

# LANDCORP STANDARD CONDITIONS

## MINOR WORKS AND SERVICES

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### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the contrary intention appears:

“**Confidential Information**” has the meaning given on **Condition 20.1**.

“**Contract**” means the contract for the provision of the Works or Services to which these Standard Conditions form part and, where applicable, includes any drawings, specifications or other documents.

“**Contractor**” means the person or company specified in the Contract.

“**Commencement Date**” means the date mentioned in the Schedule and if no date is specified then the last date of execution of the Contract by the parties.

“**Defects Liability Period**” means the period mentioned in the Schedule.

“**GST**” has the meaning given in Section 195-1 of the GST Act.

“**GST Act**” means A New Tax System (Goods & Works or Services Tax) Act 1999 and any legislation substituting or amending that Act.

“**LandCorp**” means the Western Australian Land Authority trading as LandCorp.

“**Practical Completion**” means practical completion of the Works or Services other than minor omissions or defects which do not prevent the Works or Services from being reasonably capable of being used by LandCorp for their intended purpose as determined by LandCorp (acting reasonably).

“**Representatives**” means any employee, director, executive, agent or sub-contractor of the Contractor.

“**Schedule**” means the schedule to the Contract.

“**Tax Invoice**” has the meaning given in Section 195-1 of the GST Act.

“**Taxable Supply**” has the meaning given in Section 195-1 of the GST Act.

“**Term**” means the term described in Condition 2.1.

“**Works or Services**” means the works or services mentioned in the Schedule.

1.2 In these Conditions unless the contrary intention appears:

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

- (c) other grammatical forms of defined words and expressions have corresponding meanings;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives successors and assigns of that person;
- (f) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (g) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (i) an obligation of two or more parties binds them jointly and severally;
- (j) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (k) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (l) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (n) references to the Contract includes these Conditions and any schedules and annexures;
- (o) headings are inserted for ease of reference only and shall be ignored in construing the Contract;
- (p) references to time are to local time in Perth Western Australia;
- (q) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;

- (r) a reference to a business day is a reference to a day other than a Saturday Sunday or gazetted public holiday in Western Australia;
- (s) the word “include” used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
- (t) a provision of the Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.

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## **2 TERM**

- 2.1 The engagement of the Contractor shall commence on the Commencement Date and shall continue until the earlier of:
- (a) completion of the Works or Services; or
  - (b) termination of the Contract pursuant to **Condition 23**; or
  - (c) the date for Practical Completion as mentioned in the Schedule (if any).
- 2.2 If LandCorp wishes to extend the period for the provision of the Works or Services mentioned in the Schedule then it may do so by giving notice to that effect to the Contractor whereupon the Contract shall continue for a further period as specified by LandCorp and otherwise in accordance with the terms of the Contract (other than the provisions of this condition).

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## **3 CONTRACTOR'S DUTIES**

- 3.1 During the Term the Contractor shall provide the Works or Services for the benefit of LandCorp and in doing so shall exercise a professional standard of skill, care and diligence in the performance of those Works or Services and other obligations under the Contract.
- 3.2 In the discharge of the duties under the Contract the Contractor shall:
- (a) subject to the policies of LandCorp as advised by LandCorp and the express directions of LandCorp, act on its own initiative and exercise all professional judgement as to the manner in which the Works or Services shall be performed;
  - (b) comply with all instructions given by LandCorp in relation to the performance of the Works or Services;
  - (c) as required by LandCorp from time to time and at its cost provide any report to LandCorp in such form as LandCorp may reasonably require in relation to the provision of any aspect of the Works or Services under the Contract;

