

Tender version

Pilbara Ports Authority

[ECI Contractor]

ECI Agreement

Dampier Cargo Wharf reinstatement project, Port
of Dampier, Western Australia

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Date

Parties

Pilbara Ports Authority ABN 94 987 448 870 of Level 5, 999 Hay Street, Perth, WA 6000 (**Principal**)

[Contractor TBC] ABN [TBC] of [TBC] (**ECI Contractor**)

Background

- A The ECI Contractor has been invited by the Principal to develop a design and a commercial proposal for the Principal in relation to performance of the Project.
 - B The Principal has agreed to appoint the ECI Contractor to perform the ECI Services on the terms of the Agreement.
 - C The Agreement requires the ECI Contractor to perform the ECI Services, which includes initially preparing a design, cost and constructability analysis, and if directed to proceed further, submitting a Bid for the Project which, if accepted (with or without amendment) by the Principal, must then be finalised and a Construction Contract executed with the Principal.
 - D The ECI Contractor agrees to perform the ECI Services for the Principal, in consideration of the Principal paying the Fee.
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Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document these terms have the following meanings:

Agreement	This document entered into between the Principal and the ECI Contractor, comprising clauses 1 to 25 and the schedules.
Approval	Any licence, permit, consent, approval, accreditation, determination, certificate, notice or other requirement of any Authority or under any applicable Statutory Requirement, which must be obtained or satisfied to carry out the ECI Services.
Authority	Any governmental, semi-governmental, or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Project.

Bid	<p>The binding offer to undertake the Project required to be submitted by the ECI Contractor, which must include:</p> <ul style="list-style-type: none"> (a) the Design Documentation; (b) the Contract Price; (c) the Contract Documentation; and (d) the Construction Program Documentation, <p>and any further requirements or adjustments to the requirements listed at (a) to (d) above as may be notified by the Principal to the ECI Contractor throughout the ECI Delivery Phase.</p>
Bid Submission Date	The date stated at item 6 of Schedule 1 .
Business Day	<p>Any day other than:</p> <ul style="list-style-type: none"> (a) a Saturday, Sunday or bank or public holiday in Western Australia; or (b) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).
Claim	Includes any claim, action, judgment, arbitration, proceedings, suit, cause of action, defence, set off or demand (including any claim for time or cost).
Construction Program Documentation	The documentation to be prepared by the ECI Contractor in accordance with the requirements of clause 10.5 and Schedule 4 .
Construction Contract	The agreement for the delivery of the Project (if any) which is to be entered into between the Principal and the Construction Contractor, a draft version of which may be given by the Principal to the ECI Contractor during the ECI Delivery Phase in which case the final version will accurately reflect any resolution of Departures agreed in writing by the Principal prior to the date of submission of the Bid.
Construction Contractor	The contractor (if any) engaged by the Principal to deliver the Project pursuant to the Construction Contract.
Contract Documentation	The documentation (if any) to be prepared by the ECI Contractor in accordance with the requirements of clause 10.4 and Schedule 4 , included as part of the Bid.
Contract Price	The ECI Contractor's lump sum price for carrying out the Works in accordance with the Construction Contract, included as part of the Bid.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Costing Documentation	The documentation to be prepared by the ECI Contractor in accordance with the requirements of clause 10.3 and Schedule 4 .
Cost Estimates	Has the meaning given in Schedule 4 .

Date for Practical Completion	The date identified at item 1 of Schedule 1 , being the date by which completion of the Works must be achieved under the Construction Contract.
Deed of Novation	The deed of novation in the form contained at Schedule 7 .
Delivery Method	Has the meaning given in Schedule 4 .
Departures	All assumptions, qualifications, exceptions or information relevant to or inconsistent with the draft Construction Contract provided by the Principal pursuant to clause 10.4(a) .
Design	The design for the Project (including drawings, specifications, models, samples, calculations and bills of quantities) in computer readable and written forms.
Design Documentation	The Design documentation to be prepared in accordance with the requirements of clause 9.2 , clause 10.2 and Schedule 4 .
Design Management Services	The design management services described in clause 9.2 in respect of the preparation of Design Documentation.
Dispute	<p>A dispute or difference between the ECI Contractor and the Principal in respect of any fact, matter or thing arising out of or in connection with:</p> <ul style="list-style-type: none"> (a) the ECI Services; (b) the Agreement; or (c) either party's conduct before the Agreement.
Disbursements	means any disbursements approved by the Principal in accordance with Schedule 3 .
Document Management System	Oracle's Aconex document management system or any other document management system nominated by the Principal from time to time.
ECI Contractor's Representative	The person appointed pursuant to clause 4.2 .
ECI Contractor's Team	Those persons selected by the ECI Contractor to perform the ECI Services.
ECI Delivery Phase	The period from the date on which the Agreement takes effect in accordance with clause 2 to the date on which the ECI Services are completed in full in accordance with the ECI Program.
ECI Program	The program for completion of the ECI Services as set out in Schedule 5 .
ECI Services	<ul style="list-style-type: none"> (a) The services described in Schedule 4; (b) any Investigation Activities approved by the Principal in accordance with the Agreement; (c) the Design Management Services;

- (d) preparation and submission of the Bid;
- (e) all other services which are necessary for, or incidental to the ECI Contractor performing the services in **Schedule 4**; and
- (f) all labour, materials, equipment, facilities, services and other things necessary to perform the services in **Schedule 4** and perform the other services referred to in paragraphs **(b)**, **(c)**, **(e)** and **(e)**.

Emergency An actual, impending or imminent event that the Principal considers has the effect of causing, or threatening to cause, loss of life, injury, distress or danger to any person or persons, or destruction or damage to property or the Environment.

Environment Has the same meaning as in the *Environmental Protection Act 1986* (WA).

Fee The amount or amounts payable for the ECI Services, calculated by applying the Schedule of Rates to the hours worked and/or quantities supplied and utilised by the ECI Contractor in performing the ECI Services and includes Disbursements.

Fee Cap \$[insert] (excluding GST), as may be adjusted in accordance with **clause 16.5(b)**. **[Note to tenderers: A fee cap – commensurate with a guaranteed maximum price for performing the ECI Services – must be included in your tender for this ECI Agreement, along with an estimated breakdown of costs making up the Fee Cap. Payment will be based on a schedule of rates – with an allowance for disbursements – subject always to this Fee Cap.]**

Good Industry Practice (a) With the degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent provider of services similar to the ECI Services under conditions comparable to those applicable to the Project; and

(b) in accordance with all Statutory Requirements.

Harbour Master The harbour master appointed for the purposes of the Port Act and any deputy harbour master or other person carrying out any of the Harbour Master's functions from time to time in accordance with the Port Act.

Hold Point A point in the progress of the ECI Services:

[Note to tenderers: Please take note of the chronological sequence to the ECI Services that Pilbara Ports will require its ECI Contractor to

- (a) where the Principal has made a payment to the ECI Contractor in accordance with **clause 16.4(b)(i)**; or
- (b) otherwise described as a 'Hold Point' in the Agreement, where the entitlement of the ECI Contractor to proceed with any outstanding ECI Services depends on the ECI Contractor being Permitted to Proceed.

*adhere to, and the
Hold Points
contained within
those ECI
Services.]*

Insolvency Event In respect of a person:

- (a) an application is made to a court for an order, or an order is made, that that person be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to that person under section 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to that person or any of its assets;
- (e) a receiver is appointed to that person or any of its assets;
- (f) that person enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) that person is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under section 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (h) that person is taken to have failed to comply with a statutory demand as a result of the Corporations Act s 459F(1);
- (i) a notice is issued under section 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (j) a writ of execution is levied against that person or such person's property which is not dismissed within 21 days;
- (k) that person ceases to carry on business or threatens to do so; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above.

Intellectual Property	Any protected intellectual property rights including patents, trademarks, copyright, designs, trade secrets, circuit layouts, processes, methods of working, and names.
Investigation Activities	Activities in pursuit of the Project Objectives carried out at or around the Port which may include inspections, intrusive examinations, testing, sampling and surveying.
Marine Hull Insurance	Insurance covering all vessels owned, chartered or hired by the ECI Contractor and used in the performance of the ECI Services, to cover each vessel on the following basis: <ul style="list-style-type: none"> (a) Marine Hull Insurance in accordance with the International Hull Clauses (01/11/03) (including 4/4ths Collision Liability on floating plant and vessels used in connection with the ECI Services and whilst in transit to the Port) for an amount of not less than the market value ('so valued') of each vessel; and (b) Protection and Indemnity Insurance cover in accordance with the Institute Protection and Indemnity Clauses Hulls – Time (20/7/87) (which must include cover for pollution liability) including a Specialist Operations extension for an amount not less than \$150,000,000 for any one accident or occurrence.
MSIC	Has the meaning given in clause 8.2(d)(i) .
Notice	Has the meaning given in clause 24.1 .
Notice of Dispute	A written notice complying with clause 23.3 .
Novated Contractor Agreement	Has the meaning given in clause 6.1(e)(i) .
Open Book Basis	Has the meaning given in clause 3.5(b) .
Options Assessment Report	Has the meaning given in Schedule 4 .
Other Contractor	Any contractor, consultant (including design consultants) or other party engaged by the Principal in connection with the Project (other than the ECI Contractor).
Payment Claim Dates	The 25 th day of each month for the ECI Services carried out to the end of that month.
Permitted to Proceed	Where after a Hold Point is reached, the Principal's Representative has notified the ECI Contractor that the ECI Contractor must proceed to perform the balance of the ECI Services until the next Hold Point (as applicable).
Port	The Port of Dampier gazetted at Dampier comprising all "port land" within the meaning of the Port Act and all other land, waters or

seabed at Dampier vested in or that are under the management of the Principal.

Port Act The *Port Authorities Act 1999* (WA).

Principal's Project Requirements The Principal's technical and other requirements for the Project as set out in **Schedule 6** and as may be updated or amended in accordance with the Agreement.

Principal's Representative The person appointed pursuant to **clause 4.1**.

Principal's Team The persons identified at **item 4** of **Schedule 4** as the Principal's Team for the purposes of the Agreement, and any additional or replacement persons notified to the ECI Contractor by the Principal from time to time.

Project The project stated in **item 8** of **Schedule 1**.

Project Objectives The objectives described in **Schedule 2**.

Related Body Corporate Has the meaning given by the Corporations Act.

Related Party In relation to a person:

- (a) an officer, employee, agent, contractor or advisor of the person; or
- (b) a Related Body Corporate of the person.

Schedule of Rates The rates identified as such and specified in **Schedule 3**.

Security of Payment Act The *Building and Construction Industry (Security of Payment) Act 2021* (WA) and any regulations arising thereunder.

Statutory Requirements

- (a) Acts, ordinances, regulations, rules, by-laws, orders, awards and proclamations of the Commonwealth of Australia and Western Australia;
- (b) certificates, licenses, consents, permits, accreditations, approvals and requirements of government departments, agencies or other organisations having jurisdiction in connection with the performance of the ECI Services and/or the Works; and
- (c) fees or charges payable under or in connection with matters identified in paragraphs **(a)** or **(b)**.

VTSO Has the meaning given in **clause 8.3(a)**.

Works The works and any related services to be carried out and performed by the Construction Contractor under the Construction Contract.

1.2 Interpretation

In the Agreement, except where the context otherwise requires:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the words "including" and "includes", and any variants of those words will be read as if followed by the words "without limitation";
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, the Agreement;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to local time in Perth, Western Australia;
- (h) a reference to a party is to a party to the Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 Effectiveness

The Agreement takes effect when the Agreement has been duly executed on behalf of each of the Principal and the ECI Contractor.

