. loss of anticipated savings;
3. loss of profit, revenue or business;
4. damage to reputation; and
5. the cost of capital or other financing costs,

but excludes any Loss arising from, or in connection with:1. any statutory fine arising from any breach of law by the other party;
2. personal injury, sickness or death;
3. damage to property caused or contributed to by a party;
4. criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a party;
5. wrongful acts committed by a party with a reckless indifference to the consequences;
6. wilful default by a party;
7. the abandonment of this Contract by the Contractor;
8. matters that cannot be excluded at law;
9. a breach of Clause 13; and
10. any matter which is the subject of a Claim by a Third Party against the Principal.
 |
| **Contractor’s Insurance Policies** | means the insurance policies required to be effected and maintained by the Contractor under the Contract. |
| **Contractor’s Personnel** | means the Contractor’s directors, officers, employees, agents, consultants and contractors, and all employees, agents, consultants and contractors of the Contractor’s contractors. |
| **Control** | has the meaning given in section 50AA of the *Corporations Act 2001* (Cth) except that in addition an entity controls a second entity if:1. the first entity would be taken to control the second entity but for subsection 50AA(4) of the *Corporations Act 2001* (Cth); or
2. the first entity has voting power (as defined in section 610 of the *Corporations Act 2001* (Cth)) of at least 50% in the second entity.
 |
| **Controller** | means an entity which has, or will have, Control of another entity. |
| **Covenantor** | means, where applicable, the party providing the covenant in Clause 5.10. |
| **Dispute** | has the meaning in Clause 47.1(a).  |
| **Dispute Notice** | has the meaning in Clause 47.1(b).  |
| **Enclave Area** | means an area on or adjacent to the Site that, for any period during which the Contractor has possession of the Site, has been designated for the purpose of a Third Party, and over which, during that period, the Third Party has management and control for the purposes of WHS Law. |
| **GST** | means the same as it means in the GST Law. |
| **GST Law** | means the same as it means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). |
| **Limits of Vegetation Clearing** | is defined in Specification 301 – VEGETATION CLEARING AND DEMOLITION. |
| **Loss** | means:1. any liability, cost, expense, loss, personal injury (including illness), death or damage; and
2. in relation to a Claim, includes amounts payable on the Claim and (whether or not the Claim is successful) legal costs and disbursements on a full indemnity basis.
 |
| **Principal’s Personnel** | means the Principal’s directors, officers, employees, agents, consultants and subcontractors, including the Superintendent and the Superintendent’s Representative but excluding the Contractor and the Contractor’s Personnel. |
| **Principal’s Representative** | means a person appointed in writing by the Principal under SCC 45. |
| **Probity Event** | includes any event or thing which occurs before or after the Date of Acceptance of Tender which:1. has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
2. relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Works or the Contract;
3. involves a breach by a Relevant Person of any law in relation to bribery, anti-corruption, dishonesty offences, or trust in public office offences; or
4. involves a material failure of a Relevant Person to achieve or maintain:
5. reasonable standards of ethical behaviour;
6. the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of a Relevant Person to carry out and observe its obligations in connection with the Works or the Contract; or
7. other standards of conduct that would otherwise be expected of a party involved in, or associated with, a project of the Principal or the State of Western Australia.
 |
| **Probity Requirements** | means full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics. |
| **Related Body Corporate** | means the same as it means in the *Corporations Act 2001* (Cth). |
| **Relevant Person** | means:1. the Contractor and any director, officer, employee or agent of the Contractor;
2. any Related Body Corporate of the Contractor and any director, officer, employee or agent of any Related Body Corporate of the Contractor;
3. any subcontractor of the Contractor and any:
4. director or officer of any subcontractor of the Contractor; or
5. employee or agent of any subcontractor of the Contractor who is involved in any activity, function or task related to the Contractor’s obligations under the Contract.
 |
| **SOP Act** | means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).  |
| **SOP Legislation** | means the SOP Act and its accompanying regulations. |
| **Supply** | means making available any goods and/or services, and includes the same meaning as it means in the GST Law. |
| **Tax Invoice** | means the same as it means in the GST Law. |
| **Third Party** | means a person not being the Principal or the Contractor or a director, officer or employee of the Principal or the Contractor. |
| **WHS** | means work health and safety. |
| **WHS Act** | means the *Work Health and Safety Act 2020* (WA) and regulations made under that Act.  |
| **WHS Law** | means all statutory requirements, including the WHS Act*,* and mandatory codes of practice or guidelines, relating to WHS that are applicable to the work under the Contract or the Site. |

Amend the definition of “Principal” to the following:

* 1. “Principal” means the Principal stated in the Annexure and, so far as concerns the functions exercisable by the Principal’s Representative, includes a Principal’s Representative.

Add the following paragraphs at the end of the Clause:

* 1. “The obligations of the Contractor under the Contract are all the obligations under the Contract other than those specifically allocated to the Principal or Superintendent.
	2. Terms not defined but commencing in upper case have their apparent meanings.
	3. The words “include”, “includes” and “including” are not to be construed as words of limitation.
	4. Reference to a thing (including a right or obligation) includes a part of that thing.
	5. If the Contractor comprises more than one person, each person is bound jointly and severally to comply with the obligations on the part of the Contractor contained or implied in the Contract and must act only jointly in relation to the exercise by that party of its rights under the Contract.
	6. The Contractor is solely responsible for all costs associated with the performance of an obligation of the Contractor under the Contract except to the extent (if any) expressly otherwise provided in the Contract.
	7. Unless a contrary intention is specifically expressed, no provision of the Contract limits any rights of the Principal whether under the Contract or applicable law.
	8. Unless there is a stipulation to the contrary, the following order of precedence will apply in respect of any inconsistency between any of the terms or other parts of the Contract:
		1. Form of Agreement (if any);
		2. Notice of Acceptance of Tender,
		3. Special Conditions of Contract including Attachments 1 and 2;
		4. General Conditions of Contract including the Annexure Part A but excluding the Annexure Part B;
		5. Specifications;
		6. Drawings;
		7. Main Roads Standard Method of Measurement for Construction Works;
		8. Priced Schedule of Rates/Bill of Quantities;
		9. other parts of the Contract (excluding the Contractor's Tender submission);
		10. the Contractor's Tender submission excluding the Priced Schedule of Rates/Bill of Quantities. ”
1. SCC 2 Errors in Bills of Quantities (GC 4.4)

In GC 4.4 third paragraph (line 37 on page 8), delete “$400” and substitute “$2,000”.

1. SCC 2A Provision of Security (GC 5.2)

At the end of GC 5.2 add the following:

* 1. “Notwithstanding Clauses 5.7, 5.8 and 5.9, the Principal is not liable to return to the Contractor security provided pursuant to this Clause 5.2 to the value of claims under the Contract that have been disputed and are unresolved.”
1. SCC 3 Form of Security (GC 5.3)

Delete the text of GC 5.3 and substitute:

* 1. “The security must be in the form of an unconditional undertaking in the format provided in **Attachment 1** annexed to these Conditions of Contract and must have no expiry date.”
1. SCC 3A Reduction of Security and Retention Moneys (GC 5.7)

In the first sentence of GC 5.7 delete the words “Upon issue of the Certificate of Practical Completion, the” and substitute:

* 1. “Upon the later of:
		1. the issue of the Certificate of Practical Completion; and
		2. the date upon which the Superintendent notifies the Contractor that the As Built Information is suitable in accordance with Clause 8.4,

the”

1. SCC 4 Release of Security (GC 5.8)

In the first paragraph of GC 5.8 delete the words “pursuant to Clause 42.4” and substitute:

* 1. “pursuant to Clause 42.1.13 or Clause 42.4”
1. SCC 4A Deed of Guarantee, Undertaking and Substitution (GC 5.10)

Delete GC 5.10 and substitute:

“5.10 Covenantor’s Obligations

* + 1. The Covenantor guarantees to the Principal the due and punctual payment of all debts and damages due and payable or from time to time to become due and payable to the Principal under or in connection with the Contract.
		2. If the Contractor makes default in the performance or observance of any of the Contractor’s obligations under the Contract, the Covenantor must on demand from time to time by the Principal immediately perform or procure the performance of all of the Contractor’s obligations in the same manner as, and to the extent that, the Contractor is required to perform them.
		3. The Covenantor must:
			1. indemnify the Principal against all damage, expense, loss or liability (including legal expenses on a full indemnity basis) which the Principal suffers or incurs in respect of a failure by the Contractor to do what the Contract states it must do, including any damage, expense, loss or liability incurred by the Principal:
				1. to the extent that it is caused or contributed to by the Contractor’s failure to perform any of the Contractor’s obligations under the Contract;
				2. because the Contract is void, voidable or otherwise unenforceable against the Contractor; or
				3. because of the winding up of the Contractor; and
			2. pay the amount of any such damage, expense, loss or liability on demand to the Principal.
		4. The Covenantor’s obligations under paragraphs (a), (b) and (c) are separate and independent from each other.
		5. Clause 5.10 will continue and the Covenantor will remain liable to the Principal notwithstanding that:
			1. as a consequence of any breach or non-observance by the Contractor, the Principal has exercised any of its rights under the Contract; or
			2. the Contractor may be wound up.
		6. The liability of the Covenantor is absolute and unconditional and is not affected by any act, omission, matter or thing which, but for this provision, might operate to release or otherwise exonerate the Covenantor from any of its obligations including any one or more of the following (whether occurring with or without the consent of any person):
			1. the grant to the Contractor or the Covenantor of any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Contractor or the Covenantor;
			2. any transaction or arrangement that may take place between the Principal and the Contractor or the Covenantor in respect of the work under the Contract;
			3. the winding up, liquidation of, or the appointment of an administrator to, the Contractor or the Covenantor;
			4. the amendment, or assignment by a party, of the Contract;
			5. the failure by the Principal to give notice to the Covenantor of any default by the Contractor;
			6. any legal limitation, disability, incapacity or other circumstance related to the Contractor or the Covenantor;
			7. any failure or delay by the Principal in exercising any rights under the Contract; or
			8. the fact that any person who was intended to be bound as a Covenantor in respect of Clause 5.10 does not become bound or having been bound ceases to be bound.
		7. The Principal and the Covenantor acknowledge and agree that the Covenantor’s obligations under the Contract may be enforced against the Covenantor without the Principal being required to make any demand or exercise any remedy it may have against the Contractor.
		8. The Covenantor’s obligations under the Contract continue notwithstanding any settlement of account, intervening payment or other matter whatever and are irrevocable until discharged.
		9. Any certificate, expert determination, judgment, order, arbitral award or mediation or settlement agreement binding upon the Contractor is also binding upon the Covenantor.
		10. The Covenantor must hold on trust for the Principal any security that the Covenantor holds from the Contractor, to secure the liability of the Covenantor to the Principal under the Contract but only to the extent that the security secures any liability of the Contractor to the Covenantor in respect of the Contract.
		11. The Covenantor must not:
			1. be subrogated to the Principal’s rights against the Contractor or any other surety or any security of the Principal;
			2. have or exercise any rights as surety; or
			3. prove in the winding up of:
				1. the Contractor; or
				2. any other surety for the Contractor’s obligations under the Contract,

in competition with the Principal unless the amount the Principal is entitled to will not be reduced as a result.

* + 1. In respect of any winding up of the Contractor and until the discharge of the Covenantor’s obligations under the Contract:
			1. the Covenantor irrevocably authorises the Principal (but without any obligation on the part of the Principal) to prove in the Contractor’s winding up for all moneys and damages owed (actually or contingently) by the Contractor to the Covenantor;
			2. if any dividends are received by the Covenantor from the Contractor’s winding up it must immediately pay them to the Principal and until it does so it must hold them upon trust for the Principal; and
			3. the Principal may retain any dividends from the Contractor’s winding up or moneys received from the Covenantor under subparagraph (ii) and apply them towards satisfaction of the Covenantor’s indebtedness to the Principal under the Contract.
		2. The Covenantor represents and warrants to the Principal that:
			1. it has full legal capacity and power:
				1. to own its property and assets and to carry on its business; and
				2. to enter into the Contract and to perform its obligations under the Contract;
			2. it has taken all corporate action that is necessary to authorise its entry into the Contract and to perform its obligations under the Contract;
			3. the Contract constitutes its legal, valid and binding obligations enforceable against the Covenantor in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors’ rights generally);
			4. neither its execution of the Contract nor the carrying out of its obligations under the Contract, does or will:
				1. contravene any law to which it or any of its property is subject or any order of any authority or other person that is binding on it or any of its property;
				2. contravene any undertaking or instrument binding on it or any of its property; or
				3. contravene its constitution;
			5. no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or threatened against it which (if adversely decided) could have a material adverse effect on the Covenantor’s business, assets or financial condition or its ability to perform its obligations under the Contract;
			6. no Controller is currently appointed in relation to any of its property;
			7. it is not entering into the Contract as trustee of any trust or settlement;
			8. the Covenantor’s payment obligations pursuant to Clause 5.10 rank at least equally with all of the Covenantor’s other unsecured and unsubordinated payment obligations (whether present or future, actual or contingent) other than obligations that are mandatorily preferred by law; and
			9. the Covenantor and its property are free of any right of immunity from set-off, proceedings or execution in respect of its obligations under Clause 5.10.
		3. The Covenantor acknowledges that the Principal has executed the Contract in reliance on the representations and warranties that are made in paragraph (m).
		4. The Principal may exercise a right under Clause 5.10 in its absolute discretion and separately or concurrently with another right.
		5. The Covenantor acknowledges that it has not entered into the Contract in reliance on or as a result of any statement or conduct of any kind of or on behalf of the Principal or the Government of Western Australia or any Western Australian government agency.
		6. The maximum liability of the Covenantor pursuant to Clause 5.10 is no greater than the maximum liability of the Contractor to the Principal under the Contract or, where for any reason the Contract is void, voidable or otherwise unenforceable against the Contractor, the maximum liability which the Contractor would have had to the Principal but for the Contract being void, voidable or otherwise unenforceable.”
1. SCC 4B Formal Instrument of Agreement (GC 6.2)

Insert after “execute” in the second line of the second paragraph of GC 6.2:

* 1. “, and cause the Covenantor where applicable to execute,”

At the end of the second paragraph add:

* 1. “If the Contractor fails to return the executed copies of the Formal Instrument of Agreement to the Principal within the period required by Clause 6.2, the Principal may, without giving a notice to show cause, exercise the right under Clause 44.4(a) or (b).”
1. SCC 5 Service of Notices (GC 7)

Delete the first paragraph of GC 7 and substitute:

* + 1. “A notice or other communication under the Contract is only effective if it is:
			1. in writing, signed by or on behalf of the person giving it;
			2. addressed to the person to whom it is to be given, at the address of that person stated in the Contract or last communicated in writing by that person to the person giving the notice; and
			3. sent by either:
				1. prepaid post (if posted to an address in another country, by registered airmail) or delivered to that person's address; or
				2. email, provided the size of the email is less than 30MB.
		2. Any document that by or under the SOP Legislation is authorised or required to be given by a party to the other party, must be given in accordance with Clause 7(a), and the parties acknowledge that it is reasonably practicable to provide such documents in this manner.
		3. A notice will be regarded as given and received:
			1. in the case of delivery in person, when the notice is accepted by the person or, if the person refuses to accept the notice, when the notice is put down in the person's presence and the person is informed of the nature of the notice;
			2. in the case of delivery by post,when the notice would have been delivered in the ordinary course of post unless a different time of actual delivery is established;
			3. subject to Clause 7(c)(iv), in the case of email, at the time the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been received; and
			4. if Clause 7(c)(iii) is contrary to section 14 of the *Electronic Transactions Act 2011* (WA), a notice will be taken to be given and received at the time provided in section 14 of that Act.”
1. SCC 6 Contract Documents (GC 8)

Delete the text of GC 8.1 and substitute:

* 1. “The order of precedence in Clause 2 will apply to any ambiguity or discrepancy between the various documents forming the Contract.
	2. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Contract and that ambiguity or discrepancy is not resolved by applying the order of precedence in Clause 2, that party must notify the Superintendent in writing of the ambiguity or discrepancy. In the event of such an ambiguity or discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent must direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.
	3. If any such direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference will be valued under Clause 40.5.”

In the last paragraph of GC 8.4 delete the words “but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works”.

At the end of GC 8.6 add:

* 1. “The Contractor must ensure that information and other items described in this Clause are not used or disclosed by the Contractor, or any person to whom it is given by the Contractor, for any purpose other than the performance of the Contract or essential compliance with applicable laws.”

Add the following Clause to GC 8:

“8.8 Public Disclosure of Contract Details

* + 1. The Contract Award information for all contracts above $50,000 will be publicly available and published on the Tenders WA website at [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au) after the contract is legally established.
		2. Documents and other information relevant to the Contract may be disclosed when required by law or under the *Freedom of Information Act 1992* (WA) or by tabling of documents in Parliament or under a Court order.
		3. The Contractor must not have, make or bring any action, suit, claim, demand or proceeding against the Principal for any loss, injury, damage, liability, cost or expense resulting from public disclosure of Contract Award information.
		4. In this Clause the expression ‘Contract Award information’ means:
			1. general description of goods and/or services the subject of the Contract;
			2. successful Contractor’s name(s);
			3. total Contract Price(s) or Value(s).
		5. Notwithstanding any provisions of this Contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Auditor General Act 2006* (WA) are not limited or affected by the terms of the Contract.”
1. SCC 7 Assignment (GC 9.1)

Delete the text of GC 9.1 and substitute:

“9.1 Assignment

* + 1. The Contractor must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined by the Principal:
			1. assign, transfer, mortgage, novate, charge, or otherwise encumber the Contract or any payment or other right, benefit, money or interest under or in respect of the Contract; or
			2. permit a Change in Control of it.
		2. Any request by the Contractor seeking the Principal’s approval pursuant to Clause 9.1(a) must include:
			1. information on the extent and nature of the proposed transaction; and
			2. all other relevant information to enable the Principal to consider the request by the Contractor.
		3. The matters that the Principal may take into account in considering an application by the Contractor seeking the Principal’s approval pursuant to Clause 9.1(a)(ii) include whether:
			1. the Controller is solvent and reputable;
			2. the Controller has any interest which conflicts or may conflict in a material way with the interests of the Principal or the Government of Western Australia;
			3. the proposed Change in Control would result in the Contractor not having a sufficient level of financial, managerial and technical capacity to carry out the Contractor’s obligations under the Contract;
			4. the proposed Change in Control could lead to the occurrence of a Probity Event; or
			5. the Contractor has provided the Principal with the information required under Clause 9.1(b) or any further information reasonably requested by the Principal.”
1. SCC 8 Subcontracting (GC 9.2)

Delete the text of GC 9.2 and substitute:

“9.2 Subcontracting

9.2.1 Prior Approval Required

The Contractor must not, without the prior written approval of the Superintendent:

* + 1. subcontract; or
		2. allow a subcontractor to assign or subcontract,

any of the work under the Contract.

9.2.2 Application for Approval

An application for approval under Clause 9.2.1 must be submitted to the Superintendent and include:

* + 1. in respect of the proposed subcontract (or subcontract to be assigned, as applicable);
			1. particulars in writing of the work to be subcontracted;
			2. the value of the work to be subcontracted and, if that value exceeds $100,000, confirmation that the proposed subcontract conditions comply with Clause 9.2.4(c) and (d) and a warranty given by the Contractor that the subcontract will be entered into in accordance with the requirements of Clause 9.2.4(c) and (d); and
			3. on request, proposed subcontract documents (without prices) including sufficient information relating to the proposed subcontractor’s scope; and
		2. in respect of the proposed subcontractor (or assignee, as applicable);
			1. the name and the address of the proposed subcontractor;
			2. if the value of the work to be subcontracted exceeds $1.5m (GST inclusive), a financial due diligence check on the subcontractor and a signed statement from the Contractor certifying that the subcontractor has satisfied this check; and
			3. on request, details of any criminal convictions of any director, owner or key management personnel of the subcontractor (other than any conviction which is a ‘spent conviction’ within the meaning of the *Spent Convictions Act 1988* (WA)); and
		3. such other information which the Superintendent reasonably requests.

9.2.3 Superintendent's Approval

* + 1. The Superintendent will, within 14 days after a request for approval under Clause 9.2.2, by notice to the Contractor:
			1. approve the subcontract or assignment (as applicable), with or without conditions; or
			2. not approve the subcontract or assignment (as applicable), with reasons.
		2. Without limiting the Superintendent's powers under this Clause 9.2, the Superintendent may withhold approval:
			1. if the proposed subcontract:
				1. does not address the requirements of Clause 9.2.4;
				2. contains provisions that are considered to be prohibited provisions under section 14 or 15 of the SOP Act or otherwise inconsistent with SOP Legislation; or
			2. on the basis of the criminal conviction information disclosed or available to the Superintendent.

9.2.4 Terms Required in Subcontracts

Each subcontract relating to the Contract must, unless the Superintendent otherwise approves:

* + 1. include provisions that the subcontractor must not assign or subcontract without the consent in writing of the Contractor;
		2. include provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal; and
		3. if the value of the work to be subcontracted exceeds $100,000, incorporate AS 2545-1993 as the General Conditions of Subcontract and contain no amendments other than those necessary to reflect the Contract between Contractor and the Principal or to comply with law; and
		4. if SCC 47 applies, meet the requirements of that SCC.

9.2.5 Removal of Subcontractor

Notwithstanding any approval by the Superintendent under this Clause 9.2, the Superintendent may at any time direct the Contractor to remove any subcontractor undertaking work under the Contract following the occurrence of a Probity Event in respect of that subcontractor. The Contractor shall not be entitled to make any Claim associated with a direction issued under this Clause 9.2.5.

9.2.6 Substantial Breach

* + 1. If the Contractor enters into a subcontract in any way connected with the Contract that contains:
			1. provisions that are considered to be prohibited provisions under section 14 or 15 of the SOP Act or otherwise inconsistent with SOP Legislation; or
			2. terms that do not meet the requirements of Clause 9.2.4,

the Contractor shall be considered to have committed a substantial breach of contract pursuant to Clause 44.2.

* + 1. This Clause 9.2.6 applies irrespective of whether the subcontract provisions are being enforced by the Contractor.
1. SCC 9 Privity of Subcontract (GC 9.4)

Add the following Clause to GC 9:

“9.4 Privity of Subcontract

The Contractor must inform all subcontractors including Nominated and Selected Subcontractors that the contractual relationship between the Contractor and the subcontractor does not include or imply any obligation on the Principal to the subcontractor.”

1. SCC 10 Latent Conditions (GC 12)

Delete GC 12.1 to 12.4 and substitute:

“12.1 Notification

* 1. If during the execution of the work under the Contract, the Contractor encounters on the Site or its surroundings physical conditions (other than climatic conditions or conditions arising from climatic conditions) including artificial obstructions which:
		1. differ materially from the conditions which would have been ascertainable by the Contractor if the Contractor had:
			1. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering;
			2. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
			3. inspected the Site and its surroundings; and
		2. could not reasonably have been anticipated at the date of the Contractor’s tender by a person experienced and competent in carrying out work of the type with which the Contract is concerned,

the Contractor must, as soon as practicable and no longer than 28 days after encountering the conditions and where possible before the physical conditions are disturbed, give written notice of the conditions to the Superintendent.

12.2 Provision of Details

* 1. Where the Contractor provides written notice to the Superintendent pursuant to Clause 12.1, the Contractor must specify in the written notice:
		1. the physical conditions encountered, in what respects they differ materially and why they could not reasonably have been anticipated;
		2. the additional work and additional resources which the Contractor considers necessary to deal with the physical conditions;
		3. the time the Contractor anticipates will be required to deal with the physical conditions and the expected delay in the completion of the Works; and
		4. the Contractor’s estimate of the cost of the measures necessary to deal with the physical conditions.