- (d) promptly notify LandCorp of any matter which will or is likely to have any effect on the Contractor's capacity to undertake the provision of the Works or Services or the timing of the provision of those Works or Services;
- (e) comply with all legislation and obtain all approvals, licences and permits required from any relevant authority for the lawful implementation and completion of the Works or Services, the costs of which shall be borne by the Contractor;
- (f) not to pledge the credit or incur any debt on behalf of LandCorp in relation to the provision of the Works or Services other than with the prior written approval of LandCorp;
- (g) comply in all respects with all of LandCorp's procedures and policies as advised to the Contractor from time to time;
- (h) with due expedition and without delay and in accordance with any programmes approved by LandCorp, provide all professional skill and advice required for carrying out the Works or Services;
- (i) remain fully responsible for the Works or Services carried out by the Contractor notwithstanding any review or acceptance of those Works or Services by LandCorp;
- (j) promptly give written notice to LandCorp if and to the extent the Contractor becomes aware that any document or other information provided by LandCorp is ambiguous or inaccurate or is otherwise insufficient to enable the Contractor to carry out the Works or Services;
- (k) make reasonable enquiries to ascertain the requirements of LandCorp regarding the Works or Services;
- (l) regularly consult with LandCorp regarding the carrying out of the Works or Services;
- (m) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Works or Services, give written notice to LandCorp detailing the matter or circumstances and its anticipated effect on the Works or Services;
- (n) when on LandCorp's premises and when using LandCorp's facilities, comply with all directions, procedures and policies relating to occupational health, safety and security requirements;
- (o) do all things necessary and necessarily incidental for the proper performance of the Contractor's obligation under the Contract.

**3.3** The Contractor shall provide all materials, labour, tools and plant and equipment whether of a temporary or a permanent nature required for the execution of the Works or Services.

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## **4 OCCUPATIONAL HEALTH AND SAFETY**

- 4.1 The Contractor shall provide and maintain all safety precautions required for the protection of the Works or Services or other property or for the safety and convenience of workmen and the public. In particular, the Contractor shall comply with the Occupational Safety and Health Act 1984 and the Occupational Safety and Health Regulations 1996.
- 4.2 The Contractor shall be solely responsible for ensuring that whatever practicable its employees and those of its sub-contractors are not exposed to hazards.
- 4.3 The Contractor shall take all measures necessary to avoid disturbance to the public and to prevent nuisance, whether by the unreasonable emission of noise or dust or otherwise.
- 4.4 If required by LandCorp, the Contractor shall provide to LandCorp a Safety Management Plan for approval by LandCorp. Once approved by LandCorp, the Contractor shall comply with the Safety Management Plan.
- 4.5 In the event that any material incident occurs which involves a safety issue, the Contractor shall report such incident to LandCorp within twenty four (24) hours of it occurring.

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## **5 MATERIALS AND WORK**

Save in so far as it is legally or physically impossible the Contractor shall execute, complete and maintain the Works or Services in strict accordance with the Contract and adhere strictly to any instructions or directions from LandCorp on any matter touching on or concerning the Works or Services. All materials and work shall be new and consistent with the nature and character of the Works or Services and be of a kind suitable for its purpose and in conformity with the Contract, or if not described shall be in accordance with the relevant Australian standards or, if there is no relevant Australian standard, the British standard. If LandCorp is of the opinion that any materials or work whether fixed or not fail to comply with the Contract, or if LandCorp detects any defects during the Defects Liability Period, LandCorp may order in writing removal or correction at the contractor's own expense.

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## **6 TESTING OF MATERIALS AND WORK**

- 6.1 Materials and workmanship shall be subject to such tests as may be reasonably directed by LandCorp to establish the conformity of materials and workmanship with the Contract. Except as otherwise stated in the Contract, the work of testing and the cost thereof shall be undertaken by the Contractor.
- 6.2 In default of compliance by the Contractor with any order or direction of LandCorp under this clause, after the expiry of three days notice from LandCorp requiring compliance, LandCorp may itself cause to be done all such acts which may be necessary in order to undertake testing and all costs incurred shall be a debt due by the Contractor to LandCorp.

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## **7 ADMINISTRATION OF WORKS**

LandCorp may appoint others to administer and inspect the Works or Services on its behalf and the Contractor shall permit any such person so appointed to administer and inspect the Works or Services and shall also comply with all lawful directions of such person.