3 Project objectives and relationship principles

3.1 Objectives of the Agreement

Without limiting anything in **clause 12**, the objectives of this Agreement are to:

- (a) **(framework)**: provide a framework for the ECI Contractor to work with the Principal's Team and Other Contractors in an open, co-operative and collaborative manner with a view to achieving the Project Objectives;
- (b) **(maximise constructability)**: maximise the constructability of, and minimise any discrepancies or errors in, the Design;
- (c) **(inform)**: support the ECI Contractor to inform itself of matters relevant to the nature of Design to be (or required to be) undertaken and the expected site and other conditions relevant to the Project and Construction Contract;
- (d) **(advance Design)**: advance the Design by working with the Other Contractors and to identify any issues, opportunities, and areas requiring further definition;
- (e) **(develop Design for Bid)**: develop the Design in a manner that meets the requirements of key stakeholders and that is sufficiently developed to enable:
 - (i) the ECI Contractor to establish the scope of the Project and prepare the Costing Documentation, whilst minimising the whole of life cost for the Project;
 - (ii) the Bid to be properly prepared and submitted;
 - (iii) the Works to be constructed to specified design and technical standards to ensure appropriate operational and maintenance efficiency, asset life and serviceability; and
 - (iv) the Works to be completed within the Principal's timeline;
- (f) **(investigations)**: undertake identified investigations as agreed with the Principal;
- (g) **(address risks)**: identify, mitigate, negotiate and apportion risks under the Construction Contract;
- (h) **(develop alignment)**: develop alignment with the ECI Contractor which will support the finalisation and execution of the Construction Contract following submission of a Bid;
- (i) **(plan)**: plan the performance of the Works under the Construction Contract;
- (j) **(price)**: price the Works; and
- (k) **(Bid)**: require the ECI Contractor to submit the Bid for the design and construction of the Works,

with a view to the Project Objectives being achieved and the ECI Contractor being able to be selected as the Construction Contractor (if acceptable to the Principal) and executing the Construction Contract.

3.2 Commitment to relationship principles

The ECI Contractor and the Principal agree to work cooperatively during the ECI Delivery Phase and agree that, in giving effect to the Agreement, they will:

- (a) **(cooperation)**: cooperate to achieve the objectives in **clause 3.1** and the Project Objectives so as to deliver outcomes that are in the best interests of the Project; and
- (b) **(working together)**: work together to successfully complete the work necessary to achieve the objectives in **clause 3.1** and the Project Objectives in accordance with broad governing principles which include:
 - (i) ensuring that decisions are made on a best for Project basis;

- (ii) achieving acceptable financial outcomes for the Principal;
- (iii) effective management of construction impacts on stakeholders and the community; and
- (iv) doing all things reasonably within their power to give effect to the spirit and intent of the Agreement.

3.3 Cooperation and collaboration

[Note to tenderers: *The intent is that the Principal has or will engage a design consultant, who will be one of the Other Contractors. Your task is to work with that design consultant to ensure that the required design is prepared for the purposes of constructability, pricing, and Bid submission in accordance with this Agreement. Your Bid will require, if nominated by the Principal, that you accept a novation of the design consultant for the purpose of pricing and entering into a D&C Contract using that design documentation for which the Contractor is to then accept the risk for completing and constructing.*]

- (a) The ECI Contractor must:
 - (i) fully cooperate with any Other Contractors;
 - (ii) carefully coordinate the performance of the ECI Services with any services and works provided by Other Contractors;
 - (iii) except to the extent required by the ECI Services, not interfere with, disrupt or delay services and works provided by any Other Contractors; and
 - (iv) provide any assistance to the Principal reasonably necessary to facilitate the effective provision by any Other Contractors of services and works for the Project.
- (b) Consistent with the relationship principles described in **clause 3.2**, the ECI Contractor must ensure that the ECI Contractor's Team works in an open, co-operative and collaborative manner with a view to achieving the objectives in **clause 3.1** and the Project Objectives.
- (c) The ECI Contractor must at all times endorse and support collaborative behaviour and promptly take reasonable steps to address behaviour that is not collaborative.

3.4 Conflicts of interest

The ECI Contractor agrees to fully disclose to the Principal any conflict of interest or conflict of duty that at any time exists or may arise in connection with the performance of the ECI Services or its participation in the Project.

3.5 Open book

- (a) The ECI Contractor must ensure that the ECI Contractor's Team:
 - (i) prepares and provides all financial information contemplated by the Agreement (including the Costing Documentation) on an Open Book Basis; and
 - (ii) if required by the Principal, make available the appropriate personnel to explain the information and how it was calculated or determined.
- (b) For the purposes of **clause 3.5(a)**, **Open Book Basis** means:
 - (i) providing a detailed breakdown of the calculation or determination of all relevant costs including preliminaries, labour, consultant costs, equipment, materials,

subcontract, finance and all other costs and margins in a clear and transparent manner, which breakdown must be in a form reasonably acceptable to and developed in consultation with, the Principal during the ECI Delivery Phase; and

- (ii) providing other information reasonably requested by the Principal including reasonably available source documents (such as quotes and other documents or exchanges with third parties, such as suppliers, contractors or authorities) required to verify a calculation or determination.

4 Representatives

4.1 Principal's Representative

- (a) The Principal appoints the representative identified at **item 2 of Schedule 1** to act as its representative for the purposes of the Agreement. The Principal's Representative is the primary point of contact between the Principal and the ECI Contractor for the purposes of the Agreement.
- (b) The Principal may change its representative at any time by giving notice in writing to the ECI Contractor provided that there is not more than one representative appointed at the same time.
- (c) The Principal's Representative is an agent of the Principal for the purposes of the Agreement.
- (d) Unless otherwise specified in the Agreement, the Principal's Representative will act in the interests of the Principal and is not obliged to exercise any discretionary power or right in the interests of the ECI Contractor (including to overcome a failure of the ECI Contractor to comply with any provision of the Agreement).

4.2 ECI Contractor's Representative

- (a) The ECI Contractor appoints the representative identified at **item 3 of Schedule 1** to act as its representative for the purposes of the Agreement.
- (b) Subject to **clause 6.2**, the ECI Contractor may change its representative at any time by giving notice in writing to the Principal provided that there is not more than one representative appointed at the same time.
- (c) Any notice or other information delivered or communicated to the ECI Contractor's Representative shall be deemed to have been delivered or communicated to the ECI Contractor.

5 Roles of the Principal and the Principal's Team

5.1 Principal

During the ECI Delivery Phase, the Principal must:

- (a) provide to the ECI Contractor such information as the ECI Contractor reasonably requires to perform the ECI Services and prepare the Bid, save for information that the Principal reasonably considers cannot be disclosed to the ECI Contractor for reasons including but not limited to the confidential nature of the information and/or not having rights to any Intellectual Property in the information; and

- (b) subject to **clause 5.1(a)**, progressively provide to the ECI Contractor information, documents and other particulars relating to the Project which the Principal (acting reasonably) considers are necessary for the performance of the ECI Contractor's obligations to provide the ECI Services and prepare the Bid.

5.2 Principal's Team

- (a) The Principal has appointed the persons identified at **item 4 of Schedule 1** as the Principal's Team for the purposes of the Agreement.
- (b) The role of the Principal's Team is to:
 - (i) assist the Principal's Representative in:
 - (A) reviewing any draft or final documentation forming part of the ECI Contractor's Bid; and
 - (B) otherwise administering the Agreement; and
 - (ii) do such other things as the Agreement contemplates will be done by the Principal's Team.
- (c) The Principal may replace, remove or provide additional members to the Principal's Team, at any time by notice in writing to the ECI Contractor.

6 Roles of the ECI Contractor and the ECI Contractor's Team

6.1 ECI Contractor

Without limitation to any of the ECI Contractor's obligations under the Agreement, during the ECI Delivery Phase, the ECI Contractor must:

- (a) perform the ECI Services:
 - (i) in accordance with the Agreement, Statutory Requirements and Good Industry Practice;
 - (ii) in an open, consultative and collaborative manner with the Principal, the Principal's Team, Other Contractors and any other third parties nominated by the Principal;
 - (iii) with due diligence and without delay and in accordance with the ECI Program;
 - (iv) in accordance with any reasonable directions from the Principal;
 - (v) in accordance with and to otherwise maximise the realisation of the requirements of the Principal's Project Requirements and Project Objectives; and
 - (vi) so that the Design for the Works (notwithstanding being performed by Other Contractors):
 - (A) conforms to, and meets the requirements of the Principal's Project Requirements; and
 - (B) conforms to all Authorities and Statutory Requirements then known to the ECI Contractor;
- (b) obtain, maintain and comply with any Approval required to perform the ECI Services;

- (c) inform itself of the Principal's requirements for the Project, and for that purpose must consult the Principal's Team throughout the ECI Delivery Phase;
- (d) promptly notify the Principal's Representative if the ECI Contractor believes it requires any further information for the purposes of performing the ECI Services or its other obligations under the Agreement;
- (e) in accordance with the ECI Program:
 - (i) review all agreements with Other Contractors which the Principal informs the ECI Contractor that it may require the ECI Contractor to accept the novation of if the ECI Contractor is appointed as Construction Contractor (**Novated Contractor Agreements**);
 - (ii) no later than 7 days after receipt of any Novated Contractor Agreement(s), either:
 - (A) confirm that the ECI Contractor will, if it is appointed as Construction Contractor, accept novation of the relevant Novated Contractor Agreement(s) by entering into a deed of novation in such form and on such terms and conditions as the Principal may reasonably require; or
 - (B) raise any reasonable issues or concerns it identifies with the Novated Contractor Agreement(s) in writing, the reasons for the concern and the impact (if any) to the Bid, including any Departure the ECI Contractor would require to the draft Construction Contract furnished to the ECI Contractor if the ECI Contractor was appointed as Construction Contractor and the issue or concern raised is not able to be resolved; and
 - (iii) assist the Principal to address any issues or concerns raised by the ECI Contractor in relation to the Novated Contractor Agreement(s) pursuant to **clause 6.1(e)(ii)(B)** (including assistance in negotiating with Other Contractors). The ECI Contractor agrees that it is a pre-condition to award of the Construction Contract to the ECI Contractor that if required by the Principal, the ECI Contractor must accept the novation of each Novated Contractor Agreement on such terms and conditions as the Principal may reasonably require, having regard to the issues or concerns raised and the abovementioned process; ***[Note to tenderers: At this stage, it is Pilbara Ports' intention to appoint its Construction Contractor on a design and construct basis, but is not yet in a position to confirm definitively if this is the optimal approach to achieving value for money. Pilbara Ports will maintain an open dialogue with the ECI Contractor in the course of the ECI Delivery Phase on this subject and will have regard to the ECI Contractor's feedback, having regard to the progress of the Design and Costing Documentation.]***
- (f) prepare the Bid:
 - (i) in a diligent and timely manner and in accordance with the ECI Program;
 - (ii) using the services of appropriately skilled, qualified and experienced personnel and consultants;
 - (iii) using a standard of care expected of a competent and experienced professional exercising Good Industry Practice; and
 - (iv) otherwise in accordance with the requirements of the Agreement;

- (g) submit a binding Bid in accordance with the Agreement; **Note to tenderers:** *Notwithstanding the obligations contained in clauses 1-25 of the Agreement, the sequencing of the ECI Services and timing of the Hold Points is such that Pilbara Ports may ultimately choose not to procure a Bid from the appointed ECI Contractor. This decision will be taken during the ECI Delivery Phase having regard to the outcome of the progressive Design development and preparation of associated cost estimates.*
- (h) identify all risks and contingencies to be taken into account by the Construction Contractor in respect of the Works;
- (i) identify all Statutory Requirements (and the process for obtaining them) required to be held by the Construction Contractor to lawfully carry out and complete the Works;
- (j) work collaboratively with the quantity surveyor or similar consultant (if any) engaged in relation to the Project to assist with pricing and Bid review, in consultation with the Principal's Representative; and
- (k) not proceed past any Hold Point unless Permitted to Proceed and comply with the requirements in relation to any Hold Point.

6.2 ECI Contractor's Team

- (a) The ECI Contractor has appointed the persons identified at **item 5** of **Schedule 1** as the ECI Contractor's Team for the purposes of the Agreement, including to:
 - (i) perform the ECI Services; and
 - (ii) prepare the Bid,for the ECI Contractor.
- (b) At all times before the date for submission of the Bid, the ECI Contractor must and must ensure that the ECI Contractor's Team:
 - (i) possesses the appropriate skill, expertise, authority, qualifications, registrations and licences;
 - (ii) provides the Principal and the Principal's Team with all reasonable assistance and access to all draft documentation intended for inclusion in the Bid for the purposes of reviewing that documentation; and
 - (iii) liaises regularly with the Principal's Team and progressively develop the Bid with involvement from the Principal's Team.
- (c) If the Principal considers any person employed or engaged by the ECI Contractor in relation to the ECI Services to be undesirable in relation to the performance of the ECI Services, the Principal may direct the ECI Contractor to remove that person from performance of the ECI Services.
- (d) Upon receipt of a direction under **clause 6.2(c)**, the ECI Contractor must promptly and at its own cost arrange for:
 - (i) the removal of that person from his or her role in relation to the ECI Services within the time directed by the Principal; and
 - (ii) the replacement of that person with a person acceptable to the Principal's Representative, acting reasonably.