In the event the Superintendent reasonably requires other details, those details must be provided by the Contractor to the Superintendent.

12.3 Superintendent’s Determination

* 1. After receipt from the Contractor of a notice under Clause 12.1 the Superintendent must, if the Superintendent is satisfied that the physical conditions are physical conditions to which Clause 12.1 applies, give notice in writing to the Principal and the Contractor that a latent condition has been encountered (“Latent Condition”).

12.4 Extension of Time and Cost

* 1. Delay caused by a Latent Condition may justify an extension of time under Clause 35.5.
	2. If a Latent Condition causes the Contractor to:
		1. carry out additional work;
		2. use additional Constructional Plant; or
		3. incur extra cost (including but not limited to the cost of delay or disruption),
	3. which the Contractor could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.
	4. In making a valuation under Clause 40.5, regard will not be given to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 28 days before the date on which the Contractor gives the written notice required by Clause 12.1.
	5. **12.5 Acknowledgement**
	6. The Contractor acknowledges that it can comply with the notice requirements in the prescribed period and compliance with the provision is not unreasonably onerous.”
1. SCC 10A Notices and Fees (GC 14.3)

Delete all text after the third paragraph of GC 14.3 and insert:

**“14.3.1 Increases or decreases in fees**

If there is required to be paid by the Contractor to a municipal, public or statutory authority in relation to the Works or the Temporary Works:

* + 1. an increase or decrease in a fee or charge; and
		2. that requirement comes into effect after the 14th day prior to the closing of tenders; and
		3. could not reasonably then have been anticipated by a competent contractor experienced in executing works of similar character, size and complexity to the Works,

the difference shall be valued under Clause 40.5.

**14.3.2 New fees**

If there is required to be paid by the Contractor to a municipal, public or statutory authority in relation to the Works or the Temporary Works:

* + 1. a new fee or charge; and
		2. that requirement comes into effect after the 14th day prior to the closing of tenders;
		3. could not reasonably then have been anticipated by a competent contractor experienced in executing works of similar character, size and complexity to the Works,

that fee or charge shall be reimbursed by the Principal to the Contractor.”

1. SCC 11 Reinstatement (GC 16.2)

Delete GC 16.2 and substitute:

“16.2 Mitigation and Reinstatement

* 1. Subject to Clause 16.3, if any of the Works, Temporary Works, the Constructional Plant, the Site or other property the subject of work under the Contract for which the Contractor is responsible is lost, damaged or destroyed:
		1. at any time on or before the Date of Practical Completion, the Contractor must take the following steps:
			1. make secure the Works, Temporary Works, the Constructional Plant or other property and the Site;
			2. notify:
				1. appropriate authorities, emergency services and the like; and
				2. all relevant insurers,

of the occurrence and comply with their reasonable instructions and if required, comply with the process set out in Clause 19.5; and

* + - 1. subject to Clause 16.2(a)(ii), clear any debris and begin work to repair or replace the Works, Temporary Works, the Constructional Plant, the Site or other property;
		1. at any time after the Date of Practical Completion and before the date that the Superintendent issues the Final Certificate to the Principal and the Contractor, and while the Contractor is on the Site completing outstanding work or complying with any of its obligations under Clauses 30.6, 31.1 or 37, the Contractor must take the following steps:
			1. immediately notify the Principal and comply with all reasonable directions of the Principal; and
			2. subject to a direction of the Principal to the contrary, take the steps specified in Clause 16.2(a) above; and
		2. in either of the circumstances described in Clauses 16.2(a) and 16.2(b), the Contractor must, in addition to its obligations set out in Clauses 16.2(a) and 16.2(b), also promptly consult with the Principal to procure its approval for steps to ensure:
			1. the prompt repair or replacement of the Works, Temporary Works, the Constructional Plant, the Site or other property to ensure that:
				1. the Works or Temporary Works comply with the standards and specifications required by the Contract; and
				2. any disruption to the free flow of traffic in the areas surrounding the property being repaired or replaced is minimised; and
			2. that, to the greatest extent possible, the Contractor continues to comply with its obligations under the Contract. ”
1. SCC 11A Excepted Risks (GC 16.3)

Delete paragraph ‘(e)’ and renumber paragraph ‘(f)’ as paragraph ‘(e)’.

Delete the full stop at the end of paragraph ‘(e)’ and substitute:

* 1. “,
	2. in which case if the Principal requires the Contractor to make good any loss, damage or destruction to Works, Temporary Works, the Constructional Plant, the Site or other property the subject of work under the Contract for which the Contractor is responsible which is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk, the Contractor must comply with its obligations under Clause 16.2 and the Principal will pay the Contractor for the costs incurred by the Contractor in making good as if it were a variation under Clause 40.”
1. SCC 12 Indemnities – Damage to Persons or Property (GC 17)

Delete GC 17 and replace with the following:

“17 INDEMNITIES

17.1 General Indemnity

* 1. The Contractor indemnifies the Principal and the Principal’s Personnel against any Loss or Claim suffered or incurred by the Principal and the Principal’s Personnel arising out of or in connection with, whether directly or indirectly, the performance or the non-performance of the Contractor’s obligations under the Contract or any act or omission by the Contractor or the Contractor’s Personnel, including by reason of any:
		1. tort, including negligence or breach of statutory duty by the Contractor or the Contractor's Personnel;
		2. breach of equitable duty, including breach of confidentiality or breach of fiduciary duty by the Contractor or the Contractor's Personnel; and
		3. breach of the Contract by the Contractor or the Contractor’s Personnel.

17.2 Indemnity against Claims by Third Parties

* 1. The Contractor indemnifies the Principal and the Principal's Personnel against any Loss or Claim suffered or incurred by the Principal and the Principal's Personnel in connection with any Claim by a Third Party against the Principal and the Principal's Personnel arising out of or in connection with, whether directly or indirectly, the performance or the non-performance of the Contractor's obligations under the Contract or any act or omission by the Contractor or the Contractor's Personnel, including by reason of any:
		1. tort, including negligence or breach of statutory duty by the Contractor or the Contractor's Personnel;
		2. breach of equitable duty, including breach of confidentiality or breach of fiduciary duty by the Contractor or the Contractor's Personnel;
		3. breach of the Contract by the Contractor or the Contractor’s Personnel; and
		4. infringement or alleged infringement in respect of that party’s confidential information, where the infringement or alleged infringement arises out of the receipt, use, reproduction or exploitation of the confidential information by or on behalf of the Principal in the manner contemplated by the Contract.

17.3 Apportionment of Liability

* 1. The Contractor's liability in Clause 17.1 and Clause 17.2 will be reduced proportionally to the extent that the Loss was caused by the negligence of, or breach of the Contract by, the Principal or the Principal’s Personnel.

17.4 Termination

* 1. The indemnities in Clause 17.1 and Clause 17.2 survive the termination of the Contract.

17.5 Enforcement of Indemnity

* 1. The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 17.

17.6 Conduct of Litigation

* + 1. If a Claim from a Third Party is made against the Principal or the Principal’s Personnel in connection with the performance or the non-performance of the Contractor's obligations under the Contract or any act or omission by the Contractor or the Contractor's Personnel under or in connection with the Contract or the work under the Contract, the Principal must, as soon as reasonably practicable:
			1. notify the Contractor in writing of the Claim; and
			2. provide the Contractor with such details as are available to the Principal about the Claim.
		2. If a Claim from a Third Party is made against the Contractor or the Contractor's Personnel arising out of, or in any way in connection with, the Contract or the work under the Contract, the Contractor must, as soon as reasonably practicable:
			1. give notice to the Principal of the Claim; and
			2. provide the Principal with such details as are available to the Contractor about the Claim.
		3. Nothing in Clause 17.6(a) or Clause 17.6(b) requires the Principal to provide to the Contractor legal advice received by the Principal.
		4. The Contractor must conduct the defence of any Claim specified under Clause 17.6(a) or Clause 17.6(b), unless the Principal notifies the Contractor that:
			1. the Principal or its insurers will conduct the defence of the Claim; or
			2. the Principal or its insurers intend to take over the defence of the Claim.
		5. If the Contractor is conducting the defence of the Claim, the Contractor must provide the Principal with an update on the progress of the Claim, the conduct of any defence or response in respect of the Claim and any other material matters relating to the Claim, as and when required by the Principal.
		6. When conducting the defence of a Claim in accordance with Clause 17.6(d), the Contractor must have regard to the Principal’s and, if applicable, the Principal’s insurers, expressed views or directions regarding the Claim, including when settling, compromising or releasing a Claim or taking any steps in relation to any Claim.
		7. The Contractor is responsible for the payment of any settlement costs in connection with a Claim specified under Clause 17.6(a) or Clause 17.6(b), including if the Principal or its insurer is conducting the defence of the Claim itself or has taken over the defence of the Claim.
		8. If the Contractor fails to pay any settlement costs referred to in Clause 17.6(g), the Contractor will be liable to the Principal in respect of such settlement costs, and such amount will be a debt due and payable by the Contractor to the Principal.
		9. Nothing in this Clause 17.6 limits the operation of the process in Clause 19.5 and, for the avoidance of doubt, the Contractor is required to comply with the process in Clause 19.5 notwithstanding that the process in this Clause 17.6 also applies.”
1. SCC 13 Insurance (GC 18-21)

Delete GC 18 to GC 21 and replace with the following:

“18 PRINCIPAL CONTROLLED INSURANCE PROGRAM – CONSTRUCTION CONTRACT WORKS MATERIAL DAMAGE INSURANCE AND CONSTRUCTION PUBLIC & PRODUCTS LIABILITY INSURANCE

* 1. The Principal Controlled Insurance Program Policies (**PCIP Policies**) will be constituted by the Construction Contract Works Material Damage Insurance Policy (**CCWMDI Policy**), and Construction Public & Products Liability Insurance Policy (**CPPLI Policy**), as set out below. Copies of the certificates of currency and policy wordings are available from the Main Roads website at:
	2. <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/>

18.1 Construction Contract Works Material Damage Insurance Policy

* 1. The Principal must maintain or effect and maintain a CCWMDI Policy that, subject to Clause 18.5, is on materially the same terms and conditions as set out in the certificates of currency and policy wordings for the PCIP Policies available from the Main Roads website, as those terms and conditions materially relate to the Contractor and subcontractors engaged by the Contractor to perform any part of the work under the Contract.

18.2 Construction Public & Products Liability Insurance Policy

* 1. The Principal must maintain or effect and maintain a CPPLI Policy that, subject to Clause 18.5, is on materially the same terms and conditions as set out in the certificates of currency and policy wordings for the PCIP Policies available from the Main Roads website as those terms and conditions materially relate to the Contractor and subcontractors engaged by the Contractor to perform any part of the work under the Contract.

18.3 Coverage

* 1. The PCIP Policies must provide cover to the Principal, the Contractor and all subcontractors engaged by the Contractor to perform any part of the work under the Contract, in accordance with its terms and conditions, for their respective rights, interests and liabilities.

18.4 Period of Cover

* 1. The PCIP Policies must be effected and maintained by the Principal as soon as practicable following the Date of Acceptance of Tender and in any event, prior to the commencement of the work under the Contract, and continue until:
		1. the time the Superintendent issues the Final Certificate to the Contractor and the Principal; or
		2. earlier termination of the Contract.
	2. The Principal's obligations under Clauses 18.1, 18.2 and this Clause 18.4 may be discharged by renewing or replacing (as required) the PCIP Policies first effected with policies that are materially on the same terms and conditions as set out in the certificates of currency and policy wordings for the PCIP Policies available from the Main Roads website, as those terms and conditions materially relate to the Contractor and subcontractors engaged by the Contractor to perform any part of the work under the Contract. For the avoidance of doubt, this Clause is subject to Clause 18.5.

18.5 Change in PCIP Policies

* 1. If, having made reasonable enquiries of the market, the Principal considers that it is not commercially feasible to comply strictly with Clauses 18.1 to 18.4 (namely such insurances cease to be available on commercially reasonable terms (including price and terms and conditions)), the Principal may in its absolute discretion replace or renew the PCIP Policies on terms and conditions which are materially different to the terms and conditions of the PCIP Policies first effected, and the Principal must, within a reasonable period of time:
		1. notify the Contractor that the PCIP Policies have been replaced or renewed on terms materially different to the terms and conditions of the PCIP Policies first effected or not renewed at all where the cover provided by the PCIP Policies first effected is no longer available, as the case may be; and
		2. provide to the Contractor access to copies of the relevant policy wording and schedules.

19 PCIP POLICIES – GENERAL ISSUES

19.1 Interpretation of PCIP Policies

* 1. The Principal does not hold out or make any representation as to the interpretation or application of any PCIP Policy and the Contractor acknowledges and agrees that before submitting the tender, or prior to the commencement of the work under the Contract, it has satisfied itself as to the provisions, terms, conditions, exclusions, deductibles and excesses of the PCIP Policies and that it accepts the same in full satisfaction of the Principal's obligations under Clause 18.

19.2 Breach of PCIP Policies

* 1. In the performance of its obligations under the Contract, the Principal will not be required to do any act or thing:
		1. that may constitute a breach of the PCIP Policies;
		2. that may prejudice any of the PCIP Policies; or
		3. which would be grounds for an insurer to refuse to pay a claim made under the PCIP Policies.

19.3 Contractor to Comply with PCIP Policies

* + 1. The Contractor, at its own cost and expense, must itself, and must ensure that each of its subcontractors, comply with the terms and conditions of the PCIP Policies and the requirements of the relevant insurers and must not do or permit any act or permit any circumstance by which any of the PCIP Policies may, at any time, become void or voidable or the rights of the insureds thereunder are prejudiced or the continued effectiveness of such policies are derogated from.
		2. The Contractor must indemnify and keep indemnified the Principal from and against any Claim or Loss incurred or suffered by the Principal as a consequence of non-compliance by the Contractor with the requirements of Clause 19.3(a). This indemnity survives the termination of this Contract.

19.4 Contractor’s Liability Unaffected

* + 1. Nothing in Clause 18 or this Clause 19 limits the obligations, liabilities or responsibilities of the Contractor, whether under the Contract or otherwise.
		2. Without limiting the generality of Clause 19.4(a), the Contractor will remain responsible and liable for any Loss that it is otherwise responsible or liable for under this Contract or at law.

19.5 Incidents and Claims

* + 1. All claims by the Contractor and its subcontractors under the PCIP Policies must be made in accordance with the following procedures and any other requirements of the Contract.
		2. The Contractor must at all times fully co-operate with the Principal in pursuing recovery of any insurance claim from the insurers under the PCIP Policies including, without limiting the generality of this Clause, by providing reports, information and other matters required by the Principal from time to time, and assisting with the conduct of any litigation.
		3. Upon the happening of any incident likely to give rise to a claim under any PCIP Policy the Contractor must, as soon as practicable, but not later than 24 hours thereafter or as might otherwise be required sooner by an insurer under a PCIP Policy, give written notice of the incident to the Superintendent.
		4. Not later than seven days, or as might otherwise be required sooner by an insurer under a PCIP Policy, after any incident referred to in Clause 19.5(c), the Contractor must deliver to the Superintendent written advice in the form prescribed by the Principal and provide any further particulars, information, proofs and explanations as may be reasonably required by the Principal or the insurers.
		5. The Contractor must take all reasonable steps to limit, reduce and otherwise mitigate any loss or damage and the Contractor must, unless the Superintendent otherwise directs, take such emergency action as may be required to mitigate the loss or damage.
		6. All dealings of the Contractor and its subcontractors with the insurers under the PCIP Policies must be conducted through the Principal and all claims under a PCIP Policy must be submitted to the Principal for lodgement with the relevant insurer.
		7. The Principal will, at its option and acting in good faith, have the sole authority to negotiate any settlement or effect a compromise in respect of any claim against underwriters or insurers under the PCIP Policies, without being in any way liable to the Contractor or its subcontractors for any losses suffered thereby.
		8. Monies recovered under the PCIP Policies in respect of a claim of the Contractor or its subcontractors submitted in accordance with this Clause 19 must be received by the Principal. The Principal will, subject to Clauses 19.5(i),19.5(j) and 21.7, within 14 days after receipt from the relevant insurer, pay such monies (to the extent that they are in respect of loss or damage incurred by the Contractor or its subcontractors) to the Contractor after deducting any amount payable to the Principal from the Contractor or that the Principal is otherwise entitled to deduct or set off (whether pursuant to this Contract, equity or law) from monies otherwise payable to the Contractor.
		9. The Contractor will be responsible for the payment of any excess or deductible relating to the PCIP Policies where:
			1. it makes a claim under any such policy; or
			2. the Principal makes a claim under such policy, to the extent that the Contractor or any subcontractor was responsible or liable for the relevant loss or damage.
		10. Where the Contractor fails to pay an excess or deductible referred to in Clause 19.5(i)(ii), the Contractor will be liable to the Principal in respect of such excess or deductible, and such amount will be a debt due and payable by the Contractor to the Principal.

20 CONTRACTOR’S INSURANCES

* 1. The Contractor must, at its own cost and expense, effect and maintain each of the insurances specified in this Clause 20. Where any sub-limits are not expressly specified in any such insurance, the policy limit specified for that insurance applies.

20.1 Contractor’s Plant and Equipment

* + 1. The Contractor must maintain or effect and maintain, and ensure that each of its subcontractors maintains or effects and maintains, a policy that provides cover in respect of the Constructional Plant under the ownership or control of the Contractor or its subcontractors (whether owned, hired or leased and not otherwise being the property of the Principal) for which the Contractor or its subcontractors are responsible (whether located on or off Site) that is not otherwise covered under the CCWMDI Policy or the motor vehicle insurance required under Clause 20.3.
		2. The insurance must cover any liability to third parties for personal injury, death, disease or illness (including mental illness) or liability to third parties for loss or damage to property caused by or in connection with the use of the Constructional Plant.
		3. The policy referred to in Clause 20.1(a) to be maintained or effected and maintained by the Contractor must:
			1. cover the Principal, the Contractor, the Superintendent and their respective representatives, agents and employees for their respective rights, interests and liabilities;
			2. have a limit of cover at least equal to the full market value of the Constructional Plant referred to in Clause 20.1(a), including delivery to the Site; and
			3. have a limit of liability in respect of the cover referred to in Clause 20.1(b) of no less than $10,000,000 per occurrence.
		4. The Contractor must, from the time it commences work under the Contract, maintain continuous cover under the policy referred to in Clause 20.1(a) or a replacement policy in the same material terms until the time the Superintendent issues the Final Certificate to the Principal and the Contractor.
		5. The Contractor must ensure that the policy referred to in Clause 20.1 provides that the insurer waives all rights and all entitlement to remedies or relief against the Principal and the Superintendent (and their respective representatives, agents and employees) to which the insurer might become entitled by way of subrogation.

20.2 Insurance of Employees

* + 1. Before commencing work under the Contract, the Contractor must maintain or effect and maintain a policy that provides or policies that together provide cover in respect of any injury, damage, expense, loss or liability suffered or incurred by any person engaged in carrying out the Contractor’s obligations (or their dependants) giving rise to a claim:
			1. for any compulsory statutory workers’ compensation benefits or other liability under the *Workers’ Compensation and Injury Management Act 1981* (WA) or other applicable legislation; or
			2. for employer’s liability at common law.
		2. The insurance must, in relation to employer's liability at common law, have a limit of cover in respect of any one occurrence at least equal to the sum specified in the Annexure as the limit of cover for employer's liability insurance.
		3. The insurance cover must be maintained until the time the Superintendent issues the Final Certificate to the Principal and the Contractor.
		4. The Contractor must ensure that all consultants and subcontractors have similarly insured their employees.
		5. The insurance must be in the name of the Contractor and extended to indemnify the Principal as principal or owner or occupier against any liability which it may incur to such employees or persons engaged in the provision of work under the Contract both statutory and at common law and provide a waiver of all rights of subrogation, action or relief against the Principal.

20.3 Motor Vehicle Insurance

* + 1. The Contractor must maintain or effect and maintain, and ensure that each of its subcontractors maintains or effects and maintains insurance cover in relation to motor vehicles in respect of liability to third parties for personal injury, death, disease or illness (including mental illness) or liability to third parties for loss of or damage to property and compulsory third party motor vehicle insurance as required under any law relating to motor vehicles used in connection with the Contractor’s obligations.
		2. The Contractor must from the time it commences work under the Contract maintain continuous insurance cover in relation to motor vehicles in the terms referred to in this Clause 20.3 until the time the Superintendent issues the Final Certificate to the Principal and the Contractor.
		3. The limit of liability must be no less than $30,000,000 for any one occurrence or accident.
		4. Other than for compulsory third party motor vehicle insurance, the insurance must be in the name of the Contractor and, to the extent permitted by law, extended to indemnify the Principal as principal for claims from third parties.

20.4 Professional Indemnity Insurance

* + 1. Where amounts are specified for professional indemnity insurance in the Annexure, before commencing the work under the Contract, the Contractor must maintain or effect and maintain a professional indemnity insurance policy covering any legal liability arising from any act or omission in connection with or arising out of the professional activities and duties of the Contractor and must be extended to include:
			1. fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property and trade mark;
			2. loss of or damage to documents, data, software and computer programs;
			3. breach of Chapter 2 and 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (Australian Consumer Law) and any similar legislation in any other State or Territory in so far as it relates to the provision of works or services in connection with this Contract; and
			4. the Contractor’s liability arising out of the professional activities and duties of all consultants, agents, contractors and subcontractors engaged by or on behalf of the Contractor in respect of the Contractor's obligations provided in connection with this Contract.
		2. The professional indemnity policy must have limits of indemnity at least equal or equivalent to:
			1. the sum stated in the Annexure as the required limit in relation to professional indemnity insurance for any one claim; and
			2. the sum stated in the Annexure as the required limit in relation to professional indemnity insurance for all claims in the aggregate during a single 12 month period of insurance.
		3. The Contractor must either:
			1. continue to maintain the professional indemnity insurance policy or a replacement policy in similar terms until at least seven years have expired after the date that the Superintendent issues the Final Certificate to the Principal and the Contractor; or
			2. continue to maintain the professional indemnity insurance policy or a replacement policy in similar terms until the date that the Superintendent issues the Final Certificate to the Principal and the Contractor, and thereafter effect and maintain a run off professional indemnity insurance policy that provides similar cover for a period of at least seven years.

21 CONTRACTOR’S INSURANCES – RIGHTS AND OBLIGATIONS

21.1 Principal’s Right to Approve Policies

* + 1. The Contractor's Insurance Policies must be obtained from and maintained with insurers:
			1. with a financial strength rating of at least A- as rated by Standard & Poor’s, or an equivalent rating from another internationally recognised rating agency;
			2. authorised to conduct new or renewal insurance business by the Australian Prudential Regulation Authority, or be subject to a similar international prudential regime; and
			3. approved by the Principal, acting reasonably.
		2. The Contractor's Insurance Policies must be on terms acceptable to the Principal, acting reasonably.
		3. The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Contractor’s Insurance Policies.

21.2 Evidence of Policies

* 1. Other than in relation to compulsory third party motor vehicle insurance, before the relevant commencement date specified in Clause 20 and whenever requested by the Principal, the Contractor must, in respect of each Contractor’s Insurance Policy, give the Principal:
		1. proof, to the Principal's reasonable satisfaction, of currency and coverage of each Contractor’s Insurance Policy;
		2. on request, certified copies of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips or, in respect of the professional indemnity policy, a brokers evidence of cover from a reputable national insurance broker acceptable to the Principal (**Broker’s Evidence of Cover**) evidencing the insurance effected and maintained, confirming that the professional indemnity policy complies with the requirements of the Contract and does not contain any statement that it cannot be relied upon, within a reasonable time after the Contractor receives such request; and
		3. on request, other evidence of the insurances that the Principal reasonably requires.
	2. The Contractor must use its best endeavours to provide the proposed terms and conditions of the Contractor’s Insurance Policies to the Principal at least seven days prior to the date set for each annual renewal or such lesser date as agreed between the parties, and, in any event, the Contractor must provide the proposed terms and conditions no later than four days prior to the date set for each annual renewal.