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## **8 CONTRACTOR'S REPRESENTATIVE AND ACCESS**

- 8.1 The Contractor shall personally direct the execution of the Works or Services under the Contract or have on the site of the works a competent representative approved by LandCorp to control the Works or Services. Directions of LandCorp given to the approved representative shall be deemed to be directions given to the Contractor.
- 8.2 LandCorp shall be entitled to access to the site of the Works or Services at all times.
- 8.3 The Contractor shall ensure that any access to the Site by members of the public shall be restricted to ensure proper safety procedures are followed.

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## **9 INTERFERENCE WITH PUBLIC**

- 9.1 All operations involving the execution of the Works or Services shall, except where otherwise permitted by LandCorp, be carried out so as not to interfere with public convenience or the access to, use and occupation of public or private roads or footpaths or to or of Crown lands or adjoining public or private properties.
- 9.2 Where the execution of the Works or Services includes an interference with public convenience or access as mentioned in **clause 9.1**, the Contractor shall advise LandCorp of the nature of the interference within twenty four (24) hours of it occurring.

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## **10 PROVISIONAL SUMS AND ITEMS**

Every provisional sum or item included in the Contract together with the charges and profits (if any) which the Contractor shall have added to such sum or item not expended shall be deducted from the Contract price and where work to which the provisional sum or item relates has been ordered by LandCorp and executed by the Contractor the value of the work so executed, shall be valued in the manner specified in the Schedule.

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## **11 VARIATIONS**

LandCorp may make a variation to the source, form, quality or quantity of the Works or Services or any part thereof that in its opinion may be necessary whereupon such variations shall be paid by LandCorp in the manner specified in the Schedule.

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## **12 TIME FOR COMPLETION**

The Contractor shall complete the Works or Services within the time stated in the Contract subject to any extension of time which may be approved by LandCorp in accordance with **Condition 22**.

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## **13 LIQUIDATED DAMAGES**

If the Contractor shall fail to complete the Works or Services within the time stated or such extended time as shall be approved by LandCorp, then the Contractor shall pay LandCorp the sum stated (if any) in the Contract as Liquidated Damages for such default, and not as or in the nature of a penalty, for every week or part of a week by which completion of the works is delayed.

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## **14 DEFECTS LIABILITY PERIOD**

As soon as in the opinion of LandCorp, Practical Completion of the Works or Services shall have been completed in accordance with the Contract, the Defects Liability Period stated shall commence. The Contractor shall at its own expense execute all works or repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or any other faults as may be required by LandCorp during the Defects Liability Period or within fourteen days of its expiration as a result of an inspection made prior to its expiration.

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## **15 CLEANING UP BY CONTRACTOR**

The Contractor shall keep the Works or Services and the site of the Works or Services clean and tidy during its performance of the Contract and on Practical Completion of the Works or Services the Contractor shall clear away and remove from the site of the Works or Services all plant, surplus material, rubbish and temporary works of every kind and fill and consolidate and level off all excavations (other than those forming part of the Works or Services) made by the Contractor on the site and leave the whole of the site and the Works or Services clean and tidy to the satisfaction of the LandCorp.

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## **16 PAYMENT OF CONTRACTOR**

- 16.1 LandCorp shall pay to the Contractor for the provision of the Works or Services the fees mentioned in the Schedule.
- 16.2 LandCorp shall not be required to pay or reimburse the Contractor for any cost, expense, outlay or other outgoing of whatsoever nature incurred or required to be paid by the Contractor in order to effect the provision of the Works or Services unless the Contractor has prior to incurring or becoming responsible for such cost, expense, outlay or other

outgoing sought and obtained the written consent of LandCorp to reimburse the Contractor or pay for such cost, expense, outlay or other outgoing.