- (e) The appointment of members of the ECI Contractor's Team does not relieve the ECI Contractor of any of its liabilities or obligations under the Agreement, and the ECI Contractor is at all times responsible for the performance and activities of the ECI Contractor's Team.

7 General provisions relating to Bid

[Note to tenderers: Notwithstanding the obligations contained in clauses 1-25 of the Agreement, the sequencing of the ECI Services and timing of the Hold Points is such that Pilbara Ports may ultimately choose not to procure a Bid from the appointed ECI Contractor. This decision will be taken during the ECI Delivery Phase having regard to the outcome of the progressive Design development and preparation of associated cost estimates.]

7.1 Requirements and submission of Bid

The ECI Contractor must submit a Bid by the Bid Submission Date by delivering the Bid to the Principal's Representative in a form nominated in writing by the Principal's Representative prior to the Bid Submission Date.

7.2 Responsibility for Bid

The ECI Contractor assumes full responsibility for the Bid despite:

- (a) the participation of the Principal's Team (or Related Parties of the Principal) in meetings or workshops with the ECI Contractor; and
- (b) any review, comment or direction by or other action or inaction of the Principal's Team (or Related Parties of the Principal).

7.3 Extension of Bid Submission Date

- (a) The Principal may extend the Bid Submission Date at any time by notice in writing to the ECI Contractor.
- (b) The Principal is under no obligation to extend the Bid Submission Date at the request of the ECI Contractor.

7.4 Providing information concerning Bid

The ECI Contractor must provide the Principal's Representative with any further information reasonably requested by the Principal's Representative in respect of the Bid.

7.5 Offer capable of acceptance

- (a) The Bid must be a binding offer which is:
 - (i) capable of acceptance; and
 - (ii) open for acceptance (without any adjustment, including for rise and fall) for a period of at least 120 days after the Bid Submission Date.
- (b) The ECI Contractor:
 - (i) agrees that it cannot, without the prior written consent of the Principal, withdraw or change (including by way of addition or qualification) the Bid; or
 - (ii) must not otherwise do anything which affects the Bid (including a change in the structure of any consortium the ECI Contractor represents),before the expiration of 120 days after the Bid Submission Date.

8 Investigation Activities

8.1 Request and approval

- (a) If in the performance of the ECI Services, the ECI Contractor wishes to undertake Investigation Activities, the ECI Contractor must submit a written proposal to the Principal including details of:
 - (i) the need for or benefit of performing the proposed Investigation Activities;
 - (ii) the area(s) of the Port it wishes to access;
 - (iii) the time at which it wishes to have access;
 - (iv) the members of the ECI Contractor's Team (and any subcontractors, employees or agents) proposed to be granted access;
 - (v) the proposed scope of Investigation Activities; and
 - (vi) the proposed cost for the completion of the Investigation Activities.
- (b) The Principal may review and comment upon any proposal submitted (or resubmitted) in accordance with **clause 8.1(a)**.
- (c) If required by the Principal, the ECI Contractor must make available the appropriate personnel to meet with the Principal to explain any such proposal.
- (d) If any such proposal is rejected or commented upon by the Principal, the ECI Contractor must submit an amended proposal (which complies with **clause 8.1(a)** and identifies how any comments from the Principal have been addressed) to the Principal.
- (e) The ECI Contractor must not commence any Investigation Activities unless the Principal has approved the ECI Contractor's proposal.
- (f) The Principal may approve the ECI Contractor's proposal subject to such conditions as the Principal may reasonably require.
- (g) If the Principal approves the ECI Contractor's Proposal, the Fee Cap will be adjusted accordingly.
- (h) Any Site Investigation Activities must be carried out in accordance with the requirements of **Schedule 4**.

8.2 Access to the Port

- (a) Where the Principal has approved a proposal under **clause 8.1** the Principal must use reasonable endeavours to arrange for the ECI Contractor to be provided with non-exclusive access to relevant parts of the Port for the purposes of the approved Investigation Activities.
- (b) Notwithstanding any approval by the Principal of a proposal under **clause 8.1**:
 - (i) the Principal may at any time and from time to time, impose further, reasonable requirements on the ECI Contractor as a condition to it having access to the Port for the purposes of the Investigation Activities; and
 - (ii) the Principal may terminate the ECI Contractor's access to the Port at any time by notice to the ECI Contractor, in which case the ECI Contractor must immediately demobilise from the Port.

- (c) Without limiting **clause 8.3**, the ECI Contractor must comply with the reasonable requirements and directions of the Principal in relation to access to and activities at the Port and compliance with such requirements is deemed included in the portion of the Fee for undertaking those Investigation Activities.
- (d) If the ECI Contractor or any of its subcontractors, employees or agents attend the Port, they must be escorted by the Principal's Representative (or delegate) at all times whilst at the Port, unless:
 - (i) they have a valid Maritime Security Identification Card (**MSIC**), and have completed the site inductions required by the Principal; and
 - (ii) the Principal's Representative (or delegate), in their absolute discretion, authorises them to be at the Port unescorted.
- (e) Notwithstanding anything to the contrary in the Agreement, the ECI Contractor will have no Claim arising out of or in connection with compliance with this **clause 8.2**.

8.3 Harbour Master and VTSO direction

- (a) When accessing the Port, the ECI Contractor must comply with any directions given by the Harbour Master or the Vessel Traffic Services Officer (**VTSO**) or the Principal's Representative in matters relating to or in connection with navigation, vessel and shipping movement in, around or out of the Port (including an Emergency arising out of or relating to these matters).
- (b) If the Principal's Representative, Harbour Master or VTSO gives such a direction, then the ECI Contractor must:
 - (i) maintain fully detailed records in relation to directions given by the Principal's Representative or Harbour Master or VTSO; and
 - (ii) take all reasonable steps to mitigate any costs or delays as a result of the direction.
- (c) The ECI Contractor acknowledges that the ECI Contractor's obligation to comply with any directions given pursuant to **clause 8.3(a)** prevails to the extent of any conflict or inconsistency with any other direction given to, or right or obligation of, the ECI Contractor pursuant to the Agreement.
- (d) If the ECI Contractor or any of its subcontractors, employees or agents fail to comply with a direction given pursuant to **clause 8.3(a)**, the Principal and its employees and contractors may do anything that the Principal considers necessary in order to give effect to the direction.
- (e) Without limiting the Principal's other rights and remedies, the ECI Contractor must reimburse the Principal (as a debt due) for all costs, losses and damages comprised in or arising out of anything done by the Principal or its employees or contractors under **clause 8.3(d)**.
- (f) Notwithstanding anything to the contrary in the Agreement, the ECI Contractor will have no Claim arising out of or in connection with compliance with this **clause 8.3**.

9 Design Management Process

9.1 Revise the Principal's Project Requirements

The Principal may update or amend the Principal's Project Requirements at any time during the ECI Delivery Phase.

9.2 Design Management Services

- (a) **[Note to tenderers: At this stage, Pilbara Ports intends to appoint a design consultant to work with the ECI Contractor.]**The ECI Contractor acknowledges and agrees that to the extent any Other Contractors are engaged by the Principal to prepare the Design Documentation, the ECI Contractor must provide the design management services set out in this **clause 9.2 (Design Management Services)**.
- (b) The Principal is relying on the ECI Contractor to, and the ECI Contractor must, undertake the Design Management Services using a standard of care expected of a competent and experienced contractor exercising Good Industry Practice.
- (c) The ECI Contractor must, as part of the ECI Services:
 - (i) manage and coordinate the Other Contractors;
 - (ii) manage and coordinate the Other Contractors in the provision of buildable Design Documentation, which are fit for purpose, are delivered in a timely manner and will facilitate the objective of achieving a value for money outcome;
 - (iii) review and confirm the design assumptions used by the Other Contractors are appropriate for the purposes of the Project, including for any user requirements and operational and maintenance requirements;
 - (iv) manage the Other Contractors' design and documentation processes to ensure the user requirements will be satisfied, that the design will be buildable, and the Principal's Project Requirements will be satisfied;
 - (v) review and proactively provide input into the design to ensure that the issues of safety in construction, operation and maintenance are fully considered;
 - (vi) review the design packages as they become available and advise upon:
 - (A) constructability problems and durability issues;
 - (B) the advantageous use of the site;
 - (C) the availability of materials;
 - (D) the order of delivery and construction durations;
 - (E) alternative designs; and
 - (F) any changes to the Design Documentation which may result in cost savings (including by changing the materials to be used and construction methods); and
 - (vii) manage and coordinate the design of the Project to ensure that the Design Documentation will produce a quality product which is in accordance with the Principal's Project Requirements.

9.3 Authorisations

The ECI Contractor must:

- (a) perform the ECI Services in accordance with requirements of all relevant Authorities;
- (b) liaise with relevant Authorities in relation to the application of their requirements to the Project; and
- (c) progressively report to and notify the Principal's Team of any issues arising from the liaison with relevant Authorities.

10 Development of Bid

10.1 Collaboration

- (a) In order to facilitate the performance of the ECI Services, the ECI Contractor must attend any workshops and meetings organised by the Principal from time to time and otherwise nominated in the ECI Program.
- (b) Workshops and meetings will be chaired by the Principal's Representative and will be attended by appropriate members of the Principal's Team and the ECI Contractor's Team.
- (c) Workshops are intended to be a collaborative method of reviewing:
 - (i) outputs of the performance of the ECI Services, including Design; and
 - (ii) if the ECI Services proceed past the preceding Hold Point, the ECI Contractor's draft Bid,

during which the ECI Contractor will have an opportunity to express its opinions and give recommendations in relation to the development of the Project and the various documents that will form part of the Bid.

10.2 Design Documentation

- (a) The ECI Contractor must submit the Design Documentation in accordance with the requirements of **Schedule 4** as part of its Bid.
- (b) The Design must be developed:
 - (i) sufficiently to enable:
 - (A) the ECI Contractor to establish the scope of the Project and to prepare the Costing Documentation; and
 - (B) the Bid to be properly prepared; and
 - (ii) without limiting **clause 10.2(b)(i)**, to a stage where the ECI Contractor is able to reasonably determine the Contract Price, including agreeing with the Principal on an amount for contingencies to be included in the Contract Price.

10.3 Costing Documentation

[Note to tenderers: Please note the requirement in **Schedule 4 for progressive submission of Cost Estimates and supporting documentation, as they are developed. Pilbara Ports intends to work closely with the ECI Contractor to achieve value for money outcomes for Pilbara Ports.]**

Unless the parties otherwise agree during the ECI Delivery Phase, the ECI Contractor must submit its Costing Documentation in accordance with the requirements of **Schedule 4**.

10.4 Contract Documentation

- (a) During the ECI Delivery Phase the Principal may provide to the ECI Contractor:
 - (i) a draft Construction Contract; and
 - (ii) a timeline for submission of any Departures.
- (b) If a draft Construction Contract and timeline is provided to the ECI Contractor under **clause 10.4(a)**, then the ECI Contractor:
 - (i) must submit its Construction Contract Documentation in accordance with the requirements of **Schedule 4** as part of its Bid;
 - (ii) must complete all tasks required to enable the Construction Contract (including all schedules and annexures) to be finalised and submitted as part of the Bid, in accordance with the ECI Program;
 - (iii) confirms that subject only to satisfactory resolution of the Departures the ECI Contractor will otherwise accept the terms of the draft Construction Contract provided to it under **clause 10.4(a)** and will prepare its Bid on that basis;
 - (iv) agrees that the Bid will not contain any assumptions, qualifications, exceptions or information which are inconsistent with the terms and risk allocation in the Construction Contract other than those expressly set out in the Departures; and
 - (v) must not, post Bid, request or require amendments to the draft Construction Contract other than to accurately reflect any resolution of the Departures agreed in writing by the Principal prior to the date of submission of the Bid.
- (c) Where applicable and except to the extent expressly agreed in writing by the Principal (including via the agreed Departures prior to Bid submission), the Bid must contain no assumptions, qualifications, clarifications or exceptions in respect of the ECI Contractor's acceptance of the novation of the Novated Contractor Agreements.

10.5 Construction Program Documentation

The ECI Contractor must submit its Construction Program Documentation in accordance with the requirements of **Schedule 4** as part of its Bid.

10.6 Documentation Review

The Principal may give the ECI Contractor written notice stating that the documentation submitted pursuant to **clause 10.1** to **10.5** does not comply with the Project Objectives and require the ECI Contractor to amend that documentation and promptly submit the amended documentation to the Principal for its review.