21.3 Payment of Premiums and Deductibles

* + 1. The Contractor must pay all premiums and other amounts due under the Contractor’s Insurance Policies in accordance with the terms of those policies.
		2. The Contractor is liable for all deductibles payable under the Contractor’s Insurance Policies.
		3. If an insurer requires payment under a relevant insurance policy by the Principal, the Principal may recover the payment of such amount from the Contractor as a debt due and payable from the Contractor to the Principal.

21.4 General Insurance Requirements

* 1. The Contractor must:
		1. not alter, extend or discontinue or cancel any of the Contractor’s Insurance Policies, or allow any of the Contractor’s Insurance Policies to lapse, without the prior approval of the Principal;
		2. not do or permit, or omit to do, anything which prejudices any of the Contractor’s Insurance Policies or which would be grounds for an insurer to refuse to pay a claim made under any of the Contractor’s Insurance Policies;
		3. promptly rectify anything which might, if not rectified, prejudice any of the Contractor’s Insurance Policies;
		4. fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Contractor’s Insurance Policies (whether held solely or jointly with others) in all respects;
		5. comply at all times with the terms of each of the Contractor’s Insurance Policies;
		6. do everything reasonably required by the Principal to enable the Principal to claim and to collect or recover, money due in accordance with or in connection with any Contractor’s Insurance Policy; and
		7. promptly reinstate any Contractor’s Insurance Policy required by the Contract if it is cancelled, lapses or if cover is exhausted.

21.5 Terms of Insurance

* 1. The Contractor must ensure that each of the Contractor’s Insurance Policies (other than compulsory third party motor vehicle and insurance of employees) contains terms, if relevant and to the extent available, to the effect that:
		1. the insurer will not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
		2. in the case of insurances in accordance with which the Principal is also entitled to cover, any breach of the conditions of the insurances by an insured other than the Principal, must not in any way prejudice or diminish any rights which the Principal has under the insurances;
		3. in the case of insurances in accordance with which the Principal is also entitled to cover, the relevant insurance is primary with respect to the interest of the Principal, and any other insurance or self-insurance arrangements maintained by the Principal is excess to, and not contributory with, that insurance;
		4. in the case of insurances in accordance with which the Principal is also entitled to cover, a notice of claim given to the insurer by an insured other than the Principal, will be accepted by the insurer as notice of claim given also by the Principal;
		5. in the case of insurances in accordance with which the Principal is not entitled to cover, the insurer waives any rights of subrogation which it may have against any insured party;
		6. in the case of liability insurances, the insurer agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or increasing the overall limit of indemnity;
		7. the insurer agrees that no reduction in limits or coverage affecting the Works will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 28 days prior notification to the Principal;
		8. coverage for innocent non-disclosure is not excluded;
		9. for policies written on an occurrence basis, provide that the deductible is payable once for each occurrence regardless of whether a claim or claims are brought against one or more insureds; and
		10. the policy is governed by and shall be construed according to the laws of Western Australia and must, in the case of all policies other than legal liability policies, include a provision under which each party to that policy agrees to:
			1. submit to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to that policy; and
			2. waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

21.6 Failure to Comply with Insurance Requirements

* + 1. If the Contractor does not comply with Clause 21.2, or Clause 21.3, or fails to maintain or effect and maintain any Contractor's Insurance Policy required under the Contract to be maintained or effected and maintained (other than those forming part of the PCIP Policies), the Principal may, but is not obliged to, effect or renew the relevant insurance policy, or pay the premium due in respect of that policy, and may recover the cost of doing so:
			1. as a debt due from the Contractor;
			2. from amounts payable to the Contractor; or
			3. from the proceeds of the security provided by the Contractor pursuant to Clause 5.
		2. Without limiting the Principal’s rights under this Clause 21 and Clause 44.2:
			1. the Principal is entitled to withhold payment of any amount due to the Contractor but only where the withheld amount and the reasons for withholding payment have been indicated on the payment certificate or Final Certificate issued by the Superintendent; and
			2. the Principal may suspend the Contract by written notice to the Contractor,

until the Contractor has provided proof of insurance effected and maintained by the Contractor in accordance with this Clause 21 and the Principal has no liability and the Contractor is not entitled to an extension of time, for any delay caused by this.

* + 1. If the Contractor fails to comply with Clauses 20 and 21, this is a substantial breach of the Contract for the purpose of Clause 44.2 and the Principal may exercise its rights under Clause 44.
		2. The rights given to the Principal under this Clause 21 are in addition to any other rights the Principal may have.

21.7 Insurance Claim

* + 1. If, and to the extent that, the Contractor may be insured against loss that it suffers or incurs in respect of an event, occurrence or circumstance, the Contractor must (unless the Principal assumes joint or sole responsibility in making the claim) promptly make and pursue a claim against the relevant insurer in respect of that event, occurrence or circumstance, except in circumstances where the value of the claim would not exceed the deductible payment for making the claim.
		2. The insurance claim must be properly prepared by the Contractor in the manner and time required by the relevant insurer and insurance.

21.8 Application of Insurance Proceeds

* 1. Unless the Principal otherwise directs, if the Works and/or Temporary Works and/or any property of the Principal is damaged or destroyed:
		1. all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Works and/or Temporary Works and/or the property of the Principal; and
		2. if the Principal has repaired or reinstated the Works and/or Temporary Works and/or the property of the Principal, then all insurance proceeds in respect of that damage or destruction must be paid to the Principal.

21.9 Subcontractor Insurance

* + 1. If the Contractor subcontracts any part of the work under the Contract, then the Contractor must ensure that its subcontractors are insured as required under the Contract, as appropriate (including amounts of insurance and type of insurance) given the nature of work or services to be performed by them, as if they were the Contractor.
		2. When determining whether its subcontractors have appropriate insurances in accordance with Clause 21.9(a), the Contractor must have regard to the insurance cover its subcontractors have under the insurance described in Clause 20.
		3. If the Contractor fails to ensure that its subcontractors are insured in accordance with Clause 21.9(a), the Principal may:
			1. exercise its rights under Clause 44.2;
			2. suspend the whole or part of the work under the Contract until evidence of insurance is produced to the Principal; or
			3. refuse payment of any moneys due to the Contractor until evidence of insurances required by Clause 21.9(a) is produced to the Principal.
		4. The rights given to the Principal by this Clause 21.10 are in addition to any other rights the Principal may have.
		5. The Principal is entitled to, but has no obligation to, satisfy itself as to the Contractor’s compliance with this Clause 21.9.

21.10 No Waiver by Principal

* 1. The Principal is not to be taken to have waived any rights or any breaches by the Contractor merely because it has not exercised or sought to enforce any of its rights under Clauses 21.1 to 21.6 (inclusive).

21.11 Contractor Comprising Two or More Persons

* 1. Where the Contractor comprises two or more persons:
		1. insurances effected pursuant to the Contractor's obligations under the Contract (with the exception of insurances effected pursuant to Clause 20.2 and Clause 20.3) must be effected jointly by those persons, unless the Principal otherwise agrees in writing; and
		2. each such insurance must name each person comprising the Contractor as an insured.

21.12 Notices From or To Insurer

* 1. In respect of any insurance that the Contractor is required to take out under Clause 20:
		1. the Contractor must inform the Principal, whenever the insurer gives a notice in connection with the policy;
		2. the Contractor must give the Principal a copy of any notice of cancellation, non-renewal or material alteration given by the insurer to the Contractor within 24 hours of its receipt;
		3. if there is a difference of opinion or disagreement between the Contractor and the Principal as to whether or not a claim should be made, the Principal as a party whose interest is noted on the relevant policies will have the right under the policy of insurance to directly inform the insurer of its position with respect to a claim being made and the existence of the difference of opinion or disagreement;
		4. if the policy ceases or notification of cessation is issued by the insurer, the Contractor must promptly give written notice thereof to the Principal and, in any event, prior to the cancellation, non-renewal or material alteration of any of the policies required under Clause 20; and
		5. whenever a claim is made under any of the Contractor’s Insurance Policies which has a limit that is in the aggregate or reduces the limit available under the aggregate, the Contractor must notify the Principal as soon as possible and provide confirmation that the policy limit has been restored to meet the contractual limits required under the Contract.

21.13 Notices of Potential Claims

* 1. The Contractor must, as soon as practicable and in writing, inform the Principal and the relevant insurer of any occurrence that may give rise to a claim under any Contractor’s Insurance Policy and must keep the Principal informed of subsequent developments concerning the claim. The Contractor must ensure that its subcontractors in respect of their operations similarly inform the parties.

21.14 Insurance Primary

* + 1. The insurances contemplated in Clauses 18 to 20 inclusive are primary and not secondary to the indemnities referred to in the Contract.
		2. The Principal is not obliged to make a claim or institute proceedings against any insurer under the insurances before enforcing any of its rights or remedies under the indemnities referred to in this Contract or generally.
		3. The Contractor is not relieved from, and remains fully responsible for, its obligations under the Contract regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any of the insurances respond or fail to respond.”
1. SCC 13A Possession of Site (GC 27.1)

Delete the second paragraph of GC 27.1 and substitute:

* 1. “Notwithstanding the provisions of Clause 27.1, if the Contractor is in breach of Clauses 21.1 or 21.2, the Principal may refuse to give the Contractor possession of the Site or any part of the Site until the Contractor has complied with the requirements of Clauses 21.1 and 21.2.”
1. SCC 14 Contractor’s Representative (GC 25)

Add at the end of GC 25:

* 1. “Unless approved by the Superintendent, the Contractor's Representative appointed in accordance with this Clause 25 must have:
		1. a minimum five years’ experience in management roles in the construction of major roads or bridges at the Contractor or other contractors of similar nature to the Contractor; and
		2. either:
			1. an engineering qualification from a program that is fully accredited at the level of ‘Professional Engineer’ by the Institution of Engineers Australia and be eligible for the Institution of Engineers Australia membership grade of FIEAust or MIEAust; or
			2. an engineering qualification from a program that is fully accredited at the level of ‘Engineering Technologist’ by the Institution of Engineers Australia and be eligible for the Institution of Engineers Australia membership grade of TFIEAust or TMIEAust.”
1. SCC 15 Setting out the Works (GC 28)

At the beginning of the second paragraph of GC 28.3 add:

* 1. “Subject to Clause 28.6,”

Add to GC 28 the following:

“28.5 Surveyors

* 1. The Contractor must only use survey companies that are third party certified to AS/NZS ISO 9001, with coverage including relevant surveying processes.
	2. Alternatively, where the Contractor uses in-house surveying resources, the Contractor’s third party certified quality system must include surveying as a special process.
	3. A surveyor who is eligible for membership of either the Surveying and Spatial Sciences Institute (Australia) or the Western Australia Institute of Surveyors must be on-site at all times during survey work and oversee all survey work being undertaken.

28.6 Contractor to Check

* 1. The Contractor must, as soon as practicable and prior to commencement of work on the Site, check all levels, dimensions and measurements, and workability of details and satisfy itself that they are correct for the specified purpose and that they conform to the requirements of the Contract including details shown on Drawings and Specifications. If the Contractor discovers any error it must immediately notify the Superintendent and request rectification. If the Contractor fails to check such levels, dimensions and measurements or fails to inform the Superintendent of an error in due time before incurring any associated expense or delay, the Contractor will not be entitled to claim on any basis for any additional payment or extension of time in respect of any related matter.

The Contractor acknowledges that it can comply with the notice requirements in the prescribed period and compliance with the provision is not unreasonably onerous.”

1. SCC 16 Quality Assurance (GC 30.2)

Renumber GC 30.2 as GC 30.2A and add the following additional Clause:

“30.2B Quality Management Plan and Quality Management Representative

* 1. If Clause 30.2A applies, the following additional conditions apply:
		1. Prior to commencement of work under the Contract, the Contractor must provide to the Superintendent for approval a copy of the Contractor’s Quality Management Plan for the Contract including a breakdown of required work and services, management responsibilities, inspection and test plans and step by step procedures for implementing the Plan.
		2. The Quality Management Plan must be prepared in accordance with the applicable current Australian Standards.
		3. The Contractor must appoint a management representative in accordance with AS/NZS ISO 9001, with defined authority and responsibility for implementing the Quality System under the Contract. The management representative will, for the purpose of this Contract, be known as the Quality Management Representative (QMR). The QMR must be experienced in construction and familiar with the nature of the work specified in the Contract.
		4. Failure to comply with the Contractor’s approved Quality Management Plan (as may be amended from time to time with the written approval of the Superintendent) is a substantial breach of the Contract for the purposes of Clause 44.2.
		5. Nothing in Clause 30.2B limits any other rights or obligations under the Contract.”
1. SCC 17 Who Conducts Tests (GC 31.3)

Add at the end of GC 31.3:

* 1. “The Contractor must not rely upon any inspections or tests carried out by the Principal or Superintendent for their own purposes and those inspections or tests will not affect the Contractor’s responsibility for the Works.”
1. SCC 18 Working Hours (GC 32)

Delete the text of GC 32 and substitute:

“32 WORKING HOURS

* + 1. The working hours and working days are:
			1. as stated in the Contract; and
			2. at times permitted by law.
		2. The working hours and working days must not be varied without the prior approval of the Superintendent except, when in the interests of safety or to protect life or property, the Contractor finds it necessary to carry out work outside the working hours or on days other than the working days. In such cases the Contractor must promptly notify the Superintendent in writing of the circumstances.
		3. The Contractor must notify the Superintendent of the start and finish times and working days prior to commencement of work on the Site.
		4. Unless the Contract otherwise provides, the allowable working hours for an individual person are:
			1. up to a maximum of 10 hours per day; and
			2. no more than 120 hours per fortnight.

The allowable working hours per fortnight must be reduced by the maximum hours per day for every public holiday occurring in any fortnight period.

* + 1. In approving a variation to the working hours or working days, the Superintendent may:
			1. attach conditions which may preclude the performance of work requiring inspection or attendance by or on behalf of the Principal or may include a requirement that the Contractor meets the Principal’s costs of inspection or attendance of the work under the Contract during the varied times approved by the Superintendent. Where the Principal’s costs of inspection or attendance are not required to be borne by the Contractor, they shall be borne by the Principal; and
			2. impose additional conditions on the Contractor’s fatigue management control measures as set out in the Contractor’s Health and Safety Management Plan.”
1. SCC 19 Construction Program (GC 33.2)

Delete the text of GC 33.2 and substitute:

“33.2 Construction Program

* + 1. Prior to commencement of the work under the Contract, the Contractor must provide to the Superintendent for approval, a detailed Construction Program consisting of a Critical Path Network in diagrammatic form including a time bar diagram giving details of the earliest dates by which the various stages or portions of work under the Contract are to be commenced and completed.
		2. The Superintendent may direct changes to any aspect of the approved Construction Program but cannot without the consent of the Contractor direct changes that will result in a substantial departure from the logic shown in the approved Construction Program.
		3. The Contractor must amend and submit for approval at [fortnightly/monthly] intervals, and at any other time requested by the Superintendent, further Construction Programs which represent the current state of progress of the Works but must not alter the Date for Practical Completion unless an extension of time is granted.
		4. The Contractor must proceed with the Works in accordance with and at a rate of progress consistent with the approved Construction Program, and must not depart from the sequence shown in the approved Construction Program without first giving prior notice to the Superintendent of its intention to do so and the reasons for doing so.
		5. The Construction Program which the Superintendent has most recently approved is treated as being part of the Contract.
		6. The Construction Program does not affect rights or obligations in Clause 33.1 and approval of the Construction Program by the Superintendent does not:
			1. relieve the Contractor of any obligations under the Contract; or
			2. affect the Date for Practical Completion or constitute a ground for extension of time under Clause 35.5.”
1. SCC 20 Suspension by Superintendent (GC 34.1)

Delete the text of GC 34.1 and substitute:

* 1. “If the Superintendent considers that the suspension of the whole or part of the work under the Contract is necessary:
		1. because of an act or omission of:
			1. the Principal or the Principal’s Personnel; or
			2. the Contractor or the Contractor’s Personnel;
		2. for the protection or safety of any person or property;
		3. to comply with an order of a court; or
		4. for the convenience of the Principal,

the Superintendent may direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Superintendent thinks fit.

* 1. In addition, each inspector appointed under Clause 22 as a Contract Surveillance Officer has the authority to suspend the progress of the whole or part of the work under the Contract if, in the inspector's reasonable opinion, there is a risk of imminent injury or harm to workers or the public.”
1. SCC 20A Suspension by Contractor (GC 34.2)

Delete the text of GC 34.2 and substitute:

“If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 44.9, the Contractor must apply in writing to the Superintendent requesting approval for the suspension. The Contractor’s application for suspension must include the following:

* + 1. whether the request is to suspend the whole or part of the work and if only part of the work, what part;
		2. the requested date for the work to be suspended from;
		3. the reason for the suspension;
		4. the anticipated date for recommencing work; and
		5. how the Contractor will care for the Site during suspension.
	1. The Contractor must not suspend any of the work unless their application is approved by the Superintendent. The Superintendent may impose conditions on a suspension approval which may modify any of the conditions in the Contractor’s application.”
1. SCC 20B Recommencement of Work (GC 34.3)

At the end of the last paragraph of Clause 34.3 delete “.” and substitute:

* 1. “, but if suspended pursuant to Clause 34.2 must commence work on or before the anticipated date for recommencing work approved pursuant to Clause 34.2, unless otherwise extended in writing by the Superintendent. The Superintendent may impose new conditions on any extension.”
1. SCC 20C Cost of Suspension (GC 34.4)

Delete the text of GC 34.4 and substitute:

* 1. “Any cost incurred by the Contractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Contractor but if the suspension is:
		1. due to an act or omission of the Principal or the Principal’s Personnel; or
		2. for the convenience of the Principal,

and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.”

1. SCC 20D Care of the Site During Suspension (GC 34)

After GC 34.5 Effect of Suspension, add the following:

* 1. “**34.6 Care of the Site During Suspension**
	2. Notwithstanding the conditions of any approval by the Superintendent pursuant to this Clause 34, unless explicitly stated otherwise by the Superintendent, the care of the areas in which work under the Contract has been or will be conducted remains the sole responsibility of the Contractor during any suspension, including caring for the work pursuant to Clause 16 and assuring the Site remains safe to the public which may include Temporary Works.”
1. SCC 21 Extension of Time for Practical Completion (GC 35.5)

Delete the text of GC 35.5 and substitute:

**“35.5.1 Notices**

When it becomes evident to the Contractor that anything, including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall promptly notify the Superintendent in writing with details of the possible delay and the cause.

When it becomes evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall give notice to the Superintendent who shall notify the Contractor in writing of the extent of the likely delay.

If the Contractor is or will be delayed in reaching Practical Completion by a cause described in Clause 35.5.2 and within 28 days after the delay occurs the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based, the Contractor shall be entitled to an extension of time for Practical Completion.

In setting out the facts on which the claim is based, the Contractor must, at a minimum:

* + 1. provide sufficient detail of the cause of the delay, with linkage to a cause detailed at Clause 35.5.2;
		2. demonstrate the impact the delay has caused to the affected task and resulting impacts to the Critical Path Network in diagrammatic form baselined against the most recent Construction Program approved by the Superintendent in accordance with Clause 33.2 at the time the delay occurred;
		3. provide an updated Construction Program showing the revised planned schedule of work, with specific reference to the impact of the Critical Path Network;
		4. identify any interactions that the delay has with any other concurrent delays;
		5. identify details of any actions (if any) that the Contractor has taken to preclude the occurrence of the cause and minimise the consequences of the delay;
		6. where the most recent approved Construction Program current at the time the delay occurred does not accurately demonstrate the actual progress of work at the time the delay occurred, include in addition to the current approved Construction Program, a revised program demonstrating the actual progress of work at the time delay occurred; and
		7. make its claim:
			1. based on a prospective analysis of the delay against the approved Construction Program. Retrospective analysis (including windows analysis techniques) are not acceptable;
			2. specific to an individual delay event and not combine multiple delay events to create global claims; and
			3. in line with the requirements of the Contract and not the Society of Construction Law Delay and Disruption Protocol or other similar documentation that do not form part of the Contract.

The Contractor acknowledges that it can comply with these notice requirements in the prescribed period and compliance with these provisions are not unreasonably onerous.

**35.5.2 Causes**

The causes are:

* + 1. events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor including but not limited to:
			1. industrial conditions; or
			2. inclement weather;
		2. any of the following events whether occurring before, on or after the Date for Practical Completion:
			1. delays caused by:
				1. the Principal;
				2. the Superintendent; or
				3. the Principal's employees, consultants, other contractors or agents;
			2. actual quantities of work being greater than the quantities in the Bill of Quantities or the quantities determined by reference to the upper limit of accuracy stated in the Annexure (otherwise than by reason of a variation directed under Clause 40);
			3. latent conditions;
			4. variations directed under Clause 40;
			5. repudiation or abandonment by a Nominated Subcontractor;
			6. changes in the law;
			7. directions by municipal, public or statutory authorities but not where the direction arose from the failure of the Contractor to comply with a requirement referred to in Clause 14.1;
			8. delays by municipal, public or statutory authorities not caused by the Contractor;
			9. any breach of the Contract by the Principal; or
			10. any other cause which is expressly stated in the Contract to be a cause for extension of time for Practical Completion.

**35.5.3 Considerations**

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in Clause 35.5.2, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to:

* + 1. whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time; and
		2. whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

With any claim for an extension of time for Practical Completion, or as soon as practicable thereafter, the Contractor shall give the Superintendent written notice of the number of days extension claimed.

In determining whether the Contractor is or will be delayed in reaching Practical Completion by inclement weather regard must be had to:

* + 1. meteorological averages;
		2. what delays arising from adverse conditions both seasonal and annual the Contractor could reasonably have expected;
		3. the net effect overall of any beneficial weather conditions and any beneficial effect on the work under the Contract of such conditions with respect to any saving in time; and
		4. the immediate effect of delays arising from individual instances of adverse weather conditions.

**35.5.4 Issuing an Extension of Time**

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 28 days after receipt of the notice of the number of days extension claimed, grant a reasonable extension of time. If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent shall before the expiration of the 28 days give the Contractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, the Superintendent shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 28 days shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Contractor to damages.

**35.5.5 Extension of Time at Superintendent’s Discretion**

Notwithstanding that the Contractor is not entitled to an extension of time the Superintendent may, in its absolute discretion, at any time and from time to time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason. The Superintendent is under no obligation to exercise, or to consider whether to exercise, its discretion under this Clause 35.5.5.

The provisions of Clause 23(a), (b) and (c) do not apply to the discretion in this Clause 35.5.5.”