- 16.3 The Contractor shall give to LandCorp an account for the Works or Services performed and any claim for reimbursable expenses actually incurred. The account shall contain such detail as to the work undertaken by the Contractor as required by LandCorp
- 16.4 Subject to **Condition 16.6** and the provision of a Tax Invoice in accordance with **Condition 33**, LandCorp shall pay the full amount owing in respect of each account within thirty (30) days of the receipt of the account.
- 16.5 If LandCorp upon receipt of any account disputes the amount claimed, then LandCorp shall promptly notify the Contractor in writing of such dispute provided that any failure to LandCorp to give such notice shall not constitute an agreement to pay any invoice. If the parties are unable to reach agreement in relation to any account within fourteen (14) days of the notice from LandCorp then the dispute shall be determined in accordance with **Condition 26**.
- 16.6 If required by LandCorp the Contractor shall maintain such time or other records as reasonably required by LandCorp and shall upon request provide to LandCorp copies of all such records.

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## 17 INSURANCE AND INDEMNITY

This clause shall apply unless LandCorp notifies the Contractor that the Contractor is covered by insurance effected by LandCorp.

- 17.1 The Contractor shall at the Contractor's own expense effect and maintain throughout the Term the following insurance:
- (a) Workers Compensation insurance where required by law in the name of the Contractor with insurers approved by LandCorp and on terms and conditions approved by LandCorp including liability at common law;
  - (b) Public liability insurance in respect of any loss or injury to any person or damage to any property in relation to the provision of the Works or Services by the Contractor in an amount of ten million dollars (\$10,000,000) (or such greater amount as may be reasonably required by LandCorp from time to time in order to effect sufficient and proper cover) and on terms and conditions approved by LandCorp;
  - (c) if required by LandCorp, Professional indemnity insurance in the name of the Contractor with insurers approved by LandCorp in an amount specified in the Schedule for any one event and on terms and conditions approved by LandCorp;
  - (d) contractor risk insurance and, if required by LandCorp, in the joint names of the Contractor and LandCorp against loss or damage caused by usual risks to the full replacement value of all work executed and materials supplied (including unfixed materials or goods);



- (e) such other insurance as may be reasonably required by LandCorp in relation to the provision of the Works or Services.
- 17.2 Insurance effected in accordance with these Conditions shall not limit the liability or obligations of the Contractor under any other provisions of these Conditions and shall not in any way limit any claim which may be made by LandCorp against the Contractor.
- 17.3 Before the Commencement Date and whenever requested in writing by LandCorp, the Contractor shall produce evidence to the satisfaction and approval of LandCorp of the insurance effected and maintained in accordance with these Conditions.
- 17.4 As soon as practicable and to the extent permitted under any applicable policy, the Contractor shall give notice to LandCorp in writing of any occurrence which may give rise to a claim under a policy of insurance required under these Conditions and shall keep LandCorp informed of all subsequent developments concerning the claim.
- 17.5 Subject to Condition 17.6 the Contractor shall indemnify LandCorp and its agents and employees against all damage, injury or loss of any nature suffered by LandCorp or its agent or employees arising out of any negligence by way of any act, error or omission in the Works or Services and for which the Contractor or any Representative is as the case may be legally liable.
- 17.6 The Contractor shall indemnify and keep indemnified LandCorp against any excess under any policy of insurance taken out by LandCorp under which the Contractor is an insured and in respect of a claim arising out of negligence, whether by a way of act, error or omission in the provision of the Works or Services by the Contractor or any Representative as the case may be. In the case of the public liability insurance, the Contractor's liability to indemnify LandCorp against the excess shall be reduced proportionately to the extent that any act or omission of LandCorp or employees or agents of LandCorp or other Contractors of LandCorp may have contributed to the loss, damage, death or injury the subject of the claim.
- 17.7 The indemnities referred to in Conditions 17.5 and 17.6 shall:
- (a) be a continuing obligation
  - (b) constitute a separate and independent obligation of the Contractor from the Contractor's other obligations under these Conditions; and
  - (c) survive termination of the Contract and, in respect of negligence the subject of a claim under the insurance referred to in Condition 6.1(c), shall survive for a period of six (6) years from the date of termination of the Contract.