10.7 Bid Hold Point

The submission of a Bid in accordance with this **clause 10** constitutes a Hold Point.

11 Evaluation

- (a) The Principal may evaluate the Bid, and in which case may do so:
 - (i) against the requirements of the Agreement and the Project Objectives;
 - (ii) having regard to value for money for the Principal; and
 - (iii) having regard to any other criteria it may require in its absolute discretion.

- (b) The Principal may ask clarification questions in relation to the Bid and the ECI Contractor must promptly consider and respond to such questions.
- (c) Nothing in this Agreement requires the Principal to evaluate or accept a Bid, enter into a Construction Contract with the ECI Contractor or otherwise proceed with the Works.

12 Entry into Construction Contract

12.1 Good faith negotiations

If, following submission of the Bid, the Principal notifies the ECI Contractor that it wishes to proceed with the ECI Contractor as 'preferred contractor':

- (a) the Principal and the ECI Contractor must in good faith proceed to finalise and execute the Construction Contract within the timeframe set by the Principal and in accordance with the ECI Program; and
- (b) without limiting **clause 10.4(b)(v)**, the ECI Contractor must not request or require amendments to the Construction Contract which are inconsistent with the ECI Contractor's position as set out in the Bid and agreed resolutions to Departures.

12.2 ECI Contractor acknowledgement

The ECI Contractor acknowledges and agrees that:

- (a) entry into and performance of the Agreement by the Principal is not a representation by the Principal that it will enter into the Construction Contract with the ECI Contractor or any other person and the Principal may in its absolute discretion elect to award the Construction Contract to another person or elect not to enter into the Construction Contract with any person;
- (b) entry into the Construction Contract by the Principal will be subject to, among other things, obtaining further approvals (including with respect to funding) in connection with the Project; and
- (c) the Principal:
 - (i) has and will in the future rely on the ECI Contractor performing the ECI Services in accordance with this Agreement, and complying with its commitments, acknowledgements and representations (including with respect to the development of Design, novation, submission of a compliant Bid and entry into a Construction Contract) when issuing notices and directions to proceed under the Agreement (such as Permitted to Proceed), and in not exercising rights to suspend or terminate this Agreement at any time;
 - (ii) will suffer loss and damage (including to pay or incur liability for Fees that would not otherwise have been authorised, incurred or paid) if the ECI Contractor breaches the Agreement or any of the acknowledgements, representations or agreements is not true and correct; and
 - (iii) may set-off against amounts otherwise due and payable to the ECI Contractor, any loss or damage suffered or incurred by reason of the matters in this **clause 12.2**.

12.3 Effect of entry into of Construction Contract

If the Principal and the ECI Contractor enter into the Construction Contract:

- (a) the Agreement will cease to have any effect at that time; and
- (b) the relationship between the parties in respect of the ECI Services and the Works will be governed exclusively by the Construction Contract which supersedes the Agreement and any other agreements, undertakings and communications, whether written or oral, relating to the ECI Services and the Works.

13 The Principal's discretions

- (a) The ECI Contractor agrees that, in addition to its other rights under the Agreement, the Principal may at any time during ECI Delivery Phase in its absolute discretion do one or more of the following:
 - (i) cancel the ECI Delivery Phase, by terminating the Agreement pursuant to **clause 19.1**;
 - (ii) refuse to consider the Bid, including if it:
 - (A) does not comply with the requirements of the Agreement;
 - (B) is lodged other than in accordance with the Agreement; or
 - (C) is lodged by the ECI Contractor in circumstances where the ECI Contractor has not complied with the terms of the Agreement; or
 - (iii) make changes to the process under the Agreement for the ECI Delivery Phase or submission of the Bid, or to the Principal's Project Requirements.
- (b) If the Principal terminates the Agreement, it may retender the ECI Services and/or proceed with the Works itself, with another contractor or not at all.
- (c) The ECI Contractor has no Claim against the Principal as a result of the Principal exercising its rights under this **clause 13**.

14 Provision of information by the Principal

14.1 Discrepancies

If the ECI Contractor becomes aware of any error, discrepancy, ambiguity, incompleteness or other issue arising in connection with any information supplied by the Principal, the ECI Contractor must promptly:

- (a) notify the Principal's Representative; and
- (b) request from the Principal's Representative clarification of the error, discrepancy, ambiguity, incompleteness or other issue,

and the Principal's Representative will direct the ECI Contractor as to the resolution or interpretation of the discrepancy, ambiguity, incompleteness or other issue.

14.2 No reliance

- (a) The ECI Contractor (on behalf of itself and its Related Parties) acknowledges and agrees that the Principal does not in any way warrant, give or make any guarantee nor make any representation about:

- (i) the completeness, accuracy, adequacy or content of any information or documentation provided by or on behalf of the Principal (including any work or services, such as Design Documentation, from Other Contractors); or
- (ii) any interpretation, deductions, opinions or conclusions set out in any information or documentation provided by or on behalf of the Principal,

and the ECI Contractor and its Related Parties are not entitled to make a Claim in respect of any fact, matter or thing contained in or in respect of or arising out of or in any way connected with the provision of any information or documentation provided by or on behalf of the Principal.

- (b) The ECI Contractor must not rely upon and warrants that it and its Related Parties have not relied upon information or documentation provided by or on behalf of the Principal but rather have undertaken their own investigations of all information relevant to the Project that is reasonably available to the ECI Contractor and its Related Parties and, in preparing and submitting the Bid, relied solely on their own interpretations of all information relevant to the ECI Services, the Bid and the Project.
- (c) The ECI Contractor:
 - (i) indemnifies the Principal and its Related Parties against costs, losses, liabilities and Claims suffered or incurred by the Principal or a Related Party of the Principal; and
 - (ii) releases and will procure that its Related Parties release the Principal and its Related Parties from any Claim,

arising in connection with the purported reliance upon, or use of, the information provided by or on behalf of the Principal by the ECI Contractor, its Related Parties or any other person to whom the information is disclosed by the ECI Contractor, and of its Related Parties or any person on behalf of the ECI Contractor or any of its Related Parties.

15 Insurance

15.1 Insurances to be provided by the ECI Contractor

- (a) The ECI Contractor must maintain policies of insurance acceptable to the Principal in respect of the following:
 - (i) a public liability insurance policy to cover all liability to third parties for personal injury, death, property damage and resultant economic loss arising out of the carrying out of the ECI Services, for an amount of not less than the amount specified in **item 9 of Schedule 1** for any one claim; and
 - (ii) workers compensation insurance of employees to cover liability arising out of death or injury to persons employed by the ECI Contractor, including liability under statute and at common law;
 - (iii) professional indemnity insurance to cover liability arising in connection with the ECI Services and performing the ECI Contractor's other obligations under the Agreement for an amount of not less than the amount specified in **item 11 of Schedule 1** with provision for one automatic reinstatement;

- (iv) to the extent that any Investigation Activities necessitate the use of any vessel(s), Marine Hull Insurance; and
 - (v) other insurances required by law.
- (b) The ECI Contractor must ensure that each subcontractor and consultant engaged by it in connection with the Agreement has similar insurances in place.
- (c) The ECI Contractor is liable for its own costs (including all premiums and excess amounts) of complying with this **clause 15.1**.

15.2 Proof of Insurance

Before commencing the ECI Services, the ECI Contractor must provide to the Principal's Representative a certificate of currency for each of the policies to be effected by it under **clause 15.1** and such further proof of the currency of such insurances as may be required by the Principal's Representative from time to time.

15.3 Removal of wreck

If **clause 15.1(a)(iv)** applies and to the extent not covered under Marine Hull Insurance, if any vessel which the ECI Contractor uses for the performance of the ECI Services becomes an actual, constructive, compromised or arranged total loss, or a wreck and as a result becomes an obstruction in navigation or operations of the Principal or the Principal is required by applicable law or by order of any Court or authority to remove the vessel, the ECI Contractor must, without delay, and at its cost, remove the vessel and any debris produced to the Principal's satisfaction.

16 Payment for ECI Services

16.1 Payment claim

- (a) On each Payment Claim Date the ECI Contractor must submit a claim for payment to the Principal on account of the Fee:
 - (i) in writing, in the format the Principal reasonably requires, stating that such claim is being made under the Security of Payment Act; and
 - (ii) which includes evidence reasonably required by the Principal of the ECI Services performed by the ECI Contractor in the preceding month for which it is claiming payment, including:
 - (A) details of all of its methods of calculation;
 - (B) full details of how the Fee for the preceding month has been calculated, including a breakdown of that Fee and amounts claimed on account of the Fee Cap;
 - (C) details of the total payments made on account of the Fee versus the percentage of the ECI Services which has been completed; and
 - (D) an estimate of the cost to complete the remainder of the ECI Services.
- (b) If the Principal and the ECI Contractor enter into the Construction Contract, the ECI Contractor acknowledges and agrees that payment of the Fee will be deemed to have been made on account of payment of part of the contract price under the Construction Contract.

16.2 No payment claim

If the ECI Contractor does not make a payment claim at the time that a payment claim could have been made:

- (a) the Principal may (in the Principal's absolute discretion), at any time, issue a payment schedule as if a payment claim had been made on the date it could have been made; and
- (b) the amounts to be included in the payment schedule shall be determined as at the date the payment claim could have been made.

16.3 Payment Schedule

The Principal must, within 15 Business Days of receiving a payment claim submitted in accordance with **clause 16.1**, give the ECI Contractor a payment schedule in writing stating:

- (a) the payment claim to which it relates;
- (b) the amount of the payment (if any) that the Principal proposes to make;
- (c) if the Principal does not propose to make any payment, stating that the Principal does not propose to make any payment; and
- (d) if the Principal proposes to pay less than the amount claimed or to withhold payment, the reasons why the amount is less or why the Principal is withholding payment.

A failure by the Principal to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set off (whether under the Agreement or otherwise) from the amount which would otherwise be payable to the ECI Contractor by the Principal will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set off.

16.4 Payment

- (a) Within 2 Business Days of the ECI Contractor receiving a payment schedule under **clause 16.3**:
 - (i) if the amount scheduled in accordance with **clause 16.3** is positive (indicating an amount payable by the Principal to the ECI Contractor), the ECI Contractor must give the Principal a tax invoice for that amount; or
 - (ii) if the amount scheduled in accordance with **clause 16.3** is negative (indicating an amount payable by the ECI Contractor to the Principal), the ECI Contractor must give the Principal, an adjustment note for that amount; and
- (b) within 20 Business Days of the date on which the ECI Contractor made its payment claim in accordance with **clause 16.1**:
 - (i) the Principal must, pay the ECI Contractor the amount stated as payable in the payment schedule; or
 - (ii) the ECI Contractor must pay the Principal the amount stated as payable in the payment schedule.

16.5 Fee Cap

- (a) The ECI Contractor acknowledges and agrees that the Fee Cap is the maximum amount payable to the ECI Contractor for carrying out all of the ECI Services and otherwise under or in relation to this Agreement.

- (b) The Fee Cap will not be adjusted in any event or circumstance other than by agreement in writing between the Principal and the ECI Contractor.
- (c) Other than the Principal's obligation to pay the Fee and subject always to the Fee Cap and **clause 16.6**, the Principal is not obliged to pay, and is not liable for, any Claim arising from or in connection with:
 - (i) costs, expenses or other liabilities incurred by the ECI Contractor arising from or in connection with the ECI Services or the ECI Contractor's other obligations under the Agreement; or
 - (ii) the Principal exercising any of its discretions under or in connection with the Agreement.

16.6 Right of Set-off

The Principal may deduct from moneys otherwise due to the ECI Contractor:

- (a) any debt or other moneys due from the ECI Contractor to the Principal; and
- (b) any Claim to money which the Principal asserts in good faith against the ECI Contractor whether for damages or otherwise under the Agreement or otherwise at law or in equity arising out of or in connection with the ECI Services.

16.7 Status of payment schedule and payment on account

Any evaluation, or issue of a payment schedule, by the Principal requiring payment to be made to the ECI Contractor or the payment of moneys by the Principal to the ECI Contractor does not constitute:

- (a) approval of the ECI Services, nor an admission or evidence that the work covered by the statement has been satisfactorily carried out;
- (b) an admission, representation or evidence of the value of the ECI Services or their compliance with the Agreement;
- (c) an admission of liability; or
- (d) any approval, admission, representation or evidence by the Principal of the ECI Contractor's performance or compliance with the Agreement, and

any such payment is only to be taken as payment on account only, capable of being reassessed at any time, including at the time of the issue of any payment schedule.