1. SCC 22 Delay or Disruption Costs (GC 36)

Delete the text of GC 36 and substitute:

* 1. “Only where the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by:
		1. any of the events referred to in Clause 35.5.2(b)(i); or
		2. any other event for which payment of extra costs for delay or disruption is provided for in the Annexure or elsewhere in the Contract,

will the Principal pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

* 1. The Principal is not liable to pay:
		1. extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract; or
		2. damages for breach of contract in relation to any cause of delay described in Clause 35.5.2 in addition to any extra costs for delay and disruption payable in respect of any extension of time the Contractor is entitled to by reason of such cause of delay.”
1. SCC 23 Not Used
2. SCC 24 Valuation (GC 40.5)

Delete the text of GC 40.5 and substitute:

* 1. “Where the Contract provides that a valuation must be made under Clause 40.5, the Principal must pay or allow the Contractor or the Contractor must pay or allow the Principal, as the case may require, an amount ascertained by the Superintendent in accordance with the following principles:
		1. if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices must be used;
		2. if paragraph (a) does not apply, the rates or prices in a Priced Bill of Quantities or Schedule of Rates, without alteration, must be used to the extent that it is reasonable to use them;
		3. where paragraphs (a) and (b) do not apply, the Superintendent must establish a new rate or price which is fair and reasonable and, so far as is possible, is based upon the rates or prices contained within the Priced Bill of Quantities or Schedule of Rates, adjusted by way of addition or deduction to take into account any dissimilarity between the component in the rates or prices contained in the Priced Bill of Quantities or Schedule of Rates and the corresponding affected component of the varied work;
		4. in determining the deduction to be made for work which is taken out of the Contract, the deduction must include a reasonable amount for profit and overheads;
		5. if the valuation is of an increase or decrease in a fee or charge, the value will be the actual increase or decrease without regard to overheads or profit;
		6. if the valuation relates to extra costs incurred by the Contractor for delay or disruption, the valuation must include a reasonable amount for overheads but must not include profit or loss of profit; and
		7. Daywork must be valued in accordance with Clause 41.
	2. The Contractor must support a variation with measurements and other evidence of cost, as is required to properly establish the basis and the methodology used in quantifying the claim for a variation, and must provide such further relevant information as is directed by the Superintendent. The Contractor must provide such information as the Superintendent directs regarding the build-up of the rates or prices contained in a Priced Bill of Quantities or Schedule of Rates.”
1. SCC 25 Variations (GC 40)

Add the following Clause at the end of GC 40:

“40.6 Approval of Principal

* 1. The Contractor accepts that the Superintendent, when performing the functions of the Superintendent under Clause 40 in relation to variations, may be required by internal delegation or policies to obtain the approval of the Principal.”
1. SCC 25A Project Bank Account Definitions (GC 42A)

Insert a new Clause GC 42A as follows:

“42A PROJECT BANK ACCOUNT DEFINITIONS

* 1. In Clauses 42.1, 43 and 44.2 and within the statutory declaration at Attachment 2, the following terms have the following meanings:
	2. **Bank** means the bank with which the Project Bank Account is established.
	3. **Contractor Deposit Instruction** means an irrevocable payment instruction in relation to the operation of the Project Bank Account, the purpose of which is to initiate deposits or transfers by the Contractor, in the form agreed pursuant to the PBA Trust Deed Poll.
	4. **Opt-in Notice** means a notice executed by an Opt-in Subcontractor in the form set out in the PBA Trust Deed Poll.
	5. **Opt-in Subcontractor** means:
		1. any person that is contracted by the Contractor to:
			1. undertake work or services; or
			2. undertake work or services and supply goods or materials,

where the total aggregate value of such ‘work or services' or 'work or services and supply goods or materials' in connection with the Works is less than $20,000 (GST inclusive); or

* + 1. any person that is a Supplier in connection with the Works,

where the person has expressly stated (to the Contractor) that they wish to participate in the trust created by the PBA Trust Deed Poll.

* 1. **Payment Report** means a report identifying:
		1. any Subcontractors who have performed work included in the Superintendent's most recent payment certificate, who have already been paid for that work by the Contractor;
		2. any rights of set-off that the Contractor is able to exercise (or intends to exercise) in relation to moneys that might otherwise be payable to any Subcontractor (including reasonable details of the amounts that may be set-off and to the extent it is lawfully able to do so, reasons for the exercise of the set-off right);
		3. any Subcontractor that has failed to make a payment claim under a subcontract (but which was entitled to do so), where work undertaken by the Subcontractor has been included in the Superintendent's most recent payment certificate;
		4. any amount claimed by a Subcontractor that is included in the Superintendent's most recent payment certificate, and is in dispute, including, but not limited to:
			1. any formal dispute between the Contractor and Subcontractor under the relevant subcontract;
			2. any disagreement between the Contractor and Subcontractor in relation to the amount claimed by the Subcontractor; or
			3. any claim made by the Subcontractor under the SOP Act;
		5. any difference between the amount allocated to a Subcontractor (or to works performed by a Subcontractor) in the most recent payment claim and the amount allocated to that Subcontractor in the Progress Payment Instruction(s), and the reasons for the difference; and
		6. copies of any Opt-in Notices that have been received by the Contractor since the issue of the previous Payment Report, or in the case of the first Payment Report, since the award of the Contract.
	2. **PBA Agreement** means the agreement entered into between the Contractor, the Principal and the Bank which establishes the Project Bank Account and which is in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.
	3. **PBA Trust Deed Poll** means the document of that name executed by the Contractor and which is also executed by the Principal on or around the date of the Contract, pursuant to which a Project Bank Account is to be established and moneys due to the Contractor under the Contract are to be paid and held on trust, such document to be in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.
	4. **PPI – Consolidated Allocation** means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which contains a breakdown of the total amount identified in the payment certificate and sets out:
		1. the amounts payable to each of the Subcontractors under their relevant subcontract;
		2. any allowable Retention Amounts to be retained by the Contractor pursuant to any relevant subcontract (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll);
		3. any amount that is to be paid to the Contractor pursuant to the Contract; and
		4. a total to be paid (that is the aggregate of the amounts identified pursuant to subclauses (a), (b) and (c) above) which, to avoid doubt, must be equal to the amount identified in the payment certificate to which the Progress Payment Instruction relates,

and which complies with the requirements of the Contract.

* 1. **PPI – Contractor Allocation** means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out any amount to be paid to the Contractor out of the Project Bank Account, being the amount of money that remains after the aggregate of the amounts in each:
		1. PPI – Subcontractor Allocation; and
		2. PPI – Retention Allocation,

are subtracted from the amount certified by the Superintendent for the month pursuant to the Contract and which complies with the requirements of the Contract.

* 1. **PPI – Retention Allocation** means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out any allowable Retention Amounts to be retained by the Contractor pursuant to any relevant subcontract (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll) and which complies with the requirements of the Contract.
	2. **PPI – Subcontractor Allocation** means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out the amounts payable to each of the Subcontractors under their relevant subcontract and which complies with the requirements of the Contract.
	3. **Progress Payment Instruction** means a PPI – Consolidated Allocation or any one or more of a:
		1. PPI – Contractor Allocation;
		2. PPI – Subcontractor Allocation; or
		3. PPI – Retention Allocation,

the purpose of which is to originate a payment by the Principal into the Project Bank Account.

* 1. **Project Bank Account** means the bank account established as a trust account with a single Bank as more particularly defined in the PBA Trust Deed Poll.
	2. **Retention Amount** means any moneys which the Contractor is entitled to retain from amounts due to Subcontractors pursuant to any express provision of a subcontract permitting either a specified percentage amount or a specified amount to be retained from payments to be made under the subcontract.
	3. **Retention Release Event** is the agreement or determination or occurrence of an event under a subcontract consequent upon which retention moneys or any part thereof (retained pursuant to an express provision of that subcontract) are to (as relevant) be released to the Subcontractor or paid to the Contractor.
	4. **Retention Release Instruction** means an irrevocable payment instruction in relation to the operation of the Project Bank Account which instructs the payment of Retention Amounts that are payable, that is in the form agreed pursuant to the PBA Trust Deed Poll.
	5. **Subcontractor** means:
		1. a person who has been contracted by the Contractor to:
			1. undertake work or services; or
			2. undertake work or services and supply goods or materials,

where in either case the total aggregate value of such 'work or services' or 'work or services and supply goods or materials' in connection with the Works is equal to or greater than $20,000 (GST inclusive); and

* + 1. any Opt-in Subcontractor that has signed an Opt-in Notice and given a copy of that notice to the Contractor.
	1. To avoid doubt, a “Subcontractor” may be a Selected Subcontractor or a Nominated Subcontractor (in each case as defined in the Contract).
	2. **Supplier** means a person who has been contracted to supply goods or materials to the Contractor in connection with the Works but who undertakes no design, fabrication, construction work or service of any kind in connection with the Works.”
1. SCC 26 Payment Claims, Certificates, Calculations and Time for Payment (GC 42.1)

Delete GC 42.1 and substitute:

“42.1 Payment Claims, Certificates, Calculations and Time for Payment

42.1.1 PBA Trust Documents

* 1. Upon execution, the PBA Trust Deed Poll forms part of this Contract.
	2. Within 28 days of the award of the Contract, the Contractor must deliver to the Principal:
		1. a PBA Trust Deed Poll duly executed by the Contractor prior to delivery; and
		2. a PBA Agreement which complies with the PBA Trust Deed Poll, duly executed by the Contractor and the Bank,

in each case delivered unconditionally on the basis that the Principal may execute and date the documents; and

* + 1. if the Contractor has granted a registered security interest which would extend to the Project Bank Account (as identified under the “Personal Property Securities Register” maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), other than a registered security interest in favour of the Bank, a duly executed deed of release or priority deed poll (in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>) pursuant to which the trust arrangements effected pursuant to the PBA Trust Deed Poll and the PBA Agreement are to be released from, or take priority over, any such security; and
		2. evidence to the satisfaction of the Principal that the Project Bank Account has been opened.

The Principal may withhold payment until such time as all of the above documents have been delivered to the Principal, but only where the withheld amount and the reasons for withholding payment have been indicated on the payment certificate issued by the Superintendent.

42.1.2 Notice of PBA Trust – Subcontractors

* 1. Upon request by any Subcontractor, the Contractor must provide to that Subcontractor:
		1. a copy of the executed PBA Trust Deed Poll; and
		2. a copy of the executed PBA Agreement which must include details of the relevant account number and name of the Project Bank Account.

42.1.3 Notice of PBA Trust – Right to Participate

* 1. Prior to any person being contracted by the Contractor to:
		1. undertake work or services; or
		2. undertake work or services and supply goods or materials,

in connection with the Works, where the total aggregate value of such work or services or supply goods or materials in connection with the Works is less than $20,000 (GST inclusive), or

* + 1. supply goods or materials without undertaking any design, fabrication, construction work or service of any kind in connection with the Works where the value of such goods or materials is $20,000 (GST inclusive) or more,

the Contractor must provide reasonable written notice of the trust created and contemplated by the PBA Trust Deed Poll and PBA Agreement and of the rights that person has to participate in the same. The Contractor must notify all potential Subcontractors that they are bidding for a PBA project and direct them to the PBA information available from Main Roads' website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.

42.1.4 PBA Trust – Contracted Value Increases

* 1. If a person that is contracted by the Contractor in relation to part of the Works is not a Subcontractor because the agreed total aggregate value of the ‘work or services’ or ‘work or services and supply goods or materials’ by that person is less than $20,000 (GST inclusive), then on and from the point in time that value threshold is equalled or exceeded:
		1. such person will be a Subcontractor for the purposes of this Contract; and
		2. the Contractor must, in the following Payment Report, notify the Principal that such person has become a Subcontractor.

To avoid doubt, the requirement of the Contractor to allocate and pay retentions into the Project Bank Account is not retrospective, and will only apply once that person becomes a ‘Subcontractor’ and from the time that value threshold is equalled or exceeded.

42.1.5 Opt-in Subcontractor

* 1. The Contractor will ensure that:
		1. any Opt-in Subcontractor is promptly provided with the form of an Opt-in Notice (which must be within seven days of the Opt-in Subcontractor expressly stating to the Contractor that they wish to participate in the trust created by the PBA Trust Deed Poll); and
		2. copies of all duly signed Opt-in Notices received by it are forthwith supplied to the Principal.

Upon the supply of a duly signed Opt-in Notice to the Contractor, the Opt-in Subcontractor that has signed that notice will be deemed a Subcontractor (on and from that point) for all purposes of the Contract and shall be paid via the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll.

42.1.6 Payment Claims

* 1. At the times for payment claims stated in the Annexure and upon issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor must deliver to the Superintendent claims for payment supported by evidence of the amount due to the Contractor and any such information as the Superintendent may reasonably require.
	2. Claims for payment must:
		1. include the value of work carried out by the Contractor in the performance of the Contract to that time;
		2. set out all amounts then due to the Contractor arising out of or in connection with the Contract or any alleged breach thereof;
		3. describe the work under the Contract as well as identify all items and quantities of the Works, to which the progress payment relates;
		4. expressly state that: “This is a Payment Claim made under the *Building and Construction Industry (Security of Payment) Act 2021* (WA)”; and
		5. include any further information as may be required by the Superintendent or the Principal from time to time.
	3. A claim for payment under Clause 42.1.6 delivered by the Contractor to the Superintendent shall be deemed to be given by the Contractor to the Principal for the purposes of the SOP Legislation.

42.1.7 Payment Certificate

* 1. Within 12 Business Days after a claim for payment is given, the Superintendent must issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the opinion of the Superintendent, is to be made by the Principal to the Contractor or the Contractor to the Principal. The Superintendent must set out in the certificate the calculations employed to arrive at that amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference and if payment is to be withheld, the reasons why payment is being withheld. The Superintendent must allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a certificate issued pursuant to Clause 44.6, amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract, including but not limited to any amount due or to be credited under any provision of the Contract.
	2. A payment certificate issued under Clause 42.1 by the Superintendent to the Contractor shall be deemed to be a payment schedule issued by the Principal to the Contractor for the purposes of the SOP Legislation.

If no payment certificate has been issued by the Superintendent within the required time, the Contractor's claim, excluding any amounts in such claim for damages arising out of or in connection with breach of the Contract, will, notwithstanding the absence of a payment certificate, be deemed to be the amount due as if it were set out in a payment certificate and as if such payment certificate were to have been issued on the 12th Business Day after the claim for payment was given to the Superintendent. In the Contract, a reference to an amount identified in a payment certificate must include any amount deemed to be set out in a payment certificate.

* 1. Subject to the provisions of the Contract, where a payment certificate issued by the Superintendent certifies an amount payable from the Contractor to the Principal, the Contractor must, within 14 days of the issue of the payment certificate, pay to the Principal an amount not less than the amount shown on the payment certificate.

42.1.8 Progress Payment Instructions

* 1. Subject to the provisions of the Contract and where any certificate certifies amounts due from the Principal to the Contractor, within 15 Business Days from the date that the Contractor's payment claim is submitted, the Contractor must issue to the Principal the completed Progress Payment Instruction(s), consisting of either:
		1. a single PPI – Consolidated Allocation; or
		2. any one or more of:
			1. a PPI – Contractor Allocation;
			2. a PPI – Subcontractor Allocation; and/or
			3. a PPI – Retention Allocation.
	2. The aggregate total amounts of the Progress Payment Instruction(s) provided to the Principal must be equal to the amount set out in the payment certificate to which the Progress Payment Instruction(s) relate.
	3. At the same time as the Contractor issues the Progress Payment Instruction(s) to the Principal, the Contractor must:
		1. if the Progress Payment Instruction is not a PPI – Consolidated Allocation, inform the Principal of the total number of Progress Payment Instructions that the Contractor intends to provide in relation to the payment certificate to which the Progress Payment Instruction(s) relate;
		2. provide a Payment Report to the Principal;
		3. if requested by the Principal, provide to the Principal invoices issued by any Subcontractor in relation to the payment claim; and
		4. provide the Progress Payment Instruction(s) to the Bank.

42.1.9 Shortfall of Moneys

* 1. To the extent that:
		1. the total amount due and owing from (or otherwise payable by) the Contractor to a Subcontractor is greater than the amount identified in the relevant Progress Payment Instructions for that Subcontractor; and/or
		2. amounts are due and owing from the Contractor to a Subcontractor and the amounts are not referrable to any previously issued Progress Payment Instructions,

the Contractor must pay into the Project Bank Account any amount required to make payment of the total amount due to the Subcontractor. Any such payment into the Project Bank Account must:

* + 1. be accompanied by a Contractor Deposit Instruction; and
		2. be made in sufficient time so as to allow the Bank to apply the relevant funds to that Subcontractor at the same time as acting on the relevant Progress Payment Instructions and in any event, no less than two days prior to the scheduled date of payment for such Progress Payment Instructions,

and the moneys deposited by such payment into the Project Bank Account will be held on trust for the benefit of the relevant Subcontractor.

42.1.10 Payment

* 1. The Principal must (subject to the other provisions of the Contract) pay the amount shown in the payment certificate into the Project Bank Account. The Principal must pay the amount within 20 Business Days after the relevant payment claim is given to the Superintendent.
	2. The Principal must issue to the Contractor a Recipient Created Tax Invoice in respect of GST for the total amount of the relevant payment certificate or Final Certificate or Certificate issued pursuant to Clause 44.6 and paid by the Principal into the Project Bank Account.

42.1.11 Withholding Payment / Revoking and Reissuing

* 1. The Principal may (in its absolute discretion) withhold payment of moneys due to the Contractor if no statutory declaration is supplied pursuant to Clause 43.1(c), or if the statutory declaration supplied pursuant to Clause 43.1(c) identifies, or the Principal reasonably believes that:
		1. a Progress Payment Instruction is not true and accurate, does not properly allocate amounts payable to Subcontractors pursuant to their subcontracts, or otherwise does not comply with the Contract;
		2. a Payment Report is not true and accurate, does not properly allocate amounts payable to Subcontractors pursuant to their subcontracts, or otherwise does not comply with the Contract;
		3. there are manifest errors (including arithmetic errors) in any of the Progress Payment Instructions or in any Payment Report;
		4. there are Opt-in Subcontractors who wish to become a 'Subcontractor' but have not yet been provided with an Opt-in Notice;
		5. there are persons that should have been deemed to be a Subcontractor pursuant to the Contract, and this information has not been provided to the Principal;
		6. the Contractor is liable for amounts due and owing to workers or to Subcontractors or Opt-in Subcontractors or any other subcontractor or supplier (regardless of subcontract value) in respect of works carried out and completed and such amounts remain unpaid as at the date of the statutory declaration;
		7. there has been a change in the registered security interests which would extend to the Project Bank Account (as identified under the “Personal Property Securities Register” maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), other than a registered security interest in favour of the Bank, and a duly executed deed of release or priority deed poll in relation to that security interest (in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>) has not been supplied to the Principal;
		8. the Contractor has breached the PBA Trust Deed Poll and that breach has not been remedied to the reasonable satisfaction of the Principal;
		9. there is any inconsistency or ambiguity between the invoices issued by the Subcontractors and the calculations set out in a Progress Payment Instruction; and/or
		10. the $1 payment as required by clause 3.1(c) of the PBA Trust Deed Poll has not been successfully made through the Project Bank Account,
	2. but only where the withheld amount and the reasons for withholding payment have been indicated on a payment certificate issued by the Superintendent.
	3. Without limiting its right to withhold payment, the Principal may (in its absolute discretion) direct the Contractor to revoke and reissue any Progress Payment Instruction to both the Principal and the Bank if:
		1. there are manifest errors (including arithmetic errors) in any of the Progress Payment Instructions or in the Payment Report; or
		2. that Progress Payment Instruction does not comply with the requirements of the Contract.
	4. If the Principal has provided comments on the Progress Payment Instructions, the reissued Progress Payment Instructions must properly take into account those comments.

42.1.12 Effect of Payment

* 1. Payments made into the Project Bank Account by the Principal are deemed to be payments made to the Contractor under the Contract.
	2. A payment made into the Project Bank Account pursuant to this Clause does not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, is liable to pay the difference between the amount of such payment and the amount so properly due and payable. If the Principal is liable to pay the difference, it must (subject to the rights of the Principal pursuant to Clauses 42.1.11 and 43) be paid into the Project Bank Account by the Principal upon receipt from the Contractor of a properly completed Progress Payment Instruction.
	3. Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.

42.1.13 Unfixed Plant and Materials

* 1. Notwithstanding Clause 42.4, the Principal shall be obliged to pay for any item of unfixed plant and materials where that item is listed in the Annexure, provided the Contractor:
		1. establishes to the satisfaction of the Superintendent that the Contractor has paid for the item, and the item is properly stored, labelled the property of the Principal and adequately protected; and
		2. provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the item.
	2. Upon payment into the Project Bank Account of the amount which includes the value of the item, the item shall be the property of the Principal free of any lien or charge.
	3. Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

42.1.14 Retention Release Events

* 1. The Contractor acknowledges the provisions of the PBA Trust Deed Poll, including in relation to the occurrence of Retention Release Events. The Contractor agrees to comply with the PBA Trust Deed Poll and to forthwith provide the Principal with a copy of any Retention Release Instruction issued pursuant to the PBA Trust Deed Poll.

42.1.15 SOP Legislation

* 1. The Contractor acknowledges the provisions of the SOP Legislation and (in particular) section 14 of the SOP Act. The Contractor hereby confirms that nothing in the Contract, the PBA Trust Deed Poll or the PBA Agreement shall be construed as permitting or otherwise allowing the Contractor to implement an arrangement with its Subcontractors that would result in provisions of its subcontracts having no effect by virtue of the application of section 14 of the SOP Act or any other provision of the SOP Legislation.

42.1.16 Reconciliation of Overpayments

* 1. If at any time and for any reason whatsoever the Principal has paid or pays to the Contractor more than the amount shown in a payment certificate issued by the Superintendent pursuant to Clause 42.1.7 as the amount due to the Contractor, the overpayment shall be reconciled by way of either:
		1. a deduction from the next payment claim; or
		2. the issuing of a Principal initiated invoice for the Contractor to pay within 14 days of receipt by the Contractor,

at the absolute discretion of the Principal.”

1. SCC 26A Correction of Payment Certificates (GC 42.2)

Insert the following paragraph at the end of GC 42.2 as follows:

* 1. “Any corrected certificates will be deemed to be a payment schedule issued by the Principal for the purposes of the SOP Legislation and Clause 42.1 will apply.”
1. SCC 26B Final Payment Claim (GC 42.7)

Delete the first paragraph of GC 42.7 and substitute:

* 1. “The Contractor shall lodge with the Superintendent a final payment claim and endorse it 'Final Payment Claim' before:
		1. the date that is 28 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire; or
		2. the date that is six months after the completion of all work under the Contract,
	2. whichever is the later.”
1. SCC 26C Set Offs by the Principal (GC 42.10)

Delete GC 42.10 and substitute:

* 1. “The Principal may direct the Superintendent to issue a payment certificate which includes amounts the Principal will deduct or set-off from moneys due to the Contractor, that the Principal considers (acting reasonably) will become due from the Contractor to the Principal.
	2. Failure by the Superintendent to set out in a payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal, will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.
	3. The Principal may, subject to Clause 5, have recourse to retention moneys and, if they are insufficient, then to security under the Contract, to deduct or set-off any debt or money due, or any amount that the Principal considers (acting reasonably) will become due, from the Contractor to the Principal under the Contract or otherwise than under the Contract.”
1. SCC 27 Recourse for Unpaid Moneys (GC 42.11)

Delete the text of GC 42.11 and substitute:

* 1. “If a party fails to pay the other party an amount due and payable under the Contract within the time provided by the Contract or a party fails to pay the other party any money due otherwise than under the Contract, the other party may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.”
1. SCC 27A Notice in Relation to SOP Legislation

Insert the following after Clause 42.11 as new Clauses 42.12, 42.13 and 42.14:

“42.12 Notice in relation to SOP Legislation

* + 1. The Contractor must:
			1. ensure that a copy of any written communication of whatever nature in relation to the SOP Legislation (including a “payment claim” under the SOP Legislation) which it delivers or is deemed to deliver to the Principal is provided to the Superintendent at the same time; and
			2. when the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the SOP Legislation or if the Contractor receives any communication from any subcontractor in relation to any adjudication pursuant to the SOP Legislation, promptly and without delay give the Principal and the Superintendent a copy of any written communication of whatever nature in relation to the SOP Legislation which the Contractor receives from a subcontractor.
		2. If:
			1. the Contractor suspends the work under the Contract pursuant to the SOP Legislation, the Contractor will have no claim other than as expressly provided for by the SOP Legislation; and
			2. any of the Contractor's subcontractors suspend the provision of any work, services or supply pursuant to the SOP Legislation, the Contractor will have no claim (including under Clause 35 or Clause 36).