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## 18 DELEGATED AUTHORITY

The Contractor shall have the power to act as LandCorp's agent in emergency situations where danger to persons or damage to any works appears imminent. Other than acting in an emergency situation under this condition, the Contractor shall have no power to act as the agent of LandCorp other than as authorised from time to time by LandCorp. The

Contractor shall immediately inform LandCorp of any emergency as mentioned in this clause.

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## **19 COST PROJECTIONS**

Unless otherwise agreed, the Contractor will provide to LandCorp cost projections, and any information reasonably required by LandCorp before committing to the purchase of any materials or entering into any supply contract or otherwise acquiring goods and services for which LandCorp will be liable for the reimbursement of costs and fees.

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## **20 CONFIDENTIALITY**

- 20.1 The Contractor shall and shall ensure that it or any Representative does not except as authorised or required by LandCorp divulge to any person whatsoever any information, report, data, document or any trade secrets, secret or confidential operations, processes or dealings or any information concerning the organisation, business, finances, transactions or affairs of LandCorp or arising out of the performance of the Works or Services whether provided to the Contractor by LandCorp or any other person or compiled by the Contractor in connection with the Contract.
- 20.2 The Contractor shall not use or attempt to use any Confidential Information in any manner which may injure or cause loss either directly or indirectly to LandCorp or its business or may be likely to do so.
- 20.3 The Contractor shall not use any of the Confidential Information for its own benefit except for the performance of the Works or Services and will not copy or in any manner reproduce any of the Confidential Information except as authorised by LandCorp.
- 20.4 The Contractor agrees that the terms of the Contract shall also be kept confidential by the Contractor.
- 20.5 The provisions of this condition shall continue to apply after the termination of the Contract for any reason without limit in point of time unless the Contractor has first obtained the written consent of LandCorp for the release of such information.

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## **21 INTELLECTUAL PROPERTY**

- 21.1 All intellectual property including without limitation any Confidential Information, patent, design (whether registered or not) copyright in any report or data or other information or material compiled or prepared in accordance with the Contract and trademark or trademarks created by the Contractor within the scope of the Contract is owned by LandCorp absolutely. The Contractor agrees to take all action and to execute and deliver all documents and instruments and to procure any Representative to perform any act as may be required to vest in LandCorp the intellectual property the subject of this condition.

- 21.2 The Contractor shall ensure that the reports, any software or other works or inventions contained in or embodying the intellectual property the subject of this condition do not contain any intellectual property rights belonging to third parties, without that third party's authorisation.
- 21.3 Where data or other information relating to the provision of Works or Services is stored in or processed by a computer system, a copy of all the data and information from the computer shall be supplied by the Contractor to LandCorp on request.
- 21.4 The Contractor shall not publish, either alone or with others, articles, photographs or other illustrations relating to the Works or Services without the prior written approval of LandCorp unless such articles, photographs and other illustrations are contained only in promotional material published to clients or prospective clients of the Contractor.

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## **22 DELAY AND EXTENSION OF TIME**

- 22.1 The Contractor shall proceed with the Works or Services with due expedition and without delay.
- 22.2 When it becomes evident to the Contractor that anything including an act or omission of LandCorp or an employee, other consultant, contractor or agent of LandCorp, may delay carrying out the Works or Services, that party shall promptly notify LandCorp in writing with details of the possible delay and the cause.
- 22.3 If the Contractor is or will be delayed in carrying out the Works or Services by a cause beyond the reasonable control of the Contractor, the time for carrying out the Works or Services shall be extended by the extent of the delay.
- 22.4 LandCorp may, at any time, by written notice to the Contractor extend the time for carrying out the Works or Services for any reason.
- 22.5 LandCorp may direct the Contractor in what order and at what time the Works or Services shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply with the direction the Contractor shall so notify LandCorp in writing, giving reasons.
- 22.6 Nothing in this condition shall limit the LandCorp's liability for damages for breach of contract.