16.8 GST

To the extent the ECI Services constitute a supply under GST law in respect of which GST is payable, consideration for that supply is increased by an amount equal to the GST payable with respect to that supply.

17 Intellectual Property

17.1 Principal's Intellectual Property

All rights of Intellectual Property, including copyright, and ownership in:

- (a) any information or documents provided by or on behalf of the Principal; and
- (b) the Design (including the Design Documentation as developed in accordance with the Agreement),

are, as between the Principal and the ECI Contractor, the property of the Principal. The Principal licenses the ECI Contractor to use any Intellectual Property provided by or on behalf of the Principal for the purposes of the ECI Contractor performing the ECI Services and preparing and lodging the Bid.

17.2 Pre-existing Intellectual Property

The ECI Contractor grants to the Principal a non-exclusive, irrevocable, royalty-free and perpetual licence to use Intellectual Property in its Bid that exists prior to the execution of the Agreement for the purposes of performing the ECI Services and completing the Project. This licence will remain vested in the Principal despite the termination of the Agreement or the completion of the ECI Services, and the Principal may assign or sublicense the rights granted by this licence without the consent of the ECI Contractor.

17.3 Newly created Intellectual Property

If the ECI Contractor develops Intellectual Property as a result of its performance of the ECI Services:

- (a) that newly created Intellectual Property shall vest in the Principal from the time of its creation; and
- (b) the Principal grants to the ECI Contractor a non-exclusive, royalty free and perpetual licence to use the newly created Intellectual Property for the purposes of the ECI Contractor performing the ECI Services and preparing and lodging the Bid.

17.4 Ownership of Bid

- (a) Ownership of the Bid vests in the Principal from the date the Bid is created.
- (b) The ECI Contractor must ensure that the Principal is lawfully able to use, copy, adapt and modify any material, document, information, or thing comprised in the Bid, for any purpose relating to the Project.
- (c) In addition to any other licence given by the ECI Contractor under this **clause 17** the ECI Contractor grants to the Principal, at no cost to the Principal, an unconditional, irrevocable, royalty-free and perpetual licence (which includes a right to sub-licence) to use, adapt, copy and modify all documents provided to the Principal for or on behalf of the ECI Contractor during the ECI Delivery Phase.

17.5 Warranties and indemnities in relation to Intellectual Property

- (a) The ECI Contractor warrants that the Bid as submitted to the Principal (or the implementation of it) will not infringe the Intellectual Property rights of any person and where a license has been given by the ECI Contractor to the Principal, it is capable and has the right to grant such licence.
- (b) The ECI Contractor agrees to indemnify the Principal against all costs, losses, liabilities and Claims that the Principal or its Related Parties may suffer or incur as a result of:
 - (i) any use by it or any of its Related Parties of any of the Intellectual Property licensed to the Principal under **clause 17.2** or **clause 17.4(c)**; or
 - (ii) any breach of **clause 17.5(a)** by the ECI Contractor.

17.6 No Claim

The ECI Contractor acknowledges and agrees that notwithstanding that the Intellectual Property created by the ECI Contractor vests in the Principal pursuant to **clauses 17.3** and **17.4**:

- (a) the ECI Contractor shall remain fully liable for any infringement of any third parties' Intellectual Property contained in it; and
- (b) the ECI Contractor shall have no Claim against the Principal arising out of any infringements of any third parties' Intellectual Property contained in it, including in circumstances where such third parties Claim against the ECI Contractor in the first instance.

18 Confidentiality and public statements

18.1 Confidentiality

The ECI Contractor must ensure that any information identified as confidential, or which should reasonably be recognisable as confidential, acquired as a result (either directly or indirectly) of entering into the Agreement or performing the ECI Services will be used only for the purpose of the Agreement and kept confidential subject to the following exemptions:

- (a) information which is in the public domain or could have been legally acquired by the ECI Contractor had it not entered into the Agreement, will not be considered confidential; and
- (b) the ECI Contractor may disclose confidential information:
 - (i) to the extent required by law or the rules of a stock exchange;
 - (ii) to its Related Parties and professional advisors for the purposes of the Agreement or the Project;
 - (iii) to enforce its rights under the Agreement for the purposes of proceedings under or in connection with it; and
 - (iv) in accordance with the terms of any prior written consent given by the owner of the information.

18.2 Public statements

The ECI Contractor undertakes that it will not, except with the prior written consent of the Principal's Representative or as required by law, make any public reference, comment or statement relating to the Project, the ECI Services, the Bid or the Agreement.

18.3 Compliance of servants and agents

The ECI Contractor must take steps to ensure that its Related Parties observe the obligations set out in **clauses 18.1** and **18.2** as may be reasonably required by the Principal's Representative. Such steps may include the execution by the ECI Contractor's Related Parties of an agreement or deed imposing confidentiality obligations.

19 Termination for convenience

19.1 Termination for convenience

- (a) The Principal may, in its absolute discretion, at any time and with or without reason (including at or after any Hold Point, and in order to have the services or work the subject of this Agreement performed by others, by the Principal or not at all), terminate the Agreement in whole or in part by giving notice in writing to the ECI Contractor.

- (b) Upon receipt of such notice, the ECI Contractor must immediately cease the performance of the ECI Services and must do everything possible to prevent or mitigate losses resulting from such termination.
- (c) Upon termination in accordance with this **clause 19.1**, the Principal will be entitled to:
 - (i) require the ECI Contractor to novate to the Principal or the Principal's nominee, any or all subcontracts between the ECI Contractor and its subcontractors (including any design consultants contracted to the ECI Contractor) by entering into a Deed of Novation and procuring the entry into a Deed of Novation by its subcontractors; and
 - (ii) take possession of all documentation (including Design Documentation) prepared by or on behalf of the ECI Contractor under or in connection with the Agreement.

19.2 Payment

- (a) If the Principal terminates the Agreement pursuant to **clause 19.1**, it will pay to the ECI Contractor a pro-rata proportion of the Fee based on the Principal's assessment (acting reasonably) of the proportion of the ECI Services which have been performed (but not yet paid for) to the date of termination.
- (b) Payment under **clause 19.2(a)** will be in full and final settlement of the ECI Contractor's rights against the Principal for termination for convenience under **clause 19.1**.

20 Other termination

20.1 Termination by Principal

The Principal may, by notice in writing to the ECI Contractor, terminate the Agreement immediately if:

- (a) an Insolvency Event occurs in respect of the ECI Contractor; or
- (b) the ECI Contractor fails to remedy a breach of any other term of the Agreement within 10 days after receipt of a written notice from the Principal specifying the breach and requiring its remedy.

20.2 Termination by Contractor

The ECI Contractor may, by notice in writing to the Principal, terminate the Agreement immediately if the Principal is:

- (a) in breach of a payment obligation under the Agreement; or
- (b) in substantial breach of an obligation under the Agreement (excluding an obligation to pay), where the breach has a serious detrimental impact to the ECI Contractor's ability to perform the ECI Services,

and:

- (c) in the case of payment, the Principal fails to remedy the breach within 10 Business Days (or any longer period as the ECI Contractor may allow); and
- (d) in the case of any other breach, the Principal fails to remedy the breach within 20 Business Days,

after receipt of a written notice from the ECI Contractor specifying the breach, the relevant serious detrimental impact (where applicable) and requiring its remedy.

20.3 Consequences of termination

- (a) If the Agreement is terminated under:
 - (i) **clause 20.1**, the ECI Contractor will be liable to the Principal for the costs incurred by it in administering and performing its obligations under the Agreement and notwithstanding anything else to the contrary in the Agreement, the ECI Contractor will have no liability to the Principal for loss of anticipated profit or business opportunity;
 - (ii) **clause 20.2**, the Principal will only be liable to the ECI Contractor for, and the ECI Contractor's sole entitlement will be to, be paid that portion of the Fee representing the proportion of ECI Services performed up to the date of termination, and notwithstanding anything else to the contrary in the Agreement, the Principal will have no liability to the ECI Contractor for loss of anticipated profit or business opportunity; and
 - (iii) **clause 20.1** or **clause 20.2**, **clause 19.1(c)** will apply.
- (b) Termination of the Agreement under this **clause 20** will not affect any rights and liabilities of either party arising before termination.

21 Indemnity and release

- (a) The ECI Contractor indemnifies the Principal (and agrees to keep the Principal indemnified) from and against any Claim, loss, expense, damage or liability of any nature, to which the Principal will, does or may become liable in respect of, or in connection with, any loss or damage to any property, or any death, injury, disease or illness sustained by any person and other liability of whatsoever nature or kind and however or wherever sustained directly or indirectly, caused by, arising out of or connection with:
 - (i) the performance of the ECI Services by the ECI Contractor or its personnel and subcontractors;
 - (ii) any breach of contract or other act, default or omission by the ECI Contractor or its personnel and subcontractors;
 - (iii) any loss of or damage to property of the Principal;
 - (iv) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons;
 - (v) the access, use or occupation of the Port by the ECI Contractor or its personnel and subcontractors (including any failure to comply with Statutory Requirements), caused by or arising out of or in connection with the ECI Services; or
 - (vi) termination of the Agreement pursuant to **clause 20.1**.
- (b) The ECI Contractor releases the Principal from and against any Claim, loss, expense, damage or liability of any nature that the ECI Contractor or its personnel and subcontractors may have against the Principal, the Principal's Representative or the Principal's employees, agents or contractors arising out of or connection with any act, default or omission by the ECI Contractor, its subcontractors, employees or agents in breach of the Agreement.

The release in **clause 21(b)** does not affect any right of the ECI Contractor to bring a Claim against the Principal in respect of any breach of the Agreement by the Principal.

22 Assignment or transfer

The ECI Contractor acknowledges that it has been selected to perform the ECI Services because of its special expertise and the commitment of the ECI Contractor's Team to the Agreement. Accordingly, the ECI Contractor:

- (a) cannot assign or transfer any of its rights, obligations or interest in the Agreement to any person without the prior written consent of the Principal; and
- (b) acknowledges that the Principal may terminate the Agreement in the event of such an assignment or transfer without the prior written consent of the Principal.

23 Disputes

23.1 Mandatory process

Any Dispute must be progressed and determined in accordance with **clause 23**.

23.2 Urgent interlocutory relief

This **clause 23** does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction.

23.3 Notice of Dispute

Where a Dispute arises, either party may give a Notice of Dispute to the other party. The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for the Dispute;
- (c) set out the position which the party believes is correct; and
- (d) set out the estimated amount the party is seeking.

23.4 Continuation of ECI Services

Despite the existence of a Dispute between the parties the ECI Contractor must:

- (a) continue to carry out the ECI Services; and
- (b) otherwise comply with its obligations under the Agreement.

23.5 Conference

Within 14 days after receiving a Notice of Dispute, (or such longer time as may be agreed by the parties), representatives of the Principal and ECI Contractor shall confer at least once to resolve the Dispute. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

23.6 Senior Representatives

If the representatives of the Principal and ECI Contractor are unable to resolve the Dispute in accordance with **clause 23.5**, either party may refer the Dispute to senior representatives of the parties.

23.7 Commencing Litigation

If the parties are unable to resolve the Dispute in accordance with **clause 23.6**, either party may, after giving written notice to the other party, commence litigation in respect of the Dispute.

23.8 Exchange of Information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by **clause 23** for any purpose other than an attempt to settle a Dispute between the parties.

24 Notices

24.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to the Agreement must be in writing in English and may be given by an agent of the sender.

24.2 How to give a Notice

A Notice may be given by being:

- (a) sent through the Document Management System;
- (b) personally delivered;
- (c) left at the party's current address for Notices; or
- (d) sent to the party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail.

24.3 Particulars for delivery of Notices

- (a) The particulars for delivery of Notices are set out in **item 10 of Schedule 1**.
- (b) Each party may change its particulars for delivery of Notices by notice to the other party.

24.4 Service of Notices

Subject to **clause 24.5**, a Notice is given and received:

- (a) if addressed or delivered or delivered to the relevant address in the Agreement or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) if sent through the Document Management System, the time that the Notice enters an information system which is under the control of the intended recipient provided no notice of failure of transmission is received by the sender of the Notice; or
 - (iii) 3 days after posting within Australia.

24.5 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or

- (b) on a day which is not a Business Day,
it is taken as having been given at 9.00 am on the next Business Day.