42.13 Adjudication under the SOP Legislation

* + 1. Notwithstanding the dispute resolution process provided in Clause 47, if a Dispute relates to a payment certificate, the Contractor may make an adjudication application under Part 3 of the SOP Legislation if:
			1. the Principal has not paid the amount in a payment certificate in full by the due date as set out in Clause 42.1 of this Contract; or
			2. the amount provided in a payment certificate is less than the claimed amount or no payment is proposed in the payment certificate.
		2. If the Superintendent or the Principal has not provided a payment certificate, an adjudication application under Part 3 of the SOP Legislation cannot be made by the Contractor unless:
			1. the Contractor gives notice within 20 Business Days after the due date for payment in Clause 42.1; and
			2. the Superintendent and the Principal have been given the opportunity to issue a payment certificate within five Business Days after receiving the Contractor's notice.
		3. The Contractor must bring an adjudication application within 20 Business Days of becoming entitled to make an adjudication application in accordance with Clauses 42.13(a) and (b) and the SOP Legislation.
		4. The adjudication application must:
			1. be made in the form prescribed by the SOP Legislation;
			2. be in writing;
			3. identify the payment claim and payment certificate;
			4. be accompanied by a copy of this Contract;
			5. be made to the authorised nominated authority chosen by the Contractor with the accompanying application fee (as applicable); and
			6. include any submissions the Contractor wishes to include.
		5. The Contractor must give a copy of the adjudication application to the Principal within one Business Day of making the application.
		6. A party may bring a review application if permitted under the SOP Legislation within five Business Days after that party is given the determination.

42.14 No Omission

* 1. Nothing in this Contract will be construed to:
		1. make any act or omission of the Principal in contravention of the SOP Legislation (including a failure to pay an amount becoming due under the SOP Legislation) a breach of this Contract (unless the Principal would have been in breach of this Contract had the SOP Legislation had no application); or
		2. give to the Contractor rights or remedies under this Contract which extend or are in addition to rights or remedies given to the Contractor by the SOP Legislation in respect of any act or omission of the Principal in contravention of the SOP Legislation.”
1. SCC 27B Payment of Workers, Subcontractors and Suppliers (GC 43)

Delete GC 43 and substitute:

“43 PAYMENT OF WORKERS, SUBCONTRACTORS AND SUPPLIERS

43.1 Documentary Evidence and Statutory Declaration

* + 1. The Superintendent may, not less than five days before a Payment Certificate is due, in writing request the Contractor to provide documentary evidence to the Superintendent that at the date of the request all workers who have been employed by a subcontractor or supplier of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
		2. If the Contractor fails within five days after a request by the Superintendent under Clause 43.1(a) to provide the documentary evidence required, notwithstanding Clause 42.1 the Principal may withhold payment of moneys due to the Contractor until the documentary evidence is received by the Superintendent, but only if the amount to be withheld and the reasons for withholding are indicated on a payment certificate.
		3. At the same time as (and no earlier than) any Progress Payment Instruction(s) is issued to the Principal and the Bank, the Contractor must give to the Principal a statutory declaration (in the form as set out in **Attachment 2** annexed to these Conditions of Contract) by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that:
			1. all workers who have at any time been employed by the Contractor on work under the Contract have been paid all moneys due and payable to them in respect of their employment on the work under the Contract;
			2. all subcontractors and suppliers have been paid all moneys due and payable to them in respect of work under the Contract;
			3. the Progress Payment Instruction(s) are true and accurate and comply with the Contract (and to avoid doubt and without limitation, properly allocate amounts payable to Subcontractors pursuant to their subcontracts);
			4. all Opt-in Subcontractors who wish to become a ‘Subcontractor’ have been provided with an Opt-in Notice;
			5. to the extent that any previously issued Progress Payment Instruction was not correct or for any other reason, the Contractor has no outstanding liabilities to Subcontractors or any other subcontractor or supplier (regardless of subcontract value) in connection with the Works, other than the payments the subject of the Progress Payment Instruction;
			6. the Payment Report issued with the Progress Payment Instruction(s) is true and accurate; and
			7. there has been no change in the registered security interests which would extend to the Project Bank Account (as identified under the “Personal Property Securities Register” maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), other than a registered security interest in favour of the Bank, or if there has been a change, the Contractor has provided a duly executed deed of release or priority deed poll (in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>) to the Principal, or will provide such deed of release or priority deed poll within one day of the change,
		4. in each case as at the date of the statutory declaration. The statutory declaration referred to in Clause 43.1(c) must not be signed and dated earlier than the date of the relevant Progress Payment Instruction(s).

43.2 Payments Directly to Workers, Subcontractors and Suppliers

* 1. At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker, subcontractor or supplier.
	2. If any worker, subcontractor or supplier obtains a court order or determination, pursuant to s.38 or s.48 of the SOP Act in respect of moneys referred to in Clause 43.1 and produces to the Principal the court order or determination and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order or determination, and costs included in the order or determination, to the worker, subcontractor or supplier and the amount paid shall be a debt due from the Contractor to the Principal.”
1. SCC 27C Default by the Contractor (GC 44.2)

Delete GC 44.2 and substitute:

“44.2 Default by the Contractor

* 1. If the Contractor commits a substantial breach of contract, the Principal may give the Contractor a written notice to show cause.
	2. Substantial breaches include:
		1. failing to:
			1. provide security;
			2. provide evidence of insurance;
			3. comply with a direction of the Superintendent pursuant to Clause 30.3; or
			4. use the materials or standards of work required by the Contract;
		2. wrongful suspension of work;
		3. substantial departure from a construction program without reasonable cause or the Superintendent's approval;
		4. where there is no construction program, failing to proceed with due expedition and without delay;
		5. in respect of Clause 43.1, knowingly providing documentary evidence containing an untrue statement;
		6. in respect of Clause 42.1, failing, within 28 days of the award of the Contract, to deliver to the Principal a duly executed deed of release or priority deed poll when required to do so by that Clause;
		7. if there is a change in the registered security interests which would extend to the Project Bank Account (as identified under the “Personal Property Securities Register” maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), other than a registered security interest in favour of the Bank, failure to provide a duly executed deed of release or priority deed poll (in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>) to the Principal within 14 days of the change;
		8. any breach of the PBA Trust Deed Poll or the PBA Agreement which (in the opinion of the Principal) is not minor or inconsequential in nature;
		9. any act or omission of the Contractor that substantially damages, or may substantially damage, the name or reputation of the Principal;
		10. the occurrence of a Probity Event; and
		11. in respect of Clause 9.1, there is a Change in Control of the Contractor without the prior written approval of the Principal.”
1. SCC 28 Contractor’s Prescribed Notice (GC 46.1)

In GC 46.1 second paragraph, delete “42” and substitute “28”.

Insert the following paragraph before the last paragraph of the GC 46.1 as follows:

* 1. “The Contractor acknowledges that it can comply with this notice requirement in the prescribed period and compliance with the provision is not unreasonably onerous.”
1. SCC 29 Time for Disputing Superintendent’s Directions (GC 46.2)

In GC 46.2, delete “56” and substitute “28”.

1. SCC 30 Dispute Resolution (GC 47)

Delete GC 47 and substitute:

“47 DISPUTE RESOLUTION

47.1 Notice of Dispute

* + 1. Subject to Clause 47.3, any dispute or difference of any kind arising out of or in connection with the Contract (a **'Dispute'**), including a Dispute concerning a direction given by the Superintendent, must be resolved in accordance with this Clause 47.
		2. If a party requires a Dispute to be resolved, that party must promptly give the other party and the Superintendent a notice identifying, and giving details of, the Dispute (a **'Dispute Notice'**).

47.2 No limit on rights under SOP Legislation

* 1. Nothing in this Clause 47 is a precondition to any of the following:
		1. the making of a payment claim by the Contractor under the SOP Act;
		2. the making of an adjudication application or adjudication review application under the SOP Act; or
		3. the exercise of any right, or the discharge of any obligation, under the SOP Act.

47.3 Impact of Application for Adjudication under the SOP Legislation

* 1. The SOP Legislation will have the following impact on this Clause 47:
		1. an application for adjudication or review of adjudication, or any document that is authorised or required under the SOP Act to be given by a party to the other party, will not be considered a Dispute Notice;
		2. if a Dispute Notice is given and the Dispute the subject of that Dispute Notice is, or subsequently becomes, the subject of an application for adjudication under Part 3 of the SOP Act, the operation of this Clause 47 will be stayed in relation to that Dispute until such time as the application for adjudication is withdrawn; and
		3. if a determination is made by an adjudicator or review adjudicator pursuant to Part 3 of the SOP Act, this Clause 47 will have no application to the Dispute the subject of that determination and either party may commence proceedings concerning that Dispute.

47.4 Negotiation and mediation

* + 1. Within 14 days after service of a Dispute Notice, a senior executive or other designated officer of each of the parties, and at the option of either party and provided the Superintendent so agrees, in the presence of the Superintendent, must meet and genuinely attempt to resolve the Dispute.
		2. If, within 14 days of the first meeting under Clause 47.4(a) or such further time as agreed by the parties, the Dispute is not resolved, the Principal or the Principal’s delegate and the chief executive officer of the Contractor, or the chief executive officer’s delegate, must meet within seven days of the expiry of that 14 day period and genuinely attempt to resolve the Dispute.
		3. If, within 28 days of the first meeting under Clause 47.4(a) or such further time as agreed by the parties, the Dispute is not resolved and a party wishes to continue to seek to resolve the Dispute, the party must refer the Dispute to mediation.
		4. The reference to mediation will commence when either party gives notice to the other party requiring resolution of the Dispute under Clause 47.4(c). If the Dispute is not referred to mediation within 28 days of the expiration of the timeframe in Clause 47.4(c), unless otherwise agreed by the parties, the Dispute Notice will be deemed to be withdrawn.
		5. If the Dispute is referred to mediation, the mediation must be conducted by an accredited mediator agreed by the parties, or failing agreement on the mediator and terms of appointment within a further seven days, an accredited mediator nominated by the Chair of Resolution Institute (ACN 008 651 232) or the Chair’s designated representative. The terms of the appointment must be in accordance with the Resolution Institute Mediation Rules. The location of the mediation will be Perth, Western Australia or other location determined by the Principal. Unless otherwise agreed by the parties, the mediator must be:
			1. a retired judge of the High Court of Australia or Supreme Court of a State or Territory of Australia; or
			2. a dispute resolution practitioner with legal qualifications and at least 20 years’ experience in the legal profession.
		6. The parties agree to genuinely participate in the mediation process. Any information or document obtained through or as part of the reference to mediation is confidential and may not be used for any purpose other than the settlement of the Dispute under Clause 47.
		7. The parties will share equally the mediator’s fees for any mediation.
		8. If the Dispute is not resolved within 28 days of the commencement of the reference to mediation, either party may then, but not earlier, commence proceedings in any court exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

47.5 Other Matters

* + 1. Subject to the SOP Act, circumstances beyond the control of the parties permitting, each party must continue to perform the Contract even though a Dispute exists or proceedings have been commenced under Clause 47.4(h).
		2. Notwithstanding any other provision of the Contract, nothing will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.
		3. Clause 47 survives the termination of the Contract.”

**ADDITIONAL CLAUSES – SPECIAL CONDITIONS OF CONTRACT (SCC)**

**The following Clauses have been added to those of AS 2124-1992.**

1. SCC 31 Contractor’s Performance
	* 1. To the extent allowed by law and unless provided otherwise by this Contract, the Contractor is solely responsible for all aspects of the planning, control, supervision and management of all the work under the Contract.
		2. The Contractor must perform all of the Contractor’s obligations under the Contract in a proper, thorough, skilful and professional manner with all due expedition and in accordance with Probity Requirements and current best practice and in all respects in accordance with the terms of the Contract.
		3. The Contractor remains fully responsible for the Works irrespective of any approval, consent, review, audit, inspection or acceptance by the Principal or the Superintendent of the Works or any proposal relating to the Works.
2. SCC 32 Consents
	1. Any consent or approval of the Principal required under the Contract may be given conditionally or unconditionally or withheld by the Principal in each case in its absolute discretion unless otherwise expressly provided. If a consent or approval is given conditionally, the Contractor must comply with each condition. A consent or approval of one thing does not apply to any other thing. The grant of consent or approval does not in any way affect the obligations of the Contractor in respect of the subject of the consent or approval.
3. SCC 33 Warranties from Third Parties
	* 1. Upon the termination of the Contract, the Contractor must use all reasonable endeavours to ensure that any warranties in favour of the Contractor relating to the Works are assigned to the Principal.
		2. If a particular warranty cannot be assigned to the Principal, the Contractor holds the benefit of the warranty in trust for the Principal and appoints the Principal as the Contractor’s agent for the purposes of obtaining the benefit of the warranty and enforcing its terms.
4. SCC 34 External Requirements
	* 1. The Contractor must comply with:
			1. all applicable Industrial Awards, Industrial Agreements, registered workplace agreements and orders of competent Courts or Industrial Tribunals; and
			2. applicable codes of practice, guidelines and standards including those issued by the Principal.
		2. The Principal is entitled to recover from the Contractor:
			1. any moneys received by the Contractor; or
			2. any sum by which the Tender price was increased,

in contravention of AS 4120 – 1994 as if such sum were a debt due from the Contractor to the Principal under or by virtue the Contract.

* + 1. The Contractor warrants that, in respect of its Tender for the Contract, it complied with the Australian Standard Code of Tendering AS4120 – 1994.
1. SCC 35 Preconditions to Commencement of Work under the Contract
	* 1. The Contractor must not commence work under the Contract until the Superintendent has notified the Contractor that the Superintendent has approved the Contractor’s:
			1. Construction Program;
			2. Traffic Management Plan;
			3. Health and Safety Management Plan;
			4. Environmental Management Plan;
			5. Quality Management Plan; and

NOTE: If SCC 50 Procurement Management **is not** used, delete paragraph (vi) below.

* + - 1. Procurement Management Plan.

This approval is conditional on the Contractor complying with any subsequent instructions from the Superintendent to amend the plans, within a time limit specified by the Superintendent.

NOTE: If SCC 48 Agreement with Rail Operators **does not** apply, delete paragraph (b) below.

* + 1. The Contractor must not commence any work under the Contract within any Rail Land until:
			1. the Superintendent has notified the Contractor that the Superintendent has approved the Contractor’s Rail Safety Management Plan. This approval is conditional on the Contractor complying with any subsequent instructions from the Superintendent to amend the plan, within a time limit specified by the Superintendent; and
			2. the Rail Operator has approved the Contractor's Rail Safety Management Plan in accordance with SCC 48.2(a)(ii).
1. SCC 36 Warranties by the Contractor
	* 1. The Contractor, its subcontractors and their respective employees, have the requisite expertise, applicable professional skills and capabilities to carry out the Works and will continue to have them during the term of the Contract.
		2. The Contractor has familiarised itself with local conditions and all applicable laws.
		3. The Contractor’s subcontractors and the respective employees of the Contractor and its subcontractors will not enter the Site without having first familiarised themselves to the extent necessary with local conditions and all applicable laws.
		4. The Contractor has examined all information relevant to the risks, contingencies and other circumstances having an effect on the Schedule of Rates and obtainable by making reasonable inquiries.
		5. The Contractor has inspected the Site and its surroundings.
		6. The Contractor will not do or permit anything which might damage the name or reputation of the Principal or reasonably invite adverse public criticism or result in the Principal being the subject of any official investigation.
2. SCC 37 Interface

37.1 Related Contracts

* 1. In SCC 37, “Related Works” means any works being carried out or which are required to be carried out by other contractors on or in the vicinity of the Site at the request or direction of the Principal.

37.2 Other Work

* 1. The Contractor acknowledges that the Principal may have work performed by other contractors and that it is of paramount importance that the Works are fully and completely coordinated with Related Works in view of their concurrent and sequential nature.

37.3 Contractor’s Obligations

* 1. The Contractor must at all times and in accordance with the requirements and directions of the Superintendent and at no cost to the Principal additional to that already provided for in the Schedule of Rates or Bill of Quantities:
		1. take all reasonable steps to coordinate and integrate the execution of the Works including the work of subcontractors and suppliers with the activities of other contractors;
		2. attend such coordination meetings called by the Superintendent to plan, review and coordinate activities for the management of interfaces between the Works and Related Works;
		3. plan, program and perform the execution of the work so as to minimise any interference with or hindrance of the performance of the Related Works;
		4. at all times refrain from carrying out any operation on-site in a manner which is likely to cause damage or inconvenience to the execution of the Related Works;
		5. take all necessary steps to protect the Works from accidental damage caused by related contractors;
		6. at all times cooperate with the Principal, the Superintendent, any public or private utilities, statutory or other relevant authorities and others who may be engaged on the Site so as to promote and foster a coordinated and integrated approach to the Works and the Related Works;
		7. take all reasonable steps to coordinate with and afford all reasonable access to any public or private utilities, statutory and other relevant authorities and others which may be engaged on the Site;
		8. comply with all obligations as to interfacing the Works with the Related Works as are detailed in the Specification; and
		9. permit the Principal and any other contractor or supplier employed by the Principal and duly authorised by the Principal to enter upon the site upon reasonable notice to stockpile suitable material on the Site.
1. SCC 38 Partnering Arrangement
	1. The Superintendent intends to establish a Partnering arrangement with the Contractor. This arrangement will be structured to draw on the strengths of each organisation to identify and achieve reciprocal goals. Its objectives will be effective and efficient Contract performance and completion within budget and on schedule in accordance with the Contract.
	2. This Partnering arrangement will be bilateral in makeup and costs associated with the process will be agreed to by both parties and will be shared equally.
	3. To implement this Partnering arrangement there will be a meeting, within 14 days of receipt of the Notice of Acceptance of Tender or as agreed between the parties, between the Contractor and a representative of the Superintendent to plan Partnering workshops, the agenda and workshop duration and location. Persons required to be in attendance at the Partnering workshops will be representatives of the Principal, the Superintendent and staff, and the Contractor’s key contract supervision personnel. The Contractor must use its best endeavours to ensure the attendance also of key contract supervision personnel of principal subcontractors.
	4. The initial Partnering workshop should be held prior to the commencement of Works or if this is not possible it will be held within 14 days after commencement.

NOTE: Delete the paragraph below shown in italics for contracts of less than 16 weeks duration. If the contract is over 16 weeks duration, change from italic to normal font.

* 1. *At approximately mid-term of the Contract on a date specified by the Superintendent or otherwise agreed between the parties, a further Partnering workshop will be conducted to determine the effectiveness of the Partnering arrangement and to review the operation of the Contract from a Partnering arrangement point of view.*
	2. A final closeout Partnering workshop will be conducted following Practical Completion of the Contract on a date specified by the Superintendent or otherwise agreed between the parties.
	3. The establishment of a Partnering arrangement in respect of this Contract does not change the legal relationship of the parties to the Contract nor affect any of the other terms and conditions of the Contract.
1. SCC 39 Taxes (including Goods and Services Tax (GST))
	1. Unless stated otherwise, all duties, taxes and charges imposed or levied in Australia or overseas in connection with the supply of goods and services used by the Contractor to undertake the work under the Contract are payable by the Contractor.
	2. All amounts in this Contract (except where otherwise specified) are exclusive of GST.
2. SCC 40 Health and Safety

40.1 General Requirements

* 1. The Principal is committed to ensuring, so far as is practicable, a working environment for all workers and members of the public, that is safe and without risk to health.
	2. The Contractor or any subcontractor that may be engaged to perform a service for the Principal must at all times discharge their responsibilities under WHS Law [and the Rail Safety Act] including identifying and exercising all necessary precautions for the health and safety of all persons including:
		1. the Contractor’s employees;
		2. any subcontractor and their employees;
		3. the Superintendent and the Superintendent’s staff and agents;
		4. the Principal’s employees, agents, contractors and subcontractors; and
		5. any other person,

who may be affected directly or indirectly by or as a result of any work under the Contract.

NOTE: When the Project does not involve rail, delete the reference to the Rail Safety Act above.

40.2 WHS Management System

* 1. The Contractor must at all times implement and maintain a certified WHS management system that as a minimum requirement demonstrates compliance with:
		1. WHS Law; and
		2. the requirements of AS/NZS ISO 45001:2018 *Occupational health and safety management systems – Requirements with guidance for use*.
	2. Certification must be by a third party qualified to provide such certification.
	3. The Contractor must ensure that it and its employees, subcontractors and all other persons employed or engaged on work under the Contract comply with the Contractor’s WHS management system and Health and Safety Management Plan.

40.3 WHS Management Representative

* 1. The Contractor must, for the purpose of this Contract, appoint a representative to manage the Health and Safety Management Plan with defined authority and responsibility for the implementation of the plan. The representative shall, for the purpose of this Contract, be known as the WHS Management Representative (WHS MR). The WHS MR must:
		1. possess a:
			1. Certificate IV in WHS and have at least 10 years’ verified relevant experience in safety management within the construction industry; or
			2. Diploma (or higher) in WHS and have at least 5 years’ verified relevant experience in safety management within the construction industry;
		2. be familiar with the nature of the work required in the Contract; and
		3. be a full time member of the site management team and generally be in attendance on the Site at all times activities relating to the Contract are taking place.
	2. The Health and Safety Management Plan must identify the name, qualifications and experience of the WHS MR.

40.4 Non-compliance

* 1. Failure to comply with the provisions of SCC 40, or the Health and Safety Management Plan as approved by the Superintendent, is a substantial breach of the Contract for the purposes of Clause 44.2.
	2. Imposition of a conviction in relation to WHS is a substantial breach of Contract for the purposes of Clause 44.2.
	3. Single or partial exercise of a right under SCC 40 or Specification 203 – HEALTH AND SAFETY MANAGEMENT does not prevent any other exercise of that right. Further, a waiver of a right under this SCC 40 or Specification 203 – HEALTH AND SAFETY MANAGEMENT does not prevent the exercise of any other right.

40.5 Australian Government Building and Construction Industry Work Health and Safety (WHS) Accreditation Scheme

NOTE: SCC 40.5 should be included where the building works under a contract is indirectly funded (through grants or other programs) by the Australian Government and where the funding contribution is:

* at least $6m and represents at least 50% of the total construction project value; or
* $10m or more, irrespective of the proportion of Australian Government funding; and
* The head contract for building work is greater than $4m (GST inclusive).

If not applicable, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

* 1. The Contractor must maintain accreditation under the Australian Government building and construction industry Work Health and Safety Accreditation Scheme (WHS Scheme), established by the *Federal Safety Commissioner Act 2022* (Cth), while building work (as defined in section 6 of that Act) is carried out.
	2. The Contractor must comply with all conditions of WHS Scheme accreditation.
	3. Paragraph 26(g) of the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

40.6 Compliance with WHS Law

* 1. In this SCC 40.6, “construction project”, “construction work”, “principal contractor”, “worker” and “workplace” have the same meanings assigned to those terms in the WHS Act.
	2. For the purpose of the WHS Actand to the extent the work under the Contract involves construction work or is a construction project:
		1. the Principal engages the Contractor as the principal contactor and the Contractor accepts its appointment and engagement as the principal contractor and must comply with all obligations and duties of a principal contractor;
		2. the Principal authorises the Contractor to have management and control of each workplace (including the means of entering and exiting the workplace) at which the work under the Contract is carried out (other than an Enclave Area) and to discharge the duties of a principal contractor, while the Contractor is performing work under the Contract; and
		3. the Contractor acknowledges and agrees that in the event that the appointment and engagement of the Contractor as principal contractor is not valid under the WHS Act, the Contractor must nevertheless perform the function of a principal contractor in accordance with the requirements of the WHS Act.