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## **23 TERMINATION**

- 23.1 The Contract may be terminated forthwith by LandCorp by giving written notice to the Contractor if:
- (a) the Contractor commits an act of bankruptcy or if the Contractor is a company enters into liquidation (except voluntary liquidation for the purposes of reconstruction) a receiver or receiver and manager is appointed or an administrator is appointed;

- (b) the Contractor is in default under the Contract and fails to remedy that default within seven (7) days of receipt of a written notice from LandCorp specifying the breach and requiring the same to be remedied;
- (c) any event or circumstances has occurred which, in the reasonable opinion of LandCorp, makes it unlikely that the Works or Services will be completed by the Contractor in accordance with the Contract;
- (d) the Contractor fails or refuses or neglects to comply with any instruction or direction given to it by LandCorp pursuant to the Contract;
- (e) LandCorp serves notice on the Contractor requiring the Contract to be terminated on the date specified in the notice being not less than thirty (30) days from the date of service of the notice.

23.2 Nothing in Condition 23.1 should be taken in any way to restrict any rights of LandCorp to claim and institute proceedings for damages arising out of any breach of the Contract by the Contractor.

23.3 LandCorp may at any time by notice in writing to the Contractor, reduce, curtail or discontinue any or all Works or Services to be provided to it. Upon such notice being given the Contractor shall cease or reduce work according to the tenor of the notice and shall immediately do everything possible to mitigate losses as a result of such reduction, curtailment or discontinuance.

23.4 If under the law governing the Contract, the Contract is frustrated, LandCorp shall pay the Contractor:

- (a) for work executed up to the date of frustration, the amount not then paid but which would have been payable if the Contract had not been frustrated; and
- (b) costs reasonably incurred by the Contractor to that date in the expectation of carrying out the Works or Services and not included in any prior payment by LandCorp.

23.5 On completion of the Works or Services or on termination or frustration of the contract, the Contractor shall promptly return to LandCorp all documents, data and other information created for the purposes of the Contract or supplied to the Contractor by LandCorp.

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## **24 REVIEW OF PROVISION OF WORKS OR SERVICES**

24.1 As reasonably required by LandCorp, LandCorp may undertake a performance review of the Works or Services.

24.2 The performance review shall be undertaken in such manner as required by LandCorp and may be undertaken either by LandCorp itself or by any Contractor or other third party appointed by LandCorp or for such purpose.

- 24.3 It shall be a requirement of any performance review that the Contractor be given a reasonable opportunity to make submissions to LandCorp in relation to its performance.
- 24.4 In the event that, as a result of the performance review, LandCorp forms a view in its absolute discretion that the Contractor is not performing in accordance with the requirements of LandCorp then LandCorp may upon giving not less than fourteen (14) days notice to the Contractor to terminate the Contract.

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## **25 OTHER CONTRACTORS**

- 25.1 The Contractor acknowledges that other contractors may be on site at the same time as the Contractor is undertaking the Works or Services.
- 25.2 Where any conflict or dispute arises with any other contractor on site that affects the completion of the Works or Services, the Contractor shall use its best endeavours to resolve the issue with the other contractor and promptly inform LandCorp of the terms of the resolution of the matter.
- 25.3 Where the Contractor is unable to resolve any conflict or dispute with any other contractor, the matter shall be immediately referred to LandCorp who shall resolve the conflict or dispute in such manner as it may determine.

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## **26 DISPUTE RESOLUTION**

- 26.1 If LandCorp and the Contractor are in dispute regarding any matter arising under the Contract other than in relation to the proper construction of any term of the Contract, then either party may by notice in writing served on the other request that such dispute be resolved by expert determination of an independent third party acceptable to both parties. If the parties do not agree upon the independent third party to be appointed within seven (7) days from the date of service of a notice requiring determination by a third party expert, then the dispute shall be determined by an independent third party appointed by the President of the time being of the Law Society of Western Australia. The person so appointed shall act as an expert and not as an arbitrator and his or her decision shall be final and binding between the parties. The costs of such determination shall be paid by the parties in equal shares.
- 26.2 The Contractor shall continue to provide services pursuant to the Contract notwithstanding that a dispute remains unresolved.