25 General

25.1 Conflicts of interest

- (a) The ECI Contractor must notify the Principal as soon as it becomes aware of any actual, potential or perceived conflict of interest that has arisen in relation to the performance of the ECI Services by the ECI Contractor.
- (b) The Principal reserves the right, in its absolute discretion, at any stage to undertake investigations to satisfy itself that there is no conflict of interest or potential or perceived conflict of interest which may preclude the ECI Contractor from performing the ECI Services in accordance with the requirements of the Agreement.
- (c) The ECI Contractor warrants that there is no such actual, potential or perceived conflict of interest at the time the Agreement is entered into.

25.2 Costs and expenses

Except as otherwise provided in the Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Agreement.

25.3 Variations

The Agreement may be varied only in writing signed by each party.

25.4 Approvals and consents

Except where the Agreement expressly states otherwise, the Principal may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the Agreement.

25.5 No merger

The rights and obligations of the parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.

25.6 Entire agreement

The Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

25.7 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Agreement and any transaction contemplated by it.

25.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

25.9 Relationship

The Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

25.10 Governing law and jurisdiction

The Agreement is governed by the laws applicable in Western Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

25.11 Proportionate liability legislation

The provisions of Part 1F of the *Civil Liability Act 2002* (WA) are excluded from applying to the Agreement and the ECI Contractor's performance of the ECI Services.

25.12 Counterparts

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

25.13 Indemnities

- (a) Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of a party and survives completion of the ECI Services and the termination of the Agreement.
- (b) It is not necessary for a party to incur expense or make a payment before enforcing any indemnity under the Agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Agreement.
- (d) The ECI Contractor and the Principal declare and acknowledge that:
 - (i) each indemnity and right referred to anywhere in the Agreement in favour of any of the Related Parties of the Principal is held on trust by the Principal for the benefit of the Related Parties of the Principal; and
 - (ii) the consent of the Related Parties of the Principal will not be required for any variation to, or waiver of rights under, the Agreement.

25.14 Survival of obligations

All provisions of the Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Agreement will survive the rescission, termination or expiration of the Agreement, including any provision in connection with:

- (a) confidentiality or privacy;
- (b) Intellectual Property;
- (c) any obligation to make any records available to the Principal;
- (d) any indemnity or release given under the Agreement;
- (e) any limitation on liability; and
- (f) any right or obligation arising on termination of the Agreement.

25.15 Headings

Headings are for ease of reference only and do not affect interpretation.

25.16 Port Act

- (a) All of the Principal's rights, powers, defences, immunities, indemnities or limitations of liabilities under the Port Act augment the Principal's rights and powers under the Agreement.
- (b) Nothing in or arising out of the Agreement in any way:
 - (i) diminishes the Principal's rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act;
 - (ii) fetters any discretions that the Principal has under the Port Act; or
 - (iii) precludes the Principal from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act.
- (c) If there is any inconsistency between anything in the Agreement and anything in the Port Act, then the Port Act will prevail and override the terms of the Agreement.
- (d) The ECI Contractor must comply with any directions of the Harbour Master.
- (e) The Principal will not be in breach of this Agreement or be liable, and the ECI Contractor must not make any Claim against the Principal, consequent upon any act or omission that is in accordance with, or contemplated by, provided for in or arising out of the Principal's statutory powers and functions.

25.17 Electronic execution

- (a) 'Electronic Signature' means a visual representation of a person's handwritten signature which is placed on the Agreement using DocuSign, AdobeSign or other electronic signing platform agreed by the parties and 'Electronically Signed' has a corresponding meaning.
- (b) The parties consent to the Agreement being executed electronically and signed by or on behalf of a party by an Electronic Signature.
- (c) Where an Electronic Signature has been used to sign the Agreement, the parties warrant that the Electronic Signature was used to:
 - (i) identify and authenticate the person signing; and
 - (ii) indicate that the person intended to bind the relevant party to the terms of the Agreement.
- (d) The Agreement may be Electronically Signed in any number of counterparts which together will constitute one document.
- (e) Each party consents to the exchange of counterparts of the Agreement by delivery by email.
- (f) The Agreement being Electronically Signed on behalf of a party to the Agreement is conclusive evidence of the party's and the signatory's intention that the party be bound by the Agreement.
- (g) The Agreement shall not be challenged or denied any legal effect, validity and/or enforceability solely on the ground that it is in the form of an electronic record.

Schedule 1 - Agreement and Project Details

Item	Matter	Detail				
1	Date for Practical Completion	This date, being the date by which the Works to be performed under the Construction Contract will be completed, will be developed and agreed by consultation between parties through the ECI Delivery Phase, or failing agreement, as nominated by the Principal 1				
2	Principal’s Representative	[#insert name]				
3	ECI Contractor’s Representative	[#insert name]				
4	Principal’s Team	Final details of the Principal’s team will be nominated within 14 days of the date of the Agreement				
5	ECI Contractor’s Team	<table><tr><th>Name</th><th>Role</th></tr><tr><td>[#insert name]</td><td>[#insert role]</td></tr></table>	Name	Role	[#insert name]	[#insert role]
Name	Role					
[#insert name]	[#insert role]					
6	Bid Submission Date	This date will be developed and agreed in consultation between parties through the ECI Delivery Phase, or failing agreement, as nominated by the Principal				
7	Other Contractor(s)	<p>Means:</p> <p>[# Details of the Principal’s design consultant will be inserted, being the consultant who will prepare the Design Documentation with input, coordination from the ECI Contractor and which, may be novated to the ECI Contractor as contemplated by this document if the ECI Contractor’s Bid is accepted and a Construction Contract is entered into on a design and construct basis.]</p> <p>Any others [# insert],</p> <p>, together with any other names as may be notified by the Principal during the ECI Delivery Phase: [Insert Name, if any].</p>				

Item	Matter	Detail
8	Project	<div>#insert project description</div> <div>The reinstatement of the Dampier Cargo Wharf, more particularly described in the Principal's Project Requirements.</div>
9	Public liability insurance	<div>#insert amount</div>
10	Address for Notices	<div>Principal:</div> <div> <div>insert</div> <div>insert</div> <div>insert</div> </div> <div>ECI Contractor:</div> <div> <div>insert</div> <div>insert</div> <div>insert</div> </div>
11	Professional indemnity insurance	<div>#insert amount</div>

Schedule 2 - Project Objectives

Item	Objective
1	Improve Safety and Environmental Outcomes: <ul style="list-style-type: none"> • Integrate safety-in-design principles from the outset. • Ensure construction methodologies align with best practices for worker and site safety. • Address environmental compliance requirements early in the planning phase.
2	Optimise Project Feasibility and Constructability: <ul style="list-style-type: none"> • Leverage contractor expertise to refine design, construction methodology, and staging. • Identify potential construction risks and mitigation strategies early. • Ensure design solutions are practical, cost-effective, and achievable.
3	Enhance Budget and Cost Certainty: <ul style="list-style-type: none"> • Improve cost estimation accuracy through early engagement with subcontractors. • Mitigate budget exceed through value engineering and early risk identification and allocation. • Develop procurement strategies that optimise cost and schedule.
4	Optimise Schedule and Delivery Strategy: <ul style="list-style-type: none"> • Establish realistic construction timelines informed by the ECI Contractor's and its subcontractors' input. • Identify and plan for long-lead items and supply chain considerations and constraints. • Minimise interface risks, particularly given the Port operations and adjacent construction activities by others.
5	Reduce Project Risk: <ul style="list-style-type: none"> • Identify and mitigate design, safety, environmental, and operational risks. • Assess site conditions, construction challenges, and logistical constraints. • Develop a risk allocation framework that balances responsibilities fairly.
6	Foster Collaboration: <ul style="list-style-type: none"> • Encourage open communication and joint decision-making between owner, designer, and contractor. • Promote a culture of trust, innovation, and problem-solving.

Schedule 3 - Payment Schedule

[Note to tenderers: Please bid for capped fee for services and basis for fees as indicated earlier in the Agreement.]

1 Schedule of Rates [Insert Fee details as per Tender document Section B Schedule 1]

Description	Rate (\$/hr)
1.	\$(insert)/[unit]]
2.	
3.	
4.	
5.	

2 Disbursements

- (a) Notwithstanding any other provision of the Agreement, the ECI Contractor must not charge for and the Principal will not be liable to pay for any expense:
 - (i) which is incurred without the Principal's prior approval;
 - (ii) which is not necessarily and reasonably incurred by the ECI Contractor in carrying out the ECI Services; and
 - (iii) in respect of which the ECI Contractor cannot produce documentary evidence verifying the expense, such as a receipt or like record.
- (b) Disbursements which are approved by the Principal and therefore reimbursable in accordance with this **section 2** must be charged on cost basis only and the Principal will not be liable to the ECI Contractor for any mark-up for corporate overheads or profit on such Disbursements.

[Insert Rates as per Tender document Section B Schedule 11]

Schedule 4 - ECI Services

1 General

[Note to tenderers: As noted above, please taken careful note of the sequencing of activities and positioning of the Hold Points. Whether Pilbara Ports proceeds past each Hold Point will depend on whether deliverables (Design and Costing Documentation) are demonstrating potential value for money at Works stage. Please also note that Pilbara Ports welcome feedback on this Schedule, which may be incorporated into the final ECI Agreement entered into, as appropriate.]

Unless otherwise instructed by the Principal, the ECI Services must be carried out in the sequence outlined in the ECI Program and more particularly described in **sections 2 to 7** , as follows:

- (a) **section 2:** Investigations and planning;
- (b) **section 3:** Options Assessment Report;
- (c) **section 4:** Detailed scoping and design;
- (d) **section 5:** Costing Documentation;
- (e) **section 6:** Contract Documentation; and
- (f) **section 7:** Construction Program Documentation

ECI Delivery Phase

2 Investigations and planning

- (a) The ECI Contractor must:
 - (i) undertake a desktop review of information (including of the Principal's Project Requirements) to identify various technical solutions that may be commercially viable for delivery of the Project;
 - (ii) identify:
 - (A) such Investigation Activities as a prudent, competent and experienced contractor would consider necessary for the comprehensive and accurate planning, scoping, design, costing and program of the Project; and
 - (B) a program for such Investigation Activities;
 - (iii) work collaboratively with the Principal to agree the Investigation Activities to be undertaken in accordance with **clause 8**; and
 - (iv) undertake or procure such Investigation Activities as are approved by the Principal.

- (b) The ECI Contractor and the Principal will agree an approach to the payment of third-party costs associated with such Investigation Activities.
- (c) The ECI Contractor and the Principal:
 - (i) agree that the Principal will own the reports prepared in relation to any Investigation Activities; and
 - (ii) intend that the ECI Contractor will have the benefit of reports prepared by third party consultants in relation to such Investigation Activities in the event it is appointed as Construction Contractor and enters into the Construction Contract (by reference to the novation requirements of **clause 6.1(e)** of the Agreement).
- (d) Without limiting **clause 14** of the Agreement, the ECI Contractor will have no Claim against the Principal in relation to such investigations and testing.
- (e) The ECI Contractor must undertake the approved Investigation Activities in accordance with **clause 8**.

3 Options assessment report

- (a) Upon completion of the ECI Services described at **section 2** of this schedule, the ECI Contractor must produce and submit to the Principal an options assessment report outlining:
 - (i) all reasonably available methods of design and construction for the Project, to include alternative materials which are suitable for use with each particular method (**Delivery Methods**) ;
 - (ii) the ECI Contractor's estimates of the costs associated with each Delivery Method;
 - (iii) the ECI Contractor's recommended Delivery Method; and
 - (iv) any other details agreed between the Principal's Team and the ECI Contractor's Team during the ECI Delivery Phase,(**Options Assessment Report**).
- (b) The submission of the Options Assessment Report to the Principal constitutes a Hold Point.
- (c) The Principal may review and comment upon the Options Assessment Report.
- (d) If required by the Principal, the ECI Contractor must make available the appropriate personnel to meet with the Principal to explain the Options Assessment Report.
- (e) If the Options Assessment Report is rejected or commented upon by the Principal, the ECI Contractor must submit an amended Options Assessment Report (which complies with this **section 3** and identifies how any comments from the Principal have been addressed) to the Principal.
- (f) Notwithstanding anything to the contrary in the Agreement, the Principal may direct the ECI Contractor to submit, as part of its Options Assessment Report, Cost Estimates (as defined in **section 5(b)(i)** of this schedule) in respect of each Delivery Method proposed in the Options Assessment Report (or any amended Options Assessment Report) and comply with all its obligations under **section 5** of this schedule in respect of such Cost Estimates).