40.7 Enclave Area

* 1. If the Superintendent approves an Enclave Area being created:
		1. the Contractor must prepare a notice to be provided to the relevant Third Party in respect of the Enclave Area;
		2. the notice must make it clear that the relevant Third Party has control of the Enclave Area and is the occupier of the Enclave Area, and that the Contractor is not in control of the Enclave Area, and is not the occupier of the Enclave Area;
		3. the Contractor must issue terms to any Contractor's Personnel that are undertaking work on the Site, in respect of work done by those parties which interfaces with the Enclave Area. These terms will reflect that the relevant Third Party has control of the Enclave Area and is, for the purposes of WHS only, the occupier of the Enclave Area, and that the Contractor is not in control of the Enclave Area, and is not the occupier of the Enclave Area; and
		4. the Contractor acknowledges and agrees that this SCC 40.7 relates to WHS matters only, applies only during the period approved by the Superintendent and during which a Third Party does have control of the relevant part of the Site and does not affect the Contractor's other obligations in respect of the Site (including the Enclave Area).

40.8 Consultation

* 1. The Contractor agrees to consult, co-operate and co-ordinate activities with the Principal and every other person having a WHS duty under WHS Law in relation to the work under the Contract.
1. SCC 40A Traffic

40A.1 General Requirements

* 1. The Contractor must ensure that it and its employees, subcontractors and all other persons employed or engaged on work under the Contract comply with the Contractor’s Traffic Management Plan.

40A.2 Traffic Management Representative

* 1. The Contractor must, for the purpose of this Contract, appoint a representative to manage the Traffic Management Plan with defined authority and the responsibility for the implementation of the plan. The representative shall, for the purpose of this Contract, be known as the Traffic Management Representative (TMR). The TMR must:
		1. hold an Advanced Worksite Traffic Management certificate;
		2. be familiar with the nature of the work required in the Contract; and
		3. be a full time member of the site management team and generally in attendance on the Site at all times activities relating to the Contract are taking place.
	2. The Traffic Management Plan must identify the name, qualifications and experience of the TMR.

40A.3 Non-compliance

* 1. Failure to comply with the provisions of SCC 40A, or with the Traffic Management Plan as approved by the Superintendent, is a substantial breach of the Contract for the purposes of Clause 44.2.
	2. Single or partial exercise of a right under this SCC 40A or Specification 202 – TRAFFIC MANAGEMENT does not prevent any other exercise of that right. Further, a waiver of a right under this SCC 40A or Specification 202 – TRAFFIC MANAGEMENT does not prevent the exercise of any other right.
1. SCC 40B Environment

40B.1 Environmental Management System

* 1. The Contractor must at all times implement and maintain an environmental management system which as a minimum requirement demonstrates compliance with:
		1. all statutory requirements in relation to environmental controls; and
		2. the requirements of *AS/NZS ISO 14001 – Environmental management systems, requirements with guidance for use*.
	2. The Contractor must ensure that it and its employees, subcontractors and all other persons employed or engaged on work under the Contract comply with the Contractor’s environmental management system and Environmental Management Plan.

40B.2 Environmental Management Representative

* 1. The Contractor must appoint a representative to manage the Environmental Management Plan with defined authority and responsibility for implementing the Plan. The representative shall, for the purpose of this Contract, be known as the Environmental Management Representative (EMR). The EMR must:
		1. be experienced in environmental management of construction works;
		2. be familiar with the nature of the work required in the Contract;
		3. be a full time member of the site management team and generally in attendance on the Site at all times that activities relating to the Contract are taking place.
	2. The Environmental Management Plan must indicate the name, qualifications and experience of the EMR.

40B.3 Damage to Vegetation

* 1. The Contractor acknowledges:
		1. compensation is payable to the Principal under clause 301.18.3 of Specification 301 – VEGETATION CLEARING AND DEMOLITION if the Contractor causes damage to any vegetation identified for protection and/or transplanting within the Limits of Vegetation Clearing and/or any vegetation outside the Limits of Vegetation Clearing; and
		2. all sums payable to the Principal under clause 301.18.3 of Specification 301 – VEGETATION CLEARING AND DEMOLITION represent amounts commensurate in protecting the Principal’s legitimate interest in receiving the benefit of completion of work under the Contract in accordance with the vegetation clearing requirements set out in the Contract and those sums ought not to be construed as nor are they intended to be a penalty.

40B.4 Non-compliance

* 1. Failure to comply with the provisions of SCC 40B or the Environmental Management Plan as approved by the Superintendent is a substantial breach of the Contract for the purposes of Clause 44.2.
	2. Imposition of a conviction in relation to the environment is a substantial breach of Contract for the purposes of Clause 44.2.
	3. Single or partial exercise of a right under SCC 40B or Specification 204 – ENVIRONMENTAL MANAGEMENT does not prevent any other exercise of that right. Further, a waiver of a right under this SCC 40B or Specification 204 – ENVIRONMENTAL MANAGEMENT does not prevent the exercise of any other right.

40B.5 Discovery of Rare Flora

* 1. The location of known sites of rare flora and measures to be taken shall be as dealt with in Specification 204 – ENVIRONMENTAL MANAGEMENT. In the event that new suspected sites are identified by any party during the course of the work under the Contract, then that party must bring this to the attention of the Superintendent who will advise of the measures to be taken.
	2. Any additional costs incurred by the Contractor arising from a direction from the Superintendent in respect to newly discovered rare flora as contemplated by this Clause shall be valued under Clause 40.5.
1. SCC 40C Rail Safety

NOTE: SCC 40C should be included for Works involving Rail, or Works within or in close proximity to the Rail Reserve. Clause 40C may require amending to meet specific requirements of the Rail Operator. Refer also to SCC 48.

If not applicable, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

40C.1 General Requirements

* 1. The Contractor must comply with the requirements of AS 4292 Part 1, “Railway Safety Management”.
	2. The Contractor must prepare a Rail Safety Management Plan. In addition to any requirements under the Contract, the Rail Safety Management Plan shall comply with any requirements of the Rail Operator.
	3. The Contractor must ensure that it, any Contractor Personnel and any other persons employed or engaged on work under the Contract comply with the Rail Safety Management Plan.

40C.2 Rail Safety Management Representative

* 1. The Contractor must appoint a representative to manage the Rail Safety Management Plan with defined authority and the responsibility for the implementation of the plan. The representative shall be known as the Rail Safety Management Representative (RSMR). The RSMR must:
		1. unless a separate Track Protection Officer is employed for work under the Contract and is approved by the Rail Operator, have rail protection officer qualification that is recognised by the Rail Operator;
		2. be familiar with the nature of the work required in the Contract; and
		3. except to the extent approved in the approved Rail Safety Management Plan, be in attendance at the place that the component of work under the Contract that is in or adjacent to the Rail Reserve or railway is being carried out at all times that such work is being undertaken.
	2. The Rail Safety Management Plan must identify the name, qualifications and experience of the RSMR.
	3. Where due to the nature of the work under the Contract, more than one RSMR is required, this shall be detailed in the Rail Safety Management Plan, with the responsibilities of each individual clearly articulated.

40C.3 Non-compliance

* 1. Failure to comply with the provisions of SCC 40C, or the Rail Safety Management Plan as approved by the Superintendent, is a substantial breach of the Contract for the purposes of Clause 44.2.
	2. Single or partial exercise of a right under this SCC 40C does not prevent any other exercise of that right. Further, a waiver of a right under this SCC 40C does not prevent the exercise of any other right.
1. SCC 41 Awards and Workplace Agreements and Employment Information Audit
	1. **41.1 Industrial Matters**
	2. In this clause, the terms “Contractor Personnel”, “Subcontract” and “Subcontractor” have the meaning given in SCC 41.2.
		1. The Contractor must:
			1. without limiting SCC 58, ensure, and must procure that its Subcontractors (in respect of each Subcontractor's officers, employees or agents) ensure, that the requirements of all relevant industrial awards, industrial agreements and registered workplace agreements are observed, including that the remuneration and terms of employment of all Contractor Personnel for the duration of the Contract are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry; and
			2. comply with, and ensure that the Contractor Personnel comply with, all Commonwealth and State laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)) and orders of competent courts or industrial tribunals.
		2. The Contractor (or a Subcontractor if applicable) is responsible for the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives, regarding industrial matters arising in relation to the performance of the work under the Contract but the Contractor must keep the Superintendent fully informed of all such matters.
		3. The Contractor must immediately notify the Superintendent if a strike or any other form of industrial unrest occurs or is reasonably likely to occur in relation to:
			1. Contractor Personnel; or
			2. personnel that may reasonably be engaged or have been planned to be engaged as Contractor Personnel,

and provide full details if requested.

* + 1. The Contractor must ensure that each Subcontract contains provisions equivalent to this clause.
		2. Failure by the Contractor to comply with paragraph (a) above is a substantial breach of the Contract for the purposes of Clause 44.
	1. **41.2 Employment Information Audit**
		1. In this SCC 41.2:

**Contractor Personnel** means all officers, employees and agents of the Contractor, all Subcontractors and all officers, employees and agents of Subcontractors, engaged in relation to the Contract or the work under the Contract.

**Employment Auditor** means any person or Government Agency authorised by the Principal to audit employment or industrial relations practices (including terms of employment).

**Employment Information** means records and information of any kind and in any form (including verbal) pertaining to employees or the terms and conditions of their employment, or payroll, but excluding any sensitive information (as that term is defined in the *Privacy Act 1988* (Cth)).

**Government Agency** includes any government or governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency or entity.

**Subcontractor** means a subcontractor (at any tier) of the Contractor in connection with this Contract or the work under the Contract, including contracts for works, performance of services and for the supply of goods or materials and Subcontract has an equivalent meaning.

* + 1. Subject to SCC 41.2(c), the Contractor:
			1. must on request (at its cost), and must ensure that its Subcontractors, give every assistance to, and make the Employment Information available to, an Employment Auditor for the audit of the Contractor's or any Subcontractor's employment and industrial relations practices (including terms of employment); and
			2. acknowledges and agrees, and shall ensure that each Subcontractor acknowledges and agrees, that an Employment Auditor may, at any time:
				1. inspect, audit, use and copy the Employment Information for the purposes of such audit;
				2. maintain, reproduce, destroy or transfer the Employment Information for the purpose of complying with the Employment Auditor's obligations at law; and
				3. refer any failure by the Contractor or any Subcontractor to comply with the requirements in SCC 41.1(a) (or the equivalent Subcontract clause) to any Government Agency having an oversight role in respect to employment, payroll tax or industrial relations matters,

and the Contractor must, and must ensure that Subcontractors, provide each Employment Auditor with proper access to the Employment Information, Contractor Personnel and facilities to facilitate such an audit, including allowing the person to communicate directly with (and provide Employment Information to) Contractor Personnel.

* + 1. The Contractor's obligations under SCC 41.2(b) apply to the extent permitted by law. The Contractor must, if subject to the *Privacy Act 1988* (Cth), use (and must ensure that each Subcontractor uses) all reasonable endeavours to provide Contractor Personnel with prior notice of the use and disclosure of personal information contemplated by SCC 41.2(b) and seek the consent of Contractor Personnel to such use and disclosure.
		2. Without limiting the Principal's rights under Clause 44, the Contractor must, and must ensure that each Subcontractor, promptly rectifies any failure to comply with the requirements of SCC 41.1(a) (or the equivalent Subcontract clause) notified to the Contractor.
		3. The Contractor must ensure that each Subcontract contains provisions reasonably necessary to enable the Contractor to fulfil its obligations under this clause, including a requirement for each Subcontractor to, on request from the ultimate recipient of the work under the Contract, give every assistance to and make Employment Information available to the Employment Auditor.
		4. This SCC 41.2 survives expiry or termination of the Contract.
1. SCC 42 Enforcement of Buy Local Policy
	1. Where the Principal has granted the Contractor a Regional Business Preference or a Regional Content Preference, the Contractor must strictly abide by the rules and regulations governing the “Buy Local Policy” of the Government of Western Australia.
	2. The Contractor must use the regional content detailed in the Contractor’s Tender or where agreed by the Principal, alternative regional content to the same value. With each payment claim the Contractor must submit a signed declaration on the use of regional content. This declaration must show the amount of regional content used by the Contractor to the date of the payment claim and the amount that the Contractor anticipates will be expended at the completion of the Contract, for each item of regional content in the Contractor’s Tender. The Superintendent may direct the Contractor to support the declaration with evidence of cost to demonstrate, to the reasonable satisfaction of the Superintendent, that the Contractor is actually using the regional content detailed in the Contractor’s declaration, or where agreed by the Principal, alternative regional content to the same value.
	3. The Contractor’s failure to comply with SCC 42 is a substantial breach of contract for the purposes of Clause 44 and without affecting any other right at common law or otherwise, the Principal may be entitled to recover by way of damages the amount of any price preference provided to the Contractor and may, subject to Clause 5.5, be entitled to have recourse to retention moneys, if any and, if those moneys are insufficient, then security under the Contract and any deficiency remaining may be recovered by the Principal as a debt due and payable.
2. SCC 43 Anti-Dumping
	1. Dumped goods (i.e. goods from overseas that are imported into Australia at less than their normal value, causing or threatening to cause material injury to an Australian industry producing like goods, or materially hindering the establishment of such an industry) must not be used in the performance of this Contract.
	2. Where a tender involving the supply of goods from overseas has been accepted and the relevant Minister subsequently determines the goods as dumped, the Principal may either direct the substitution of such goods or terminate the Contract. Any consequential costs or losses of the Contractor may be borne and paid for by the Contractor. In addition, any extra costs or losses incurred by the Principal will constitute a debt recoverable from the Contractor.
	3. Where it is reasonably suspected that any goods subject to a Contract constitute dumped goods, the Contract may be suspended to enable the suspicion to be confirmed or dismissed under the Commonwealth Customs legislation. Any costs or losses incurred by the Principal as a result of any suspension under SCC 43 may be borne and paid by the Contractor.
3. SCC 44 Priority Start Policy

NOTE: The Priority Start Policy applies to all State Government building construction, civil construction and maintenance contracts with a TOTAL VALUE (inclusive of GST) over $5 million.

For contracts with a TOTAL VALUE (inclusive of GST) less than $5 million, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

44.1 Definitions

* 1. In this Clause:

|  |  |
| --- | --- |
| Apprentice | means a person undertaking an approved apprenticeship that leads to a nationally recognised qualification under a registered training contract. |
| Compliance Panel | means the panel responsible for reviewing requests by contractors to vary the Target Training Rate. |
| Construction Apprentices and Trainees | means apprentices and trainees working in an in-scope apprenticeship or traineeship as published at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au). |
| Construction Trades Workers | means all construction trades workers, including Apprentices and Trainees, in-scope of the Policy working on a full time, part time or casual basis, as published at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au). |
| Policy | means the Government of Western Australia's Priority Start policy, available at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au/). |
| Priority Start Report | means the Priority Start report to be submitted by the Contractor in accordance with the Policy and this Clause. |
| Reporting Period | means:1. until the Date of Practical Completion, each twelve month period ending on the anniversary of the Date of Acceptance of Tender; and
2. the period between:
	1. the Date of Acceptance of Tender and the Date of Practical Completion for contracts of less than 12 months duration; or
	2. the last anniversary of the Date of Acceptance of Tender and the Date of Practical Completion.
 |
| Subcontractor | means a contractor, other than the Contractor, working on the Contract whose workforce includes Construction Trades Workers in-scope of the Policy. This includes all subcontractors in the supply chain working on the Contract. It does not include manufacturers and suppliers of goods. |
| Target Training Rate | means 5%. |
| Trainee | means a person undertaking an approved traineeship that leads to a nationally recognised qualification under a registered training contract. |
| Training Rate | means the number of Construction Apprentices and Trainees as a percentage of the Construction Trades Workforce for the Contractor and all Subcontractors used for the Contract. It is based on the combined Western Australian construction trades workforce of the:1. the Contractor; and
2. all Subcontractors used for the Contract.

The Training Rate is arrived at using the following formula: |
|  | Training Rate % =  |  |

44.2 The Contractor to Comply with the Policy

* + 1. It is a condition of this Contract that the Contractor complies with the Policy and the terms contained in this Clause.
		2. Without limiting the application of the Policy, the Contractor must:
			1. ensure that the Target Training Rate is met in the Priority Start Report and is calculated consistently with the Policy;
			2. obtain from all in-scope Subcontractors a count of their:
				1. directly employed construction Apprentices and Trainees;
				2. Apprentices and Trainees employed through group training organisations (GTOs) or skill hire companies; and
				3. Construction Trades Workers,

for the purposes of complying with the Policy, and any other information to discharge the Contractor's reporting obligations under this Clause;

* + - 1. subject to paragraph (c), submit a Priority Start Report to the Principal reporting the Training Rate for the relevant Reporting Period no later than 30 days after the end of each Reporting Period; and
			2. keep all supporting information, documents and evidence that was used to calculate the number of Construction Apprentices and Trainees and Construction Trades Workers by the Contractor and its relevant Subcontractors engaged for each Reporting Period, for audit purposes, for a minimum of two years following the Date of Practical Completion.
		1. A Priority Start Report is not required to be submitted where the end of the relevant Reporting Period is less than 3 months after the end of the previous Reporting Period.

44.3 Meeting the Training Rate

* 1. Each Priority Start Report must:
		1. be in the form of the Head Contractor Priority Start Report – Template available at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au/), unless amended by the Principal; and
		2. contain the following information:
			1. contract name, number and description;
			2. contract award, construction commencement and estimated completion dates;
			3. business name, Australian Business Number (ABN) and Australian Company Number (ACN) for the Contractor;
			4. business name and ABN for all Subcontractors used for the Contract;
			5. number of Construction Apprentices and Trainees working during the Reporting Period in Western Australia for the Contractor, and all Subcontractors used for the Contract, including those on probation;
			6. for those Construction Apprentices and Trainees hosted through a group training arrangement, by the Contractor and all Subcontractors, the name of the GTO or skill hire company;
			7. number of Construction Trades Workers (full time equivalents) working in Western Australia during the Reporting Period for the Contractor and all Subcontractors used for the Contract; and
			8. estimated Training Rate.

44.4 Variation of Target Training Rate

* + 1. The Target Training Rate may be varied, at the request of the Contractor and at the absolute discretion of the Compliance Panel, pursuant to the following conditions being met:
			1. the Contractor submits a written request (via the approved template) to the Principal for a variation of the Target Training Rate to apply for the duration of this Contract. The request must clearly set out:
				1. the Contractor’s proposed varied Target Training Rate;
				2. the grounds for the variation with sufficient evidence to establish that:

the Contractor undertakes a significant proportion of their overall work;

in regional and/or remote areas; or

on projects that do not allow Apprentices or Trainees on the worksite due to WHS risks;

there has been limited or no construction work undertaken during a particular stage/year of the Contract; or

there are other exceptional circumstances to justify a variation to the Target Training Rate; and

* + - * 1. the proposed date for the varied Target Training Rate to take effect,
			1. the Compliance Panel is satisfied there are sufficient exceptional circumstances to justify the Contractor’s request to vary the Target Training Rate; and
			2. following approval, the Principal and the Contractor sign a written variation agreement to the Target Training Rate, including the date the variation is to take effect.
		1. Should the request not be approved by the Compliance Panel, the Contractor may appeal the decision by lodging a written request (via the approved template) with the Principal within 14 days of notification of the decision.

44.5 Breach

* 1. Notwithstanding Clause 44 of the General Conditions, a failure to comply with the requirements of this Clause is deemed a substantial breach of Contract.

44.6 Information

* 1. For information on the Policy contact:
	2. Priority Start Policy Officer
	Department of Training and Workforce Development
	Telephone: (08) 6551 5607
	Email: policy.prioritystart@dtwd.wa.gov.au
	Website: [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au/)
	3. For information on how to employ an Apprentice or Trainee and the incentives available, contact:
* Jobs and Skills Centres on 13 64 64 or [www.jobsandskills.wa.gov.au](http://www.jobsandskills.wa.gov.au);
* Australian Apprenticeship Support Network on 13 38 73 or [www.australianapprenticeships.gov.au](http://www.australianapprenticeships.gov.au)
* Construction Training Fund (for incentive information) on 9244 0100 or [www.ctf.wa.gov.au](http://www.ctf.wa.gov.au).
* Nudge on 9323 4310 or [www.nudge.ngo/](http://www.nudge.ngo/)
1. SCC 45 Principal’s Representative
	1. The Principal may from time to time appoint individuals to exercise any functions of the Principal under the Contract but not more than one Principal’s Representative will be delegated the same function at the same time. The appointment of a Principal’s Representative does not prevent the Principal from exercising any function.
	2. The Principal must forthwith notify the Contractor in writing of:
		1. the appointment and the name of any Principal’s Representative and the functions delegated to the Principal’s Representative;
		2. any changes or variation to the functions delegated to the Principal’s Representative; and
		3. the termination of the appointment of a Principal’s Representative.
2. SCC 46 Use of Lobbyists
	1. The Contractor warrants and represents to the Principal that any “Lobbyist” (as that term is defined in the *Integrity (Lobbyists) Act 2016* (WA)) that it or any of its officers, employees, agents or subcontractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with this Contract, is duly registered as a “Lobbyist” in terms of that Act, and has fully complied with its obligations under it and the Code of Conduct for Registrants and Lobbyists.
3. SCC 47 Adjustment for Rise and Fall in Costs

47.1 General

Rise and fall in the cost of the work under the Contract will be accommodated by an adjustment of the Rates only where:

* + 1. the components of the work under the Contract are expressly detailed at SCC 47.2(a); and
		2. for a rise in costs, the Contractor has complied with SCC 47.6.2 and SCC 47.6.3.

47.2 Definitions

The following definitions apply to this SCC 47:

***Pricing Terms***

**Current Rate (CR)** means the Rate applicable for the calendar month that the relevant work was undertaken, following the application of any applicable Rise and Fall.

**Pre-Tender Date** means the date that is 14 days prior to the date of submission of the Tender.

**Rate** means rate within a Schedule of Rates, price within a Bill of Quantities or new rate or price agreed or established under Clause 40, as the case may be.

**Tendered Rate (TR)** means the Rate submitted by the Contractor in its Tender or, where a Rate is added after the date of submission of the Tender that was determined using current prices, the value calculated by applying SCC 47.5(b).

***Work Types***

* + 1. The following components of the work under the Contract are, provided SCC 47.2(b) does not apply, subject to adjustment for rise and fall in costs in accordance with SCC 47.3:

**Asphalt Supply** means any component of the work under the Contract that comprises the supply of asphalt or microsurfacing (bituminous slurry), but excluding Asphalt Work.

**Asphalt Work** means any component of the work under the Contract that comprises both the supply and construction (laying) of asphalt or microsurfacing (bituminous slurry).

**Bituminous Products Supply** means any component of the work under the Contract that comprises the supply of any bitumen used for manufacturing of cutback bitumen, polymer modified bitumen, multigrade bitumen or bitumen emulsion, but excluding Bituminous Sealing (Spray Seal) Work.

**Bituminous Sealing (Spray Seal) Work** means any component of the work under the Contract that comprises both the supply and construction of spray bituminous sealing, including primes, primerseals, bitumen seals, emulsion seals, polymer modified binder seals, geotextile reinforced seals, bridge deck seals and tack coats (except where the tack coat is included in the Rate for Asphalt Work).

**Road Work** means any component of the work under the Contract that is not Asphalt Supply, Asphalt Work, Bituminous Products Supply, Bituminous Sealing (Spray Seal) Work or Structure Work.