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## **27 ASSIGNMENT**

- 27.1 The Contractor shall not assign, transfer or otherwise dispose of the whole or any part of its rights or obligations under the Contract without the prior written consent of LandCorp.

- 27.2 LandCorp shall be entitled to assign the whole or any part of the benefit and obligations under the Contract and, if applicable, subject to the assignee agreeing to be bound by the terms of the Contract in the place of LandCorp.

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## **28 APPOINTMENT OF SUB-CONTRACTORS**

- 28.1 If circumstances arise which require expertise outside the field of practice of the Contractor, the Contractor may with the prior written approval of LandCorp engage an appropriate sub-consultant or sub-contractor to perform any part of the provision and relevant Works or Services under the Contract. The Contractor shall be solely responsible for the engagement of and the payment for any Works or Services provided by any sub-contractor and shall accept responsibility for the provision of those Works or Services. In the event that the use of a subcontractor is required due to Works or Services being provided outside of the original scope of Works or Services then the costs of such sub-contractor shall be met by LandCorp.
- 28.2 It shall be a condition of such approval given by LandCorp pursuant to **Condition 28.1** that any such sub-contractor shall at the Contractor or sub-contractor's own expense, effect and maintain throughout the term of the engagement of such sub-contract insurance in accordance with the requirements of **Condition 17** in addition to the insurance to be provided by the Contractor.

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## **29 ENGAGEMENT OF FURTHER CONTRACTOR**

In the event that the Contractor for any reasons fails to perform any obligations under the terms of the Contract LandCorp may, without prejudice to any right of action or other remedy which it may have be entitled to appoint any other consultant, person, agent or otherwise to carry out such unperformed works, the costs of which shall be immediately reimbursed to LandCorp by the Contractor.

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## **30 CONFLICT OF INTEREST**

- 30.1 The Contractor must immediately inform LandCorp in writing of any direct or indirect interest that the Contractor has or may have which conflicts with or may conflict with the Contractor's duties and obligations under the Contract.
- 30.2 LandCorp may in its absolute discretion determine how any conflict of interest shall be resolved on the part of the Contractor.
- 30.3 If the Contractor is unable to resolve the conflict of interest as required by LandCorp or if LandCorp elects not to provide any mechanism for resolving such conflict, then LandCorp may immediately terminate the Contract or may limit the engagement of the Contractor under the Contract to matters not affected by the conflict of interest.
- 30.4 Where the conflict of interest arises as a result of any action by the Contractor or any omission by the Contractor, then the Contractor shall be deemed to be in breach of the

Contract as a result of such conflict being allowed to arise and LandCorp shall be entitled to all rights and damages arising from such breach.

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## **31 STATUS OF CONTRACTOR**

- 31.1 The Contractor acknowledges that it is an independent contractor and that it supplies the Works or Services in such capacity only.
- 31.2 The relationship between LandCorp and the Contractor is that of principal and contractor. Nothing in the Contract shall be taken as construing the Contractor as an employee of LandCorp or constituting a partnership or joint venture.