- (g) The ECI Contractor will not be Permitted to Proceed unless and until the Principal has:
 - (i) selected its preferred Delivery Method; and
 - (ii) notified the ECI Contractor of its preferred Delivery Method.
- (h) For the avoidance of doubt, if the ECI Contractor is Permitted to Proceed, the ECI Contractor's Design obligations under the Agreement apply only in respect of the Principal's chosen Delivery Method. The ECI Contractor must not develop any Design Documentation for any other Delivery Method proposed in its Options Assessment Report unless otherwise instructed by the Principal.

4 Detailed scoping and Design

- (a) The ECI Contractor must:
 - (i) assume a leadership and co-ordination role in the development of the Design;
 - (ii) develop the Design Documentation as described in **clause 10.2(b)** of the Agreement; and
 - (iii) work collaboratively with the Principal and Other Contractors in relation to the matters described above.
- (b) The ECI Contractor must provide Design Documentation which provides, as a minimum, a Design that has been prepared and developed from the Principal's Project Requirements and meets the requirements of the Agreement (including **clause 10.2(b)**).
- (c) The ECI Contractor must immediately notify the Principal upon the preparation of Design Documentation reaching the following states of completion:
 - (i) 50% of the Design Documentation;
 - (ii) 85% of the Design Documentation; and
 - (iii) 100% of the Design Documentation,and each of these milestones constitutes a Hold Point.

5 Costing Documentation

- (a) The ECI Contractor must prepare Costing Documentation in respect of the Principal's chosen Delivery Method.
- (b) The ECI Contractor must provide the following as a minimum:
 - (i) progressively prepared cost estimates for the Works (**Cost Estimates**);
 - (ii) supporting details and calculations for all parts of the Cost Estimates; and
- (c) a consolidated schedule of all assumptions, clarifications and qualifications made in respect of the Cost Estimates. The Cost Estimates must be prepared in a transparent manner by the ECI Contractor working collaboratively with the Principal's Team. During the preparation of the Cost Estimates, the ECI Contractor will:
 - (i) actively seek innovative solutions through the implementation of structured innovation processes (that involves subcontractors, suppliers and specialist consultants);

- (ii) use competitive tendering processes and other market testing to obtain input costs;
 - (iii) use the best production and productivity rates from other similar projects;
 - (iv) have the estimating process, inputs and procurement processes used to obtain quotations for input costs continuously checked and reviewed by the Principal's Team;
 - (v) have the structure of the estimate, quantities, input costs, risk provisions and production rates continuously checked and reviewed by the Principal's Team; and
 - (vi) have regard to the Project Objectives.
- (d) The Principal and ECI Contractor acknowledge that the open book approach expressed in **clause 3.5** and the commitment to relationship principles referred to in **clause 3.2** have particular application in the preparation of the Cost Estimates.
- (e) In preparing the Cost Estimates, the ECI Contractor must:
- (i) have regard to a process for determining the contingency which may be developed between the Principal's Team and the ECI Contractor's Team;
 - (ii) ensure the Cost Estimates are in a form that is sufficiently detailed to enable the Principal's Team to analyse each component of cost making up the Cost Estimates; and
 - (iii) ensure the Cost Estimates are based upon, and developed having regard to, the further information that becomes available to the ECI Contractor during the ECI Delivery Phase.
- (f) The ECI Contractor must submit Cost Estimates to the Principal, progressively at **monthly** intervals or at such other intervals as the Principal may reasonably require in accordance with the ECI Program.
- (g) The Principal may, on submission of Cost Estimates to the Principal in accordance with **section 5(f)** or at any other time, review and comment upon Cost Estimates prepared by the ECI Contractor.
- (h) If required by the Principal, the ECI Contractor must make available the appropriate personnel to meet with the Principal to explain any such Cost Estimates.
- (i) If any Cost Estimates are rejected or commented upon by the Principal, the ECI Contractor must submit amended Cost Estimates (which comply with this **section 5** and identify how any comments from the Principal have been addressed) to the Principal.

6 Construction Contract Documentation

The ECI Contractor must provide the following Construction Contract Documentation in accordance with the ECI Program as a minimum:

- (a) a proposed construction contract in the form of the Construction Contract, with all particulars, schedules and annexures completed, including
 - (i) completion date(s);
 - (ii) the Contract Price; and

- (iii) project plans contemplated by the Construction Contract; and
 - (b) proposed amendments to the Construction Contract to effect the Departures,
- in each case marked up against the Construction Contract provided by the Principal during the ECI Delivery Phase.

7 Construction Program Documentation

- (a) By the time stated in the ECI Program, the ECI Contractor must submit a draft construction program in relation to the works to be completed under the Construction Contract.
- (b) The Construction Program Documentation must be consistent with the ECI Contractor's draft program submitted in accordance with **section 7(a)** of this schedule.
- (c) As a minimum, the ECI Contractor must provide Construction Program Documentation in the form of a construction program for all works to be completed from the time of completion of the Bid to full completion of the construction of the Project.
- (d) The construction program must have the following characteristics:
 - (i) a completion date no later than the Date for Practical Completion;
 - (ii) presented as a Gantt chart, and created using market standard programming software;
 - (iii) tasks presented in a logical order, including grouping into packages;
 - (iv) tasks broken down to a level of detail to define tasks of a duration of a day and/or a week (as necessary);
 - (v) includes any remaining design and documentation work;
 - (vi) includes timeframes related to Statutory Requirements (with input from the Principal's Representative and the Principal's Other Contractors, as required);
 - (vii) includes timeframes for any activities external to the design and construction but that will impact upon the timing of the design and construction (with input from the Principal's Representative and Principal's Other Contractors, as required); and
 - (viii) includes lead times for procurement of materials, components and the like.

Schedule 5 - ECI Program

Schedule 6 - Principal's Project Requirements



DAMPIER CARGO WHARF PROJECT – STAGE 3: DCW REFURBISHMENT

PRINCIPAL'S PROJECT REQUIREMENTS FOR ECI SERVICES

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VERSION	PREPARED BY	DATE	AMENDMENT DETAILS
A	S. Chong	09/04/2025	First draft for review
B	S. Chong	14/04/2025	Second draft incorporating EGMPE and stakeholders' comments
0	S. Chong	29/04/2025	Draft issued to Corrs

1. INTRODUCTION

1.1 Project overview

The DCW consists of a total of seven berths. Four berths are on the western face, which is 210 m long as shown in Figure 1 and Figure 2. Constructed in 1982, the DCW is due for major refurbishment works to form Stage 3 of the Dampier Cargo Wharf Project (DCWP) as shown in Figure 1 and Figure 2.

The objective of this project is to refurbish and/or reinstate the existing Dampier Cargo Wharf (DCW) to extend its service life. This refurbishment must ensure the wharf meets all functional and non-functional requirements to support current and forecasted trade, whilst also complying with current safety, engineering, and environmental standards.

Commonwealth funding has been secured to construct the DLB and undertake the required DCW refurbishment works with the priority to deliver the DLB followed by the DCW works.



Figure 1: Site Location

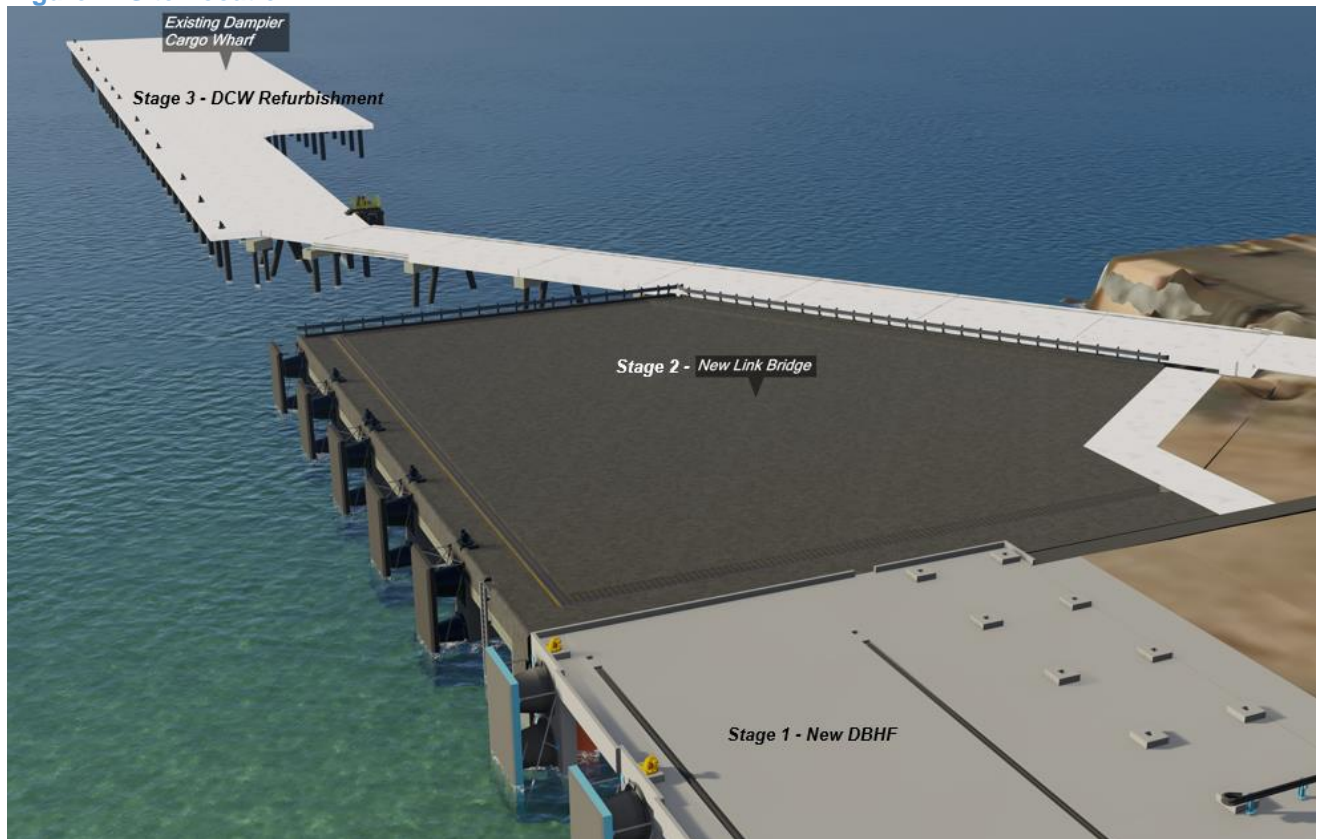


Figure 2: DCWP Construction Stages

1.2 Background

The DCW was originally constructed by Woodside in 1982 as a temporary Materials Offloading Facility to support the importation of pre-assembled modules to construct the Karratha Gas Plant as part of the Northwest Shelf Venture project. The structure was later extended by 97m to the north in 1993 to cater for a rapidly increasing demand for shipping from the offshore petroleum industry. The original purpose of the structure and its initially intended temporary nature does not lend itself for its current use as a general cargo wharf and has resulted in ongoing maintenance issues and concrete deterioration, as well as functional constraints.

2. FUNCTIONAL REQUIREMENTS

2.1 Deck Loads

The wharf must be designed and constructed to support both current and forecasted cargo throughput activities, ensuring the deck load capacity meets these operational requirements. As a minimum requirement this shall be no less than the original design criteria for the DCW and includes but is not limited to:

- The design vehicles listed in Annexure A.
- Live load – 40kPa on wharf deck.

2.2 Heavy Deck Loads

Additional costs associated with the design and construct of a wharf to accommodate the new loading requirements shall also be investigated and includes:

- Harbour crane – to increase container movement per hour productivity.
- Reach stacker – to increase container movement per hour productivity e.g. reference crane Hyster RS46-41XD/67

2.3 Deck Height

Wharf deck to be RL+6.8m CD, as per current, to match with DBHF wharf deck level.

2.4 Vessels

The wharf must be designed and constructed to support the berthing and mooring of vessels required for current and forecasted trade activities as defined by Pilbara Ports. This includes accommodating the size, weight, and operational needs of these vessels. As a minimum requirement, this includes but is not limited to:

Vessels in

-
- Table 1.
 - Approach speed of 0.15m/s.