**Structure Work** means any component of the work under the Contract that is within ‘Series 800 – Bridges and Major Structures’ of the Schedule of Rates or Bill of Quantities.

* + 1. Any component of the work under the Contract where the Rate:
			1. is derived from actual costs or percentage mark-ups, extra overs or similar applied to actual costs; or
			2. relates to liquidated damages or incentive payments for achievement of performance targets, outcomes or similar,

is not subject to adjustment for rise and fall in costs, regardless of whether it is detailed in SCC 47.2(a).

***Bitumen Index***

**Bitumen Index (BI)** means the straight average of the major Western Australian bitumen suppliers’ Monthly Gate List Prices (Published List Selling Price) for bitumen for Western Australia, as verified by the Principal. The Principal will from time to time determine the number of and composition of the major Western Australian bitumen suppliers.

**Base Bitumen Index (BIb)** means the Bitumen Index applicable to the calendar month that the Pre-Tender Date falls in.

**Current Bitumen Index (BIc)** means the Bitumen Index applicable at the date that the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the Bitumen Index applicable at the Date for Practical Completion.

***Diesel Index***

**Diesel Index (DI)** is calculated by dividing the sum of all the daily Diesel Terminal Gate Prices (Wholesale) for Perth (published by the Australian Institute of Petroleum [[www.aip.com.au](http://www.aip.com.au)]) for the calendar month by the total number of published days for the calendar month. The result of this calculation will be rounded to one decimal place, in accordance with AS 2706 – 2003.

**Base Diesel Index (DIb)** means the Diesel Index applicable to the calendar month that the Pre-Tender Date falls in.

**Current Diesel Index (DIc)** means the Diesel Index applicable at the date that the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the Diesel Index applicable at the Date for Practical Completion.

***Road and Bridge Construction Index***

**Road and Bridge Construction Index (RBCI)** means the road and bridge construction (3101) index for output of the Construction Industries for Western Australia, of the Producer Price Indexes, Catalogue No. 6427.0, Table 17 (Index Reference Period 2011-2012 = 100), published by the Australian Bureau of Statistics at [www.abs.gov.au](http://www.abs.gov.au).

**Base Road and Bridge Construction Index (RBCIb)** means the latest Road and Bridge Construction Index published on the Australian Bureau of Statistics website prior to the Pre-Tender Date.

**Current Road and Bridge Construction Index (RBCIc)** means the latest Road and Bridge Construction Index that is published on the Australian Bureau of Statistics website on the last day of the month in which the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the latest Road and Bridge Construction Index published at the Date for Practical Completion.

47.3 Calculation of the rise and fall adjustment

The Superintendent will undertake the calculation detailed in this SCC 47.3 when issuing a payment certificate under Clause 42.1 or Final Certificate under Clause 42.8.

**47.3.1 Asphalt Supply**

Any Asphalt Supply Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.7×\left(\frac{RBCIc-RBCIb}{RBCIb}\right)+0.25×\left(\frac{BIc-BIb}{BIb}\right)\right)$$

**47.3.2 Asphalt Work**

Any Asphalt Work Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.8×\left(\frac{RBCIc-RBCIb}{RBCIb}\right)+0.15×\left(\frac{BIc-BIb}{BIb}\right)\right)$$

**47.3.3 Bituminous Products Supply**

Any Bituminous Products Supply Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.95×\left(\frac{BIc-BIb}{BIb}\right)\right)$$

**47.3.4 Bituminous Sealing (Spray Seal) Work**

Any Bituminous Sealing (Spray Seal) Work Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.61×\left(\frac{RBCIc-RBCIb}{RBCIb}\right)+0.34×\left(\frac{BIc-BIb}{BIb}\right)\right)$$

**47.3.5 Road Work**

Any Road Work Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.9×\left(\frac{RBCIc-RBCIb}{RBCIb}\right)+0.05×\left(\frac{DIc-DIb}{DIb}\right)\right)$$

**47.3.6 Structure Work**

Any Structure Work Rate must be adjusted utilising the following formula:

$$CR=TR×\left(1+0.95×\left(\frac{RBCIc-RBCIb}{RBCIb}\right)\right)$$

47.4 Changes to indices

If an index in SCC 47.3 is renamed, discontinued or the basis on which an index is calculated is varied, the Superintendent will:

* + 1. where an index is renamed, give a direction as soon as practicable, substituting the renamed index;
		2. where an index is discontinued, give a direction as soon as practicable, substituting an index which will most closely correspond with the discontinued index; or
		3. where the basis is altered, only if required, give a direction as soon as practicable, amending the relevant formulas detailed at SCC 47.3 to ensure that as far as is practicable the intention of this SCC 47 is given effect to.

47.5 Rates added after submission of Tender

If a Rate is added after the date of submission of the Tender and such Rate is subject to rise and fall adjustment in accordance with SCC 47.1 and 47.3 and the relevant Rate was derived on the basis of:

* + 1. actual cost, this SCC 47 will not apply unless the Superintendent agrees in writing that, for convenience of administration, a process equivalent to paragraph (b) will be used; or
		2. current prices, the Rate, once ascertained, must be deescalated from the date the Rate was ascertained to the Pre-Tender Date and, thereafter, the formulas detailed at SCC 47.3 will apply.

47.6 Subcontracts

**47.6.1 Condition precedent**

It is condition precedent to the Contractor being entitled to be paid for a rise in costs in relation to a component of the work under the Contract that the Contractor has complied with SCC 47.6.2 and SCC 47.6.3 in relation to that component of the work under the Contract.

**47.6.2 Passing on Rise and Fall**

Where the Contractor enters into any subcontract relating to any work under the Contract

* + 1. that involves Asphalt Supply, Asphalt Work, Bituminous Products Supply, or Bituminous Sealing (Spray Seal) Work, the subcontract must contain the same adjustment for rise and fall in costs as detailed in this SCC 47, without alteration, for that component of the work under the Contract; and
		2. where the value of the work to be subcontracted exceeds $100,000 and the subcontract involves Road Work or Structure Work, the subcontract must contain an adjustment for rise in costs (and at the Contractor’s discretion, fall in costs) that:
			1. aligns to that detailed in this SCC 47 for that component of the work under the Contract; or
			2. gives effect of the intent of this SCC 47 and aligns with this SCC 47 to the extent that it is reasonable to do so.

**47.6.3 Payments**

* + 1. The Contractor must:
			1. with any payment claim involving work described in SCC 47.6.2; and
			2. at any other time requested in writing by the Superintendent,

give to the Superintendent a statutory declaration (in the form set out in Attachment 2) by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that the Contractor has complied with SCC 47.6.2.

* + 1. The Contractor must, upon request at any time and from time to time:
			1. provide to the Superintendent documentary evidence of compliance with SCC 47.6.2; and
			2. make all documentation available to the Principal or the Principal's nominated auditors, for the purpose of auditing, verifying or otherwise satisfying the Principal that the Contractor has complied with SCC 47.6.2.
		2. The Principal may (in its absolute discretion) withhold payment of moneys due to the Contractor if the Contractor fails to comply with paragraph (a) or paragraph (b) or the Principal reasonably believes that the Contractor has failed to comply with SCC 47.6.2, but only where the withheld amount and the reasons for withholding payment have been indicated on the payment certificate or Final Certificate issued by the Superintendent.
		3. If the Superintendent or the Principal becomes aware that the Contractor has failed to comply with SCC 47.6.2 in relation to a component of the work under the Contract and payment for a rise in costs has been made under this SCC 47 in relation to that component, the amount paid to the Contractor to which the Contractor has no entitlement under this SCC 47 will be a debt due and payable by the Contractor to the Principal.
1. SCC 48 Agreement with Rail Operators

NOTE: SCC 48 should be included for works involving Rail, or works within or in close proximity to the Rail Reserve. The specific requirements of the relevant Rail Operator need to be considered and inserted for each contract, in consultation with the State Solicitor’s Office. Refer also to SCC 35 and SCC 40C.

If not applicable, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

48.1 Definitions and Applicability of Clause

* 1. For the purpose of SCCs 35, 40, 40C and 48:
		1. “Rail Land” means any Rail Reserves or railways that are within or adjacent to the Site or the location of any Temporary Works;
		2. “Rail Operator” means the owner, manager or operator of Rail Land; and
		3. “Rail Safety Act” means the *Rail Safety National Law (WA) Act 2015*.

48.2 Works on Rail Land

* + 1. The Contractor must not:
			1. access any Rail Land until the Contractor has entered into any agreement governing access required by the Rail Operator; or
			2. commence any activities that may impact on the Rail Operator's use or operation of the Rail Land until:
				1. the Rail Safety Management Plan has been approved by the Rail Operator (in addition to the Superintendent under SCC 35(c)); and
				2. the Contractor has entered into any agreement required by the Rail Operator governing such activities.
		2. The Contractor must:
			1. comply with any agreement entered into by the Contractor with the Rail Operator;
			2. take all reasonable steps and precautions in carrying out the work under the Contract to ensure the Contractor causes as little disturbance as possible to the Rail Operator's use or operation of the Rail Land;
			3. without limiting sub-paragraph (ii):
				1. in the event of a suspension of the whole or part of the work under the Contract, or termination of the Contract, ensure that any Rail Land impacted by the carrying out of the work under the Contract is made safe for normal rail operations as soon as practically possible after the suspension or termination;
				2. not proceed past any hold point identified in an agreement with the Rail Operator without the release of the relevant designated authority; and
				3. take all reasonable steps to ensure the carrying out of the work under the Contract does not involve any unplanned cancellation, deferment or delay to scheduled train services.
			4. carry out the work under the Contract so as not to put the Rail Operator in breach of any of its obligations as a Rail Transport Operator under the Rail Safety Act (if applicable);
			5. comply with all reasonable requirements of the Railway Operator in relation to compliance with the Rail Operator's accreditation under the Rail Safety Act (if applicable); and
			6. not do anything or fail to do anything which jeopardises the Rail Operator's accreditation under the Rail Safety Act (if applicable).

48.3 Non-compliance

* 1. Failure to comply with the provisions of SCC 48 is a substantial breach of the Contract for the purposes of Clause 44.2.
	2. Single or partial exercise of a right under SCC 48 does not prevent any other exercise of that right. Further, a waiver of a right under this SCC 48 does not prevent the exercise of any other right.
1. SCC 49 Fraud and Corruption Prevention

NOTE: SCC 49 must be included where the total contract value is $20m or more, and is optional for contracts less than $20m.

If not applicable, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

The Contractor must:

* + 1. implement fraud and corruption prevention, detection and response measures in compliance with Australian Standard (AS 8001-2021) and relevant international standards;
		2. hold a Contractor fraud and corruption risk workshop within 14 days from the Date of Acceptance of Tender;
		3. undertake detection data analytics every six months from the Date of Acceptance of Tender until the Date of Practical Completion to detect and respond to potential fraud and corruption;
		4. maintain a gifts and benefits policy, a conflict of interest policy and reporting procedures consistent with the requirements of paragraph (a);
		5. implement subcontract procurement processes with probity controls to ensure appropriate delegations (with separation of duties) and checks and balances are in place at various stages in the procurement process;
		6. undertake regular independent audits (first audit to be at six months after the Date of Acceptance of Tender, then annually, until the Date of Practical Completion) of procurement processes;
		7. provide copies of audit reports to the Principal within five days of completion of the audit; and
		8. permit the Principal to undertake detection data analytics, including by providing the Principal with proper access to personnel, key databases and facilities to facilitate such analytics, and must address any issues identified.

Without limiting SCC 55 or the Superintendent's rights under Clause 26, within 30 days of receipt of the results of any independent audit or detection data analytics, the Contractor must take action to resolve any issues identified (to the satisfaction of the Principal) and provide a report to the Principal on the issues, actions and outcomes.

1. SCC 50 Procurement Management

NOTE: SCC 50 must be included where the total contract value is $20m or more, and is optional for contracts less than $20m.

If not applicable, delete the Clause text, retain the Clause number, and replace the Clause title with the words “NOT USED”.

The Contractor must prepare a Procurement Management Plan which must:

* + 1. clearly record the risks, controls and treatment actions from the fraud and corruption risk workshop; and
		2. include the processes that will be followed to comply with SCC 49, including:
			1. subcontract procurement processes;
			2. fraud and corruption prevention, detection and response measures including:
				1. detection data analytics and timing;
				2. gifts and benefits policy and reporting procedures; and
				3. conflict of interest policy and reporting procedures; and
			3. the required regular independent audits of procurement processes (including audit of the matters contemplated in SCC 49(a) to (e)).
1. SCC 51 Application of the Civil Liability Act
	* 1. The operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
		2. Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in the Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
2. SCC 52 Financial Capacity
	1. The Contractor must immediately notify the Principal of any significant changes to its financial capacity that may have a material adverse effect on the Contractor’s ability to perform its obligations under the Contract.
	2. Notwithstanding the previous paragraph, at the same time as (and no earlier than) any Progress Payment Instruction(s) is issued to the Principal and the Bank,the Contractor must submit to the Superintendent a statutory declaration (in the form of **Attachment 2** annexed to these Conditions of Contract) that there has been no significant changes to the Contractor’s financial capacity, as assessed by the Principal prior to Contract award.
	3. The Principal may request up to date financial information from the Contractor for the purpose of confirming or reviewing the Contractor’s financial capacity to complete the Contract requirements. The requested information must be provided within the time period specified by the Principal or otherwise agreed to by both parties.
3. SCC 53 Aboriginal Participation

53.1 Definitions

* 1. The following definitions apply in this Contract:
		1. **Aboriginal Business (or Businesses)** means a business registered on the Aboriginal Business Directory WA (available at [www.abdwa.com.au](http://www.abdwa.com.au)) and/or Supply Nation (available at [www.supplynation.org.au](http://www.supplynation.org.au)).
		2. **Aboriginal Person** means a person who is of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which he or she lives or has lived.
		3. **Aboriginal Participation Plan** means the plan submitted by the Contractor for this Contract and approved by the Principal prior to award of this Contract.
		4. **ACCO** means Aboriginal Community Controlled Organisation as defined in the Delivering Community Services in Partnership Policy (https://www.wa.gov.au/government/publications/general-procurement-direction-202303-delivering-community-services-partnership-policy)
		5. **Total Work Hours** means the total Work hours worked on Site by employees of the Contractor and its subcontractors on this Contract.
		6. **Incentive Payment** means an additional payment made to the Contractor for meeting specific targets of Aboriginal participation in accordance with this SCC 53.
		7. **State** means the State of Western Australia and includes any department, agency, instrumentality or Minister, whether body corporate or otherwise.

53.2 Mandatory Minimum Participation and Obligations

* + 1. The Contractor must meet the following mandatory requirements in respect of Aboriginal employment and procurement for the Contract, unless otherwise approved by the Superintendent:
			1. Aboriginal employment minimum requirement – at least i% of the Contractor’s Total Work Hours are undertaken by Aboriginal Persons; and
			2. Aboriginal Business / ACCO subcontracting target minimum requirement – works and/or services to a value of at least ii% of the GST Exclusive Contract award value are undertaken by Aboriginal Businesses or ACCOs.

NOTE: The Aboriginal employment targets are:

* 2% if contract in Perth metropolitan area, South West, Great Southern, Wheatbelt or State-wide.
* 5% if contract in Gascoyne, Mid West and Goldfields-Esperance.
* 10% if contract in Pilbara or Kimberley.

Where contract is delivered across multipule regions the lowest applicable target will apply.

The Aboriginal Business / ACCO procurement targets are:

* 2024-2025 – 4%
* 2025-26 – 4.5%
* From 2027– 5%
	+ 1. The percentage of the Contractor’s:
			1. Total Work Hours associated with the work under the Contract undertaken by Aboriginal Persons will be calculated as follows:

|  |  |  |
| --- | --- | --- |
| ( | Total Work Hours worked by Aboriginal Persons | ) x 100 |
| Total Work Hours |

* + - 1. GST Exclusive Contract award value associated with the work under the Contract undertaken by all Aboriginal Businesses or ACCOs will be calculated as follows:

|  |  |  |
| --- | --- | --- |
| ( | Total value of procurement from Aboriginal Businesses or ACCOs (excluding GST) | ) x 100 |
| Total Work Hours |

* + 1. The Contractor must comply with the Aboriginal Participation Plan.
		2. The Contractor acknowledges the requirement to submit monthly Aboriginal participation reports and a final Aboriginal participation report under SCC 53.3 which includes auditable details of its compliance with the Aboriginal participation requirements of the Contract. If in two consecutive calendar months, the Contractor:
			1. on a pro rata basis fails to meet 80% of the mandatory minimum requirements in respect of Aboriginal employment and procurement for the Contract, as detailed at SCC 53.2(a)(i) and SCC 53.2(a)(ii) and in reviewing the Aboriginal Participation Plan the Superintendent is not satisfied that the Contractor will meet the requirements of SCC 53.2(a)(i) or SCC 53.2(a)(ii); or
			2. fails to provide the information required pursuant to SCC 53.3,

the Contractor will be deemed to have committed a substantial breach of Contract and the Principal may give the Contractor a written notice to show cause under Clause 44.2.

* + 1. The parties acknowledge that the Aboriginal employment and procurement requirements in this SCC 53.2 are independent. For the avoidance of doubt, where an Aboriginal Business or ACCO is engaged by the Contractor as a subcontractor:
			1. the value of that subcontract can be applied towards the Aboriginal Business/ ACCO subcontracting target; and
			2. the hours worked by employees of that Aboriginal Business or ACCO can, where the requirements of this SCC 53 are satisfied, be applied towards the Aboriginal employment requirements.

53.3 Aboriginal Participation Reporting

* + 1. The Contractor must prepare and submit to the Superintendent:
			1. a monthly Aboriginal participation report containing the following information:
				1. Total Work Hours worked for employees of the Contractor and all subcontractors on this Contract in the month;
				2. Total Work Hours worked by Aboriginal Persons directly employed by the Contractor and employed by each subcontractor in the month;
				3. timesheets with employment (hours worked) and training records (where applicable) for all Aboriginal Persons engaged on the Site by the Contractor and its subcontractors;
				4. copies of all invoices from the Aboriginal Businesses or ACCOs;
				5. a Statutory Declaration confirming that invoices submitted as part of SCC 53.3(a)(i)(D) have been paid;
				6. an Action Plan, in the event that the Aboriginal employment and/or Aboriginal business/ACCO requirements of this SCC 53 are not met, which details the Contractor’s intended actions to meet the requirements, and
			2. a final Aboriginal participation report containing the following information:
				1. details of achievement in relation to the mandatory minimum Aboriginal employment and Aboriginal Business / ACCO subcontracting target described in SCC 53.2(a);
				2. details of achievement in relation to any commitments made in the Aboriginal Participation Plan to exceed the mandatory minimum Aboriginal employment and Aboriginal Business / ACCO subcontracting targets described in SCC 53.2(a);
				3. details of compliance with SCC 53.3(a)(i);
				4. the Contractor's calculation of any incentive payment the Contractor claims to be entitled to under SCC 53.4; and
				5. the reference date for calculating Total Work Hours and the value of Aboriginal Business / ACCO procurement will be the Date of Practical Completion of the last Separable Portion and the final Aboriginal participation report must be submitted no later than 30 days from that date.
		2. The items detailed at SCC 53.3(a)(i)(A) to (D) must be captured (and where relevant, calculated) within the Principal’s Contractor Reporting Portal detailed at SCC 57.3.
		3. The items detailed at SCC 53.3(a)(i)(E) to (F) must be provided separately to the Superintendent at the same time that the remaining requirements are submitted.
		4. Each report required under SCC 53.3 must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
		5. The Contractor must ensure that each report referred to in SCC 53.3 is endorsed and verified by a person who is duly authorised by the Contractor.

53.4 Incentive Performance Payment

* + 1. The Contractor acknowledges that it is the Principal’s aim to maximise Aboriginal participation in this Contract. To achieve this aim the Principal agrees, subject to the conditions precedent in SCC 53.4(b) being met, to pay an incentive payment to the Contractor as set out in this SCC 53.4.
		2. Each of the following conditions precedent must be met for the Contractor to be entitled to receive an Incentive Payment under SCC 53.4(c) or SCC 53.4(d):
			1. the issuing of a Certificate of Practical Completion of the last Separable Portion in accordance with Clause 42.5;
			2. achievement of each of the minimum mandatory requirements in SCC 53.2(a)(i) and SCC 53.2(a)(ii);
			3. all monthly Aboriginal participation reports meeting the requirements of SCC 53.3(a)(i) have been submitted; and
			4. a final Aboriginal participation report meeting the requirements of SCC 53.3(a)(ii) has been submitted.
		3. An Incentive Payment shall be paid to the Contractor where the percentage of the Contractor’s Total Work Hours undertaken by Aboriginal Persons, as calculated in accordance with SCC 53.2(b)(i) is greater than i%.
			1. The Incentive Payment under SCC 53.4(c) shall range from $0 where less than i% of Total Work Hours are undertaken by Aboriginal Persons to $XXX where i+10% or greater of Total Work Hours are undertaken by Aboriginal Persons.
			2. The Incentive Payment under SCC 53.4(c) shall be calculated using the following formula:

*Incentive Payment ($) = WWW x (****E*** *– i)*

*Where* ***E*** *is the percentage, measured to two decimal places, of the Contractor’s Total Work Hours undertaken by Aboriginal Persons.*

* + - 1. The Incentive Payment described at SCC 53.4(c) is capped at $XXX.
		1. An Incentive Payment shall be paid to the Contractor where the percentage of the Contractor’s GST Exclusive Contract award value associated with the work under the Contract is undertaken by Aboriginal Businesses or ACCOs, as calculated in accordance with SCC 53.2(b)(ii) is greater than ii%.
			1. The Incentive Payment under SCC 53.4(d) shall range from $0 where less than ii% of the Contractor’s GST Exclusive Contract award value associated with the work under the Contract is undertaken by Aboriginal Businesses or ACCOs to $YYY where ii+10% or greater of the Contractor’s GST Exclusive Contract award value associated with the work under the Contract is undertaken by Aboriginal Businesses or ACCOs.
			2. The Incentive Payment under SCC 53.4(d) shall be calculated using the following formula:

*Incentive Payment ($) = ZZZ x (****B*** *– ii)*

*Where* ***B*** *is the percentage, measured to two decimal places, of the Contractor’s GST Exclusive Contract award value associated with the work under the Contract undertaken by Aboriginal Businesses or ACCOs.*

* + - 1. The Incentive Payment described at SCC 53.4(d) is capped at $YYY.

NOTE: Values for SCC 53.4 should generally be as follows:

XXX is 1% of the estimated Contract value, rounded up and be divisible by $50,000

WWW is 10% of XXX

YYY is 1.5% of the estimated Contract value, rounded up and be divisible by $50,000

ZZZ is 10% of YYY

53.5 Verification of Compliance Aboriginal Participation Requirements

* + 1. The Principal's Representative may arrange audits of Total Work Hours and/or the value of Aboriginal Business or ACCO procurement and the Contractor must ensure that the Principal's Representative, the Principal's Personnel and any person authorised by the Principal's Representative, has access to all original documentation, records and Contractor's Personnel that are needed for the carrying out of any audit.
		2. If the Principal requests from the Contractor information or access to documentation in connection with the Aboriginal participation requirements, or information or documentation in connection with any report referred to in SCC 53.3, the Contractor must promptly comply with such a request, ensuring that the information or documentation provided is accurate, up to date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
		3. The Contractor authorises the Principal, the Principal's Personnel, and any other 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 Aboriginal participation requirements.

53.6 Use of Information

Both the Principal and the State may use or disclose any report provided under clause SCC 53.3 or any information or documentation referred to in SCC 53.5 for the legitimate purposes of or relating to government or the business of government.