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## **32 GUARANTEE**

- 32.1 The Guarantor (if any) mentioned in the Schedule GUARANTEES payment to LandCorp on demand of the whole of the Secured Moneys and the performance and observance of all the Secured Obligations.
- 32.2 As an independent liability the Guarantor INDEMNIFIES AND AGREES TO KEEP INDEMNIFIED LandCorp against any loss, damage, action, demand, expense, claim or obligation which LandCorp has or may suffer or incur by reason of or in any way consequent upon arising out of or incidental to the non-payment of the Secured Moneys or the non-performance or non-observance of the Secured Obligations. This indemnity shall not be limited or affected in any way whatsoever by the fact that the Secured Moneys or the Secured Obligations cannot be or could never be recovered from or enforced against the Contractor for any reason.
- 32.3 The Guarantor's liability under **Conditions 32.1** and **32.2** are unlimited.
- 32.4 This Guarantee and Indemnity is a continuing security and shall not be wholly or partially discharged (even upon payment of all of the Secured Moneys that are presently owing) as long as any of the Secured Moneys are owing or payable, are contingently owing or payable or may in LandCorp's opinion become owing or payable or as long as any of the Secured Obligations have not been performed and the Guarantor shall have no right to discontinue this Guarantee and Indemnity.
- 32.5 This Guarantee and Indemnity shall not be affected by any eventuality or circumstance of any nature whatsoever including without limitation:
- (a) LandCorp granting time or other indulgence to or compromising with or partially releasing in any way the Contractor or the Guarantor;
  - (b) acquiescence, delay, acts or omissions on the part of LandCorp;
  - (c) a variation of the Contract with or without the consent of the Guarantor;
  - (d) any assignment (whether on the part of LandCorp or the Contractor or both) or extension of the Contract;

- (e) the death, dissolution or other incapacity of the Contractor or the Guarantor;
- (f) the winding up of the Contractor;
- (g) the invalidity or unenforceability of an obligation or liability of the Contractor under the Contract;
- (h) the disclaimer of the Contract by a liquidator or a trustee of the Contractor;

32.6 For the purposes of this Condition:

**“Secured Moneys”** means all of the moneys owing or owed by the Contractor to LandCorp in any way whatsoever and at any time under or pursuant to the Contract;

**“Secured Obligations”** means all of the obligations, covenants, warranties, representations, terms and conditions express or implied to be observed, performed or fulfilled by the Contractor under the Contract.

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### **33 GOODS AND SERVICES TAX**

- 33.1 The parties to the Contract agree that all Taxable Supplies to be made under the Contract are inclusive of GST. The party supplying the Taxable Supply shall provide a Tax Invoice.
- 33.2 The party or parties to the Contract providing supplies for consideration expressed otherwise than an amount of money, in accordance with the terms of the Contract, which will constitute a Taxable Supply shall provide a Tax Invoice to the other party for that Taxable Supply based on the GST inclusive market value of that consideration as determined by the party making the supply.
- 33.3 A written statement given to the Contractor by LandCorp of the amount of GST that LandCorp is liable to pay on a Taxable Supply made or to be made under the Contract is conclusive between the parties except in the case of an obvious error.
- 33.4 The Contract and supporting material is not a document notifying an obligation to make payment and is not considered an invoice under the GST Act.

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### **34 NOTICES**

- 34.1 Any notice given or required to be given under this Contract:
  - (a) must be in writing addressed to LandCorp or to the Contractor (as the case may be), to LandCorp’s or the Contractor’s address shown in the Contract (or to any other address specified by the Contractor to LandCorp or LandCorp to the Contractor by notice);
  - (b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender’s lawyer, conveyancer or other authorised representative (as the case may be);



- (c) is to be regarded as being given by the sender and received by the addressee:
- (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee; and
  - (iii) if by facsimile transmission:  
  
on the date the notice or communication is transmitted in its entirety by a facsimile machine; and  
  
that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,  
  
but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and
- (d) can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

34.2 Where the Contractor comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Contractor.

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## **35 SPECIAL PROVISIONS**

The Special Provisions (if any) mentioned in the Schedule shall apply or form part of the Contract. In the event of any inconsistency between the Special Conditions and these Conditions, the Special Conditions shall prevail.

Signed on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.

\_\_\_\_\_  
Authorised Officer

\_\_\_\_\_  
Authorised Officer

**SIGNED** by [\*]  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Witness (print)

**EXECUTED** by [\*] (ACN [\*]) in accordance with section 127 of the Corporations Act by:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)