Table 1: Vessel requirements

	WESTERN BERTH						EASTERN BERTH	
Vessel Class Particulars		General Cargo	Handysize	Offshore Supply Vessel	RoRo Vessel (Hoegh Jeddah or equivalent)	Cruise Ship ^{NOTE1}	140m Container Vessel	Offshore Supply Vessel
Length Overall (LOA)		122.2	180	67	199.95	293.2	143	67
Width (B)		19.8	28.4	16	32.26	32.2	20.5	16
Depth		10.7	15.2	7	32.57	12.2	10.5	7
Draft (Laden)		7.2	10.8	5.5	10.3	8.5	8	5.5
Draft (Unladen)		4.3	6.0	4.0	TBC	8.5	4.7	4.0
Deadweight Tonnage (DWT)		8,000	35,000	3,100	20,407	-	10000	3,100
Displacement (Laden)		12,400	45,000	TBC	39,077	TBC	15000	TBC
Displacement (Unladen)		TBC	23,400	TBC	TBC	50,300		
Note 1: Assumes there are no vessels alongside Link Bridge and DBHF wharf and those berths can also be used in additional to DCW to accommodate its length								

2.5 Mooring Arrangements

The wharf shall be designed and constructed to allow safe and efficient mooring of vessels on both sides of the deck and take into consideration vessels alongside the Dampier Bulk Handling Facility wharf to the south and vessels alongside the Dampier Barge Facility to the east. There must be due consideration for mooring infrastructure including adequately spaced mooring points, durable bollards and fenders.

2.6 Safety and Accessibility

The wharf must be designed and constructed to support operational safety and vehicle access with due consideration for simultaneous operations and activities on both the western and eastern sides. As a minimum requirement, the wharf must accommodate the following requirements:

- Vehicle access – efficient loading/unloading zones, clear pathways, exclusion zones (e.g. crane lift zones).
- Lighting – adequate for 24/7 operations.
- Safety features – emergency infrastructure (e.g. ladders), equipment (e.g. firefighting, CCTV, PA, quick release hooks), and ancillary deck infrastructure (e.g. non-slip surfaces, railings).
- Mooring line snapback safety features – to enhance safety and minimise the risk of snapback incidents to as low as reasonably practicable. This could include incorporating into design quick release hooks, line tension monitoring systems, enhanced bollards and capstans, and snapback zone line markings.

2.7 Utilities

The wharf must be designed and constructed to include service trenches that house essential utility lines such as water, electricity, and communication cables, and fuel lines. These trenches should be easily accessible for maintenance and protected from damage to support the efficient operation of the wharf.

3. NON-FUNCTIONAL REQUIREMENTS

3.1 Durability

The wharf shall be designed and constructed to ensure long-term durability and minimal maintenance.

3.2 Maintenance

Design and construct the wharf to allow ease of maintenance, inspections and repairs.

3.3 Environmental Compliance

The wharf shall be designed and constructed to adhere to environmental regulations and standards, including waste management and hydrocarbon containment/management.

3.4 Operational Efficiency and SIMOPS

The wharf shall be designed and constructed to ensure it can efficiently handle current and forecasted trade volumes, without significant disruptions, and allow for simultaneous operations (SIMOPS) at DBHF wharf, that is, export of urea or other operations.

3.5 Construction Methodology

Construction methodology that will be developed by the ECI Contractor should consider multiple scenarios of maintaining DCW operations: fully, partially, and not at all (i.e. closed berth). This shall account for any necessary demolition activities and consider phased completion of refurbished deck sections to return them to operational use.

Due consideration for relocation of third-party infrastructure including fuel lines (by others).

3.6 Scalability and Flexibility

The design shall allow for easy incremental refurbishment of the DCW (from south to north i.e. landside outwards) should financing not allow for full refurbishment at once. The design should ensure each stage can be completed independently and integrated seamlessly into the overall structure.

4. OTHER CONSIDERATIONS

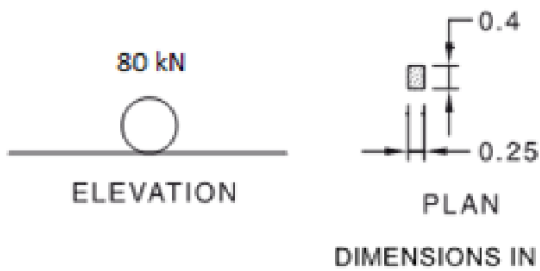
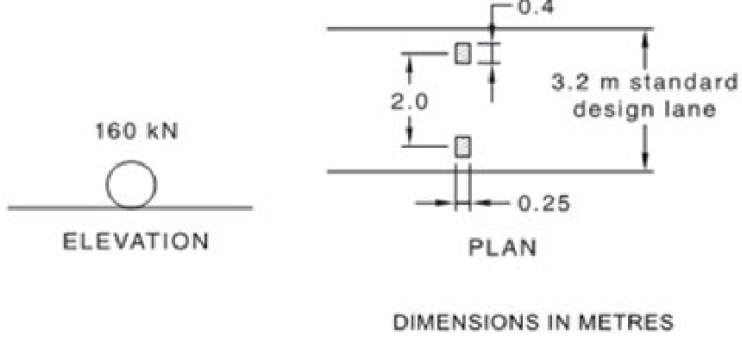
In addition to the main DCW structure, other items that form part of this project are:

- Small craft landing refurbishment
- DCW revetment

Refer Figure 1.

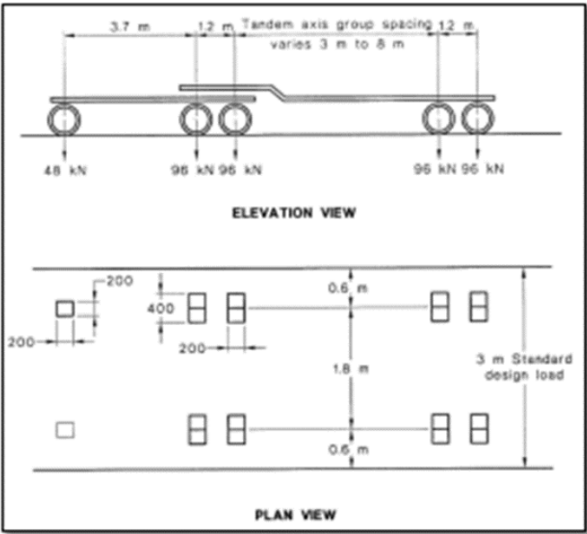
ANNEXURE A– DESIGN VEHICLES

Design vehicle and reference loading is shown in the table below. This list shall be confirmed during the ECI process in consultation with stakeholders.

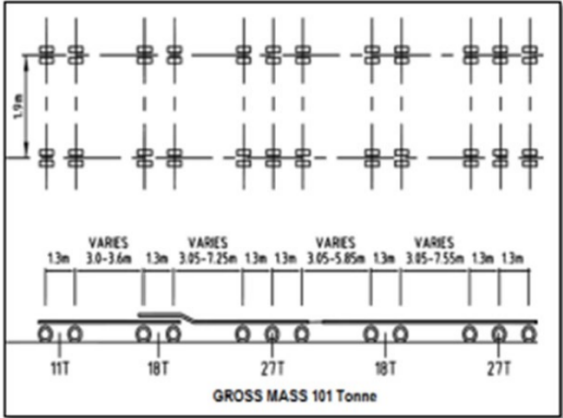
DESIGN VEHICLE	LOADING
W80 Wheel Load	 <p style="text-align: center;">ELEVATION PLAN</p> <p style="text-align: center;">DIMENSIONS IN METRES</p>
A160 Axle Load	 <p style="text-align: center;">ELEVATION PLAN</p> <p style="text-align: center;">DIMENSIONS IN METRES</p>

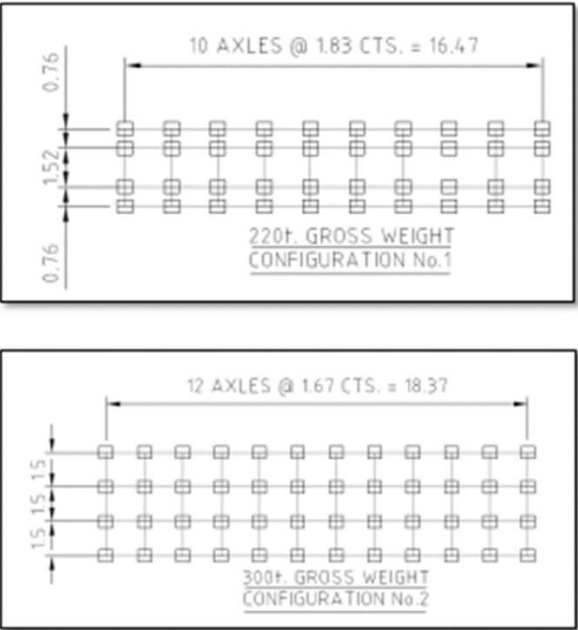
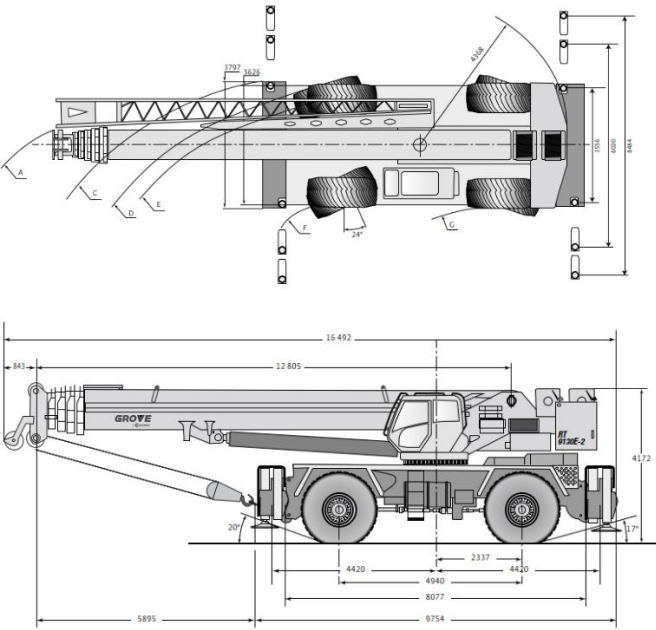
M1600 Moving Load (Tri- Axle Group) Including UDL Portion	<p>ELEVATION</p> <p>360 kN 360 kN 6 kN/m 360 kN 360 kN</p> <p>1.25 1.25 3.75 1.25 1.25 Varies 6.25 min. 1.25 1.25 5.0 1.25 1.25 0.6</p> <p>0.2 0.4 3.2 m standard design lane 2.0 0.6</p> <p>PLAN</p> <p>DIMENSIONS IN METRES</p>
S1600 Stationary Traffic Load	<p>ELEVATION</p> <p>240 kN 240 kN 24 kN/m 240 kN 240 kN</p> <p>1.25 1.25 3.75 1.25 1.25 Varies 6.25 min. 1.25 1.25 5.0 1.25 1.25 0.6</p> <p>0.2 0.4 3.2 m standard design lane 2.0 0.6</p> <p>PLAN</p> <p>DIMENSIONS IN METRES</p>
HLP 320	<p>16 axles, spaced at 1.8 m centres</p> <p>Total load per axle = $\begin{cases} 200 \text{ kN HLP 320} \\ 250 \text{ kN HLP 400} \end{cases}$</p> <p>ELEVATION VIEW</p>
HLP 400	<p>1400 500 500 1400</p> <p>3600 for HLP 320 4500 for HLP 400</p> <p>END VIEW OF AN HLP AXLE</p>

T44 Truck

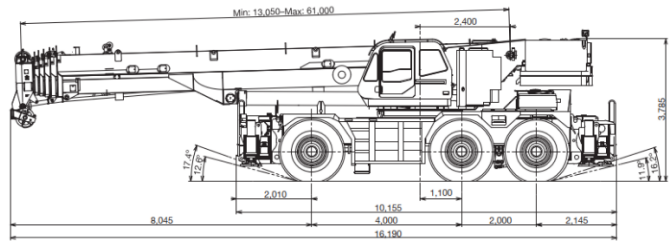


Road Train

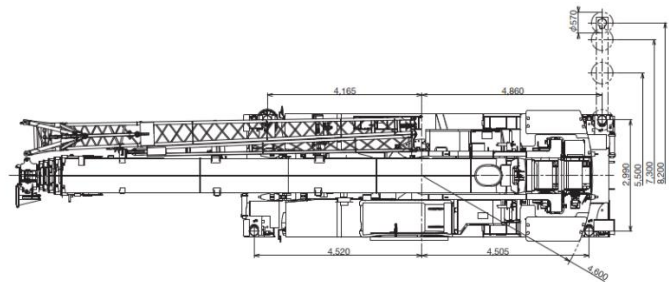