53.7 Compliance with Aboriginal Participation Requirements

The Contractor acknowledges that if the Contractor does not comply with this SCC 53, the Principal and the State may consider suspending the Contractor from further contracting opportunities with the Principal and the State for a period determined by the Principal or the State (as applicable) in its absolute discretion.

1. SCC 54 Western Australian Industry Participation Strategy
	* 1. In this SCC 54:

|  |  |
| --- | --- |
| Final WAIPS Report | has the meaning given in SCC 54(c). |
| JTSI | means the Department of Jobs, Tourism, Science and Innovation of Level 11, 1 William Street, Perth, Western Australia 6000.  |
| State | means the State of Western Australia and includes any department, agency, instrumentality or Minister, whether body corporate or otherwise. |
| WAIPS | means the Western Australian Industry Participation Strategy created pursuant to section 5 of the *Western Australian Jobs Act 2017* (WA). |
| WAIPS Participation Commitments | means the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in Section B of the WAIPS Participation Plan. |
| WAIPS Participation Plan | means the participation plan accepted by the Principal on the Date of Acceptance of Tender. |
| WAIPS Portal | means the Western Australia Industry Link’s portal available on the JTSI website and accessed via the specific link provided in the Request for Tender. |

* + 1. The Contractor must:
			1. in performing its obligations under the Contract, comply with the WAIPS Participation Commitments;
			2. not amend the WAIPS Participation Plan without the prior written approval of the Principal;
			3. include in in each subcontract obligations that enable the Contractor to comply with its obligations under SCC 54; and
			4. ensure that the WAIPS Participation Plan is endorsed and verified as being true and correct by a person who is duly authorised by the Contractor.
		2. No later than two months from the Date of Practical Completion, the Contractor must submit to the Principal a final WAIPS report for the whole of the work under the Contract which complies with this SCC 54(c) **(Final WAIPS Report)**. The Final WAIPS Report must be:
			1. accurate, up-to-date, comprehensive, sufficiently detailed and in no way misleading or deceptive;
			2. verified and endorsed as being true and correct by a person who is duly authorised by the Contractor; and
			3. in the form of, and address the matters outlined in, the WAIPS Participation Plan report form which is available to complete through the WAIPS Portal.
		3. The Contractor must:
			1. permit the Principal, the Principal's Personnel or any other person duly authorised by the Principal, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies. at the Principal's expense, of all WAIPS records maintained by the Contractor for the purposes of this Contract;
			2. permit the Principal, the Principal's Personnel or other person authorised by the Principal, from time to time to undertake a review of the Contractor’s compliance with the WAIPS Participation Commitments; and
			3. ensure that the Contractor's Personnel give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection under SCC 54(d).
		4. If the Principal requests from the Contractor information or access to documentation in connection with the WAIPS Participation Plan, the WAIPS Participation Commitments, or information or documentation in connection with the Final WAIPS Report, the Contractor must promptly comply with such a request, ensuring that the information or documentation provided is accurate, up to date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
		5. The Contractor authorises the Principal, the Principal's Personnel and any other 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 its WAIPS Participation Commitments.
		6. Both the Principal and the State may use or disclose the WAIPS Participation Plan, the Final WAIPS Report or any information or documentation referred to in SCC 54 for the legitimate purposes of or relating to government or the business of government.
		7. The Contractor acknowledges that if it fails to comply with the WAIPS Participation Commitments, the WAIPS Participation Plan or any other obligations under this SCC 54, the Principal and the State may consider suspending the Contractor from further contracting opportunities with the Principal and the State for a period determined by the Principal or the State (as applicable) in its absolute discretion.
		8. This SCC 54 survives the expiration of the Contract.
1. SCC 55 Probity Events

55.1 Occurrence of a Probity Event

* + 1. The Contractor must give notice to the Principal immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
		2. The notice, must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
		3. Promptly, and in any case no later than seven days after the Principal:
			1. receives a notice under SCC 55.1(a); or
			2. becomes aware of a Probity Event,

the Principal and the Contractor must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.

* + 1. The Contractor must comply with any agreement made in accordance with SCC 55.1(c) in the agreed timeframe.
		2. If the Principal and the Contractor fail to agree to a course of action in accordance with SCC 55.1(c) (including where the Contractor fails to meet with the Principal in accordance with SCC 55.1(c)), the Contractor must, at its cost, take any action required by the Principal to remedy the Probity Event in accordance with any timeframe determined by the Principal.
		3. The Contractor must give notice to the Principal immediately upon becoming aware of any allegation that a Probity Event has occurred or is likely to occur.
		4. The Contractor agrees that the Principal may, or may require the Contractor at any time to, conduct an investigation, at the Contractor’s cost, in respect of:
			1. any allegation a Probity Event has occurred in respect of a Relevant Person;
			2. any Relevant Person; or
			3. any person who is proposed to become a Relevant Person.
		5. The Contractor must obtain all relevant consents from any person in connection with an investigation in respect of an alleged Probity Event.
		6. Where the Principal requires the Contractor to conduct an investigation in accordance with SCC 55.1(g), the Contractor must promptly:
			1. conduct the investigation; and
			2. communicate the findings of that investigation to the Principal in the form required by the Principal.
		7. The Contractor must bear all costs incurred by the Principal in connection with a Probity Event or any investigation that finds a Probity Event has occurred.

55.2 Other Rights of Principal in Relation to Probity Events

* 1. No aspect of SCC 55.1 prejudices other rights of the Principal under the Contract, including those rights relating to Probity Events within Clause 9.2 and Clause 44.2.
1. SCC 56 Cap on Liability and Consequential Loss

56.1 Cap on Liability

* + 1. Subject to paragraphs (b) and (c), the liability of the Contractor and the Principal to each other in respect of any Loss or Claim arising out of or in connection with this Contract will be capped to an amount in aggregate equal to the greater of:
			1. the Contract Sum plus 20% rounded up to the nearest million; and
			2. $10 million.
		2. The limitation on the parties’ liability in paragraph (a) does not apply to, limit or restrict in any way, the parties’ liability to each other for Claims and Losses:
			1. arising out of any statutory fine or penalty arising from breach of any law by the liable party;
			2. arising out of personal injury, sickness or death;
			3. arising out of loss or damage to property caused or contributed to by a party;
			4. arising out of criminal acts of, unlawful or fraudulent acts or omissions of, or fraudulent misrepresentation by, a party;
			5. arising out of acts committed by a party or omissions of a party with a reckless indifference to the consequences;
			6. arising out of wilful or deliberate default by a party;
			7. arising out of the abandonment of this Contract by the Contractor;
			8. in relation to any special, exemplary and punitive damages;
			9. arising out of breach of Clauses 8.6 or 13, confidence or privacy of this Contract; or
			10. arising out of matters that cannot be limited or excluded at law.
		3. The cap on liability under paragraph (a) does not limit the Contractor’s liability:
			1. to the extent that the Contractor or a subcontractor recovers or is entitled to recover under the insurance policies effected pursuant to the requirements of this Contract (‘Insurance Policies’); or
			2. for amounts the Contractor or a subcontractor would have been entitled to recover but for the Contractor’s breach of the Insurance Policies or this Contract,

in that case, unless paragraph (b) applies, the limit of the Contractor’s liability is the greater of the amount set out in paragraph (a) and the amount recovered, or entitled to be recovered, or which should have been recovered (but for the Contractor’s breach of the Insurance Policies or this Contract) under the Insurance Policies.

56.2 Consequential Loss

* 1. Notwithstanding any other provision of this Contract (other than this Clause), the parties will not be liable to each other for Consequential Loss:
		1. except as may be included in liquidated damages payable under this Contract;
		2. save to the extent that the Contractor recovers or is entitled to recover Consequential Loss under the Insurance Policies capped at the limits of cover under the Insurance Policies; or
		3. that would be recoverable, but for the Contractor’s breach of the Insurance Policies.
1. SCC 57 Contractor Reporting

57.1 General

* 1. The Contractor acknowledges that it must provide regular reporting to the Superintendent and/or the Principal. Such reports must:
		1. contain all relevant information required, including any relevant supporting documentation;
		2. be accurate and verifiable, as may be reasonably determined by the Principal or the Superintendent;
		3. be provided in the format required under the Contract or in any other format reasonably requested by the Superintendent; and
		4. be provided within the timeframes required under the Contract.
	2. The submission of any reporting by the Contractor does not constitute approval by the Superintendent or the Principal of the content of the reports.

57.2 Reporting to be Provided

* 1. The Contractor acknowledges the following reports are required to be submitted by the Contractor under the Contract:
		1. current Construction Program, pursuant to Clause 33.2;
		2. Payment Report, pursuant to Clause 42.1.8;
		3. regional content utilised signed declaration, pursuant to SCC 42, where applicable;
		4. Priority Start Report, pursuant to SCC 44.2(b)(iii), where the Priority Start Policy applies;
		5. reports required pursuant to SCC 50, where a Procurement Management Plan is required;
		6. aspects of the Aboriginal participation reports detailed at SCC 53.3 not submitted within the 'Contractor Reporting Portal';
		7. Final WAIPS Report, pursuant to SCC 54;
		8. all information required within the 'Contractor Reporting Portal' detailed at SCC 57.3;
		9. the ‘Contractor Combined Monthly Reporting’ detailed at SCC 57.4; and
		10. any further reports required pursuant to the Specifications, including those related to the management of quality, traffic, health and safety and the environment.
	2. For the avoidance of doubt, the reports detailed at SCC 57.2(a) to SCC 57.2(j) may not be an exhaustive list of all reporting requirements under the Contract.

57.3 Contractor Reporting Portal

* 1. Notwithstanding and in addition to any other requirement under the Contract, the Contractor must provide on a monthly basis all information required within the ‘Contractor Reporting Portal’ on the Main Roads website at:
	2. <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/>.

57.4 Contractor Combined Monthly Reporting

* 1. Notwithstanding and in addition to any other requirement under the Contract, except to the extent that the information has already been submitted within the Contractor Reporting Portal detailed at SCC 57.3, the Contractor must provide on a monthly basis completed ‘Contractor Combined Monthly Reporting’, in the form detailed on the Main Roads website at:
	2. <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/>.

57.5 Timing of Monthly Reporting

* 1. For any reporting that is required to be submitted on a monthly basis, unless otherwise stated, the report for a relevant calendar month must be provided by the 5th day of the next calendar month.

57.6 Failure to Adequately Report

* 1. In addition to any other rights of the Principal under the Contract, should a report required to be submitted by the Contractor under the Contract not be submitted or not meet the requirements of SCC 57.1(a) to SCC 57.1(d), the Superintendent may, in determining the value of work carried out by the Contractor, value the cost of preparing and submitting the report under Clause 40.5 and deduct such value when issuing the next payment certificate pursuant to Clause 42.1.7.
1. SCC 58 Traffic Management Employment Requirements

58.1 Definitions

* 1. In addition to any other definition detailed in the Contract, the following definitions apply in this SCC 58. For the purposes on this SCC 58 (only), in the event of any discrepancies between other areas of the Contract and the definitions included in this SCC 58.1, the contents of this SCC 58.1 take precedence.

**AGTTM** means Austroads Guide to Temporary Traffic Management.

**Award** means the Building and Construction General On-site Award 2020, as may be amended or replaced from time to time.

**Base Rate** has the same meaning as 'base rate of pay' in the *Fair Work Act 2009* (Cth).

**Category A Person** means any person other than a Category B Person, Category C Person, Category D Person or Category E Person.

**Category A.2 Person** means a Category A Person who has less than six months Experience.

**Category A.3 Person** means a Category A Person who has six months or more Experience. **Category B Person** means a person who has a Worksite Traffic Management and/or Truck Mounted Attenuator accreditation pursuant to the Code of Practice, but excluding a Category C Person, Category D Person or Category E Person.

**Category C Person** means a person who has an Advanced Worksite Traffic Management accreditation pursuant to the Code of Practice, but excluding a Category D Person or Category E Person.

**Category D Person** means a person who has a Roadworks Traffic Manager accreditation pursuant to the Code of Practice, but excluding a Category E Person.

**Category E Person** means any person operating Road Marking Plant.

**Code of Practice** means Western Australia's *Traffic Management for Works on Roads Code of Practice* as may be amended from time to time (available on the Main Roads website), and reference to the Code of Practice includes all requirements within the Code of Practice including compliance with relevant parts of AGTTM and AS1742.3 – Traffic Control for Roadworks.

**Enterprise Agreement** means an enterprise agreement approved in accordance with the *Fair Work Act 2009* (Cth) and which applies to the Contractor and its employees when undertaking Relevant Work or which applies to any subcontractor and its employees when undertaking Relevant Work.

**Experience** means experience undertaking work (either under the Contract or otherwise) that is:

1. Traffic Management Activity; or
2. Road Marking Work.

Experience need not be continuous and can be obtained working for any employer (including the Contractor). Experience is to be measured in months, with the number of months calculated by the sum of the number of days where any such work has been carried out on that day, divided by 20. Note that where a shift extends past midnight, this would be one day.

**Letter of Service** means a letter signed by the Contractor or a relevant subcontractor and provided to a person that undertakes any Relevant Work, detailing the date(s) of engagement and/or disengagement, either:

* + 1. detailing the Experience gained by the person, where the Experience is 6 months or less; or
		2. outlining the Experience gained by the person, where the Experience is greater than 6 months.

**Minimum Rate** means:

* + 1. for a Category A.2 Person undertaking Relevant Work; $34.33;
		2. for a Category A.3 Person undertaking Relevant Work; $35.67;
		3. for a Category B Person undertaking work under the Contract that is a Traffic Management Activity; $37.15;
		4. for a Category C Person or Category D Person undertaking work under the Contract that is a Traffic Management Activity; $39.00; or
		5. for a Category E Person undertaking work under the Contract that is Road Marking Work; $39.00.

**Other Award** means any modern award, other than the Award, which applies to the Contractor and its employees when undertaking Relevant Work or which applies to any subcontractor and its employees when undertaking Relevant Work.

**PCCP Document** means the Painting Contractor Certification Program document PP-D033 – PCCP - Accreditation Requirements - Classes 20 to 29, available at https://vs.csiro.au/pccp/documents/.

**Related Bodies Corporate** has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

**Relevant Work** means any work under the Contract that is Traffic Management Activity and/or Road Marking Work.

**Road Marking Plant** means a ‘Type A machine’ or ‘Type B machine’ as described in the PCCP Document.

**Road Marking Work** means any work described:

1. in the PCCP Document; and/or
2. in Specification 604 – Pavement Marking.

**Scheme** means the *State Road Traffic Management Company Registration Scheme*, details of which are available on the Main Roads website.

**Traffic Management Activity** means any work that requires the person undertaking such work to have a Traffic Controller, Basic Worksite Traffic Management, Worksite Traffic Management, Advanced Worksite Traffic Management, Roadworks Traffic Manager and/or Operate Truck Mounted Attenuator accreditation pursuant to the Code of Practice or as otherwise be required in accordance with the Contract.

58.2 General

* + 1. The Contractor must ensure that while a person is undertaking Relevant Work they are paid a Base Rate that is not less than the Minimum Rate, other than where an Enterprise Agreement applies.
		2. Where an Enterprise Agreement applies, the Contractor will:
			1. ensure that a person is not paid less than the minimum rate of pay required by the applicable Enterprise Agreement; and
			2. ensure that while a person is undertaking Relevant Work the amount paid to the person includes a Base Rate that is not less than the Minimum Rate; and
			3. if requested by the Principal, provide calculations to establish to the Principal's reasonable satisfaction that the amount paid to a person undertaking Relevant Work provide for a Base Rate which is not less than the Minimum Rate.
		3. The Contractor must ensure that while a person is undertaking Relevant Work they have terms and conditions of employment that meet or exceed those detailed in the Award.
		4. If meeting or exceeding the terms and conditions detailed in the Award would mean the Contractor or a subcontractor could not comply with the terms of an applicable Enterprise Agreement or Other Award, the Contractor is not required to ensure that the terms and conditions meet or exceed those in the Award but only to the extent of the non-compliance.
		5. If a person receives an annualised salary, the Contractor must ensure that while a person is undertaking Relevant Work they are no worse off than had they received a Base Rate greater than or equal to the Minimum Rate and received the relevant loadings, allowances, penalty rates and overtime as prescribed by the Award. If requested by the Principal, the Contractor will provide calculations to establish this to the Principal's reasonable satisfaction.
		6. All Category A Persons or Category B Persons or Category E Persons undertaking work under the Contract that is a Traffic Management Activity must be either:
			1. directly employed as an employee of the Contractor; or
			2. directly employed as an employee of a company, who at the time that the relevant work under the Contract is undertaken, has a current registration under the Scheme.
		7. For the avoidance of doubt, nothing in the above SCC 58.2(f) in any way alters the requirements of the Scheme.
		8. The Contractor must ensure that a person undertaking Relevant Work at a location that requires the person to reside at a location other than their base location of employment receives either:
			1. reasonable allowances; or
			2. has no out of pocket expenses,

relating to the provision of a reasonable level of meals and/or accommodation associated with such location.

* + 1. The Principal, Superintendent or anyone authorised pursuant to SCC 41.2 may, without notice, audit the Contractor or any subcontractor (at any tier) engaged to perform Relevant Work to verify or otherwise compliance with any aspect of this SCC 58.
		2. Any non-compliance identified pursuant to SCC 58.2(i) or otherwise reasonably determined by the Principal, Superintendent or anyone authorised pursuant to SCC 41.2 constitutes a substantial breach of contract for the purposes of Clause 44.2.
		3. The Contractor must include provisions in any of its relevant subcontracts to give effect of this SCC 58.
		4. The Contractor is not required to comply with this SCC 58 to the extent that it requires the Contractor to take any action which would breach any laws.
		5. Notwithstanding SCC 58.2(l), if the Contractor believes that complying with the requirements of this SCC 58 would cause the Contractor to breach any laws, the Contractor must immediately notify the Principal of:
			1. the extent to which it cannot comply; and
			2. information pertaining to why it cannot comply.

58.3 Portable Long Service Leave

* + 1. The Contractor acknowledges the terms of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) and the *Construction Industry Portable Paid Long Service Leave Regulations 1986* (WA) (in this SCC 58.3, collectively Portable Long Service Leave Legislation).
		2. To the extent that the Portable Long Service Leave Legislation is applicable to a person, the Contractor must ensure that it fully complies with the Portable Long Service Leave Legislation in relation to the person (this includes making any contributions or payments prescribed by the Portable Long Service Leave Legislation).

ATTACHMENT 1 – FORM OF SECURITY

APPROVED FORM OF UNCONDITIONAL UNDERTAKING

TO: The Commissioner of Main Roads (“the Principal”)

At the request of ……….………….…………………….……………………. (“the Contractor”) and ………………………………….………………….……………. (“the Financial Institution”) AND IN CONSIDERATION of the Principal agreeing to accept this undertaking as security in accordance with the agreement entered into between the Principal and the Contractor for Main Roads Contract No. ……..….. being …………………………………. (“the Contract”) the Financial Institution HEREBY UNDERTAKES UNCONDITIONALLY to pay on demand to the Principal any sum or sums which may from time to time be demanded in writing by the Principal to an amount not exceeding Dollars ($................…….........) in the aggregate.

Payment of the said sum or any part or parts thereof will be made by the Financial Institution to the Principal without reference by the Financial Institution to the Contractor and notwithstanding any notice to the Financial Institution by the Contractor not to pay to the Principal any moneys hereunder and irrespective of the performance or non-performance by the Contractor or the Principal of the terms of the Contract.

The Financial Institution’s liability hereunder must not be impaired or discharged by any alterations which may be made in the terms of the Contract or by any extension of time or other forbearance on the part of either the Principal or the Contractor to the other.

This guarantee must continue in force either until notification in writing has been received by the Financial Institution from the Principal that this guarantee is no longer required by the Principal or until payment to the Principal by the Financial Institution of the whole of the said sum or the balance thereof remaining after any part payment or payments.

Notwithstanding anything hereinbefore contained the Financial Institution reserves the right to terminate this guarantee at any time upon payment to the Principal of the said sum or the balance thereof remaining after any part payment or payments or such lesser amount as the Principal may require.

The security is redeemable at [insert name of Financial Institution’s Branch] in Perth, Western Australia.

DATED at ......................................……….......... day of .............................20......…...

ATTACHMENT 2 – CLAUSE 43.1(C) STATUTORY DECLARATION

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

I, [***insert name***]

of [***insert address***]

[***insert occupation***]

Sincerely declare as follows:

1. I hold the position of [*insert position title*] and am duly authorised by the Contractor to make this declaration.
2. In respect of [*insert name and number of Contract*] (the Contract):
	* 1. all workers, suppliers and subcontractors have been paid all moneys due and payable to them in respect of work under the Contract;
		2. all subcontracts:
			1. that involve Asphalt Supply Asphalt Work, Bituminous Products Supply or Bituminous Sealing (Spray Seal), regardless of the subcontract value; and
			2. that involve Road Work or Structure Work, where the total value of the subcontract exceeds $100,000,

contain the adjustments for rise and fall of costs as required in SCC 47 and all payments for adjustments for rise and fall in costs due to suppliers and subcontractors have been paid;

* + 1. there have been no significant changes to the Contractor’s financial capacity since the issuing of the Notice of Acceptance of Tender, that will have a material adverse effect on the Contractor’s ability to perform its obligations under the Contract; and
		2. in respect of the Progress Payment Instruction(s) [***insert PPI numbers***] of [***insert dates the PPIs were authorised***]:
			1. the Progress Payment Instruction(s) are true and accurate and comply with the Contract (and to avoid doubt and without limitation, properly allocate amounts payable to Subcontractors pursuant to their subcontracts);
			2. the Payment Report issued with the Progress Payment Instruction(s) is true and accurate;
			3. all Opt-in Subcontractors have supplied an Opt-in Notice to the Contractor;
			4. to the extent that any previously issued Progress Payment Instruction was not correct or for any other reason, the Contractor has no outstanding liabilities to Subcontractors or any other subcontractor or supplier (regardless of subcontract value) in connection with the Works, other than the payments the subject of the Progress Payment Instruction; and
			5. there has been no change in the registered security interests which would extend to the Project Bank Account (as identified under the
			“Personal Property Securities Register” maintained pursuant to the *Personal Property Securities Act 2009* (Cth)), other than a registered security interest in favour of the Bank, or if there has been, a duly executed deed of release or priority deed poll (in form and substance acceptable to the Principal) has been executed,

in each case as at the date of this declaration, where terms defined in the Contract have the same meaning in this statutory declaration.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declaration Act 2005* (WA) at:

[***insert location***]

On [***insert date the declaration is being made which MUST NOT be made before the date the PPIs were authorised***]

by:

[*Signature of person making the declaration*]

In the presence of

[*Signature of authorised witness*]

[*Name of authorised witness and qualification as such a witness*]

**\*Important** This Declaration must be made before any of the following persons: Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer (judge, magistrate, registrar or clerk), Defence force officer (Commissioned, Warrant or NCO with 5 years continuous service), Dentist, Doctor, Electorate officer of a member of State Parliament, Engineer, Industrial organisation secretary, Insurance broker, Justice of the Peace, Landgate officer, Lawyer, Local government CEO or deputy CEO, Local government councillor, Loss adjuster, Marriage celebrant, Member of Parliament (State or Commonwealth), Minister of religion, Nurse, Optometrist, Patent attorney, Physiotherapist, Podiatrist, Police officer, Post office manager, Psychologist, Public notary, Public servant (State or Commonwealth), Real estate agent, Settlement agent, Sheriff or deputy sheriff, Surveyor, Registered teacher, Tribunal officer, Veterinary surgeon **OR** any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

As of 1 January 2006 there is no provision for Commissioners for Declarations in the State of Western Australia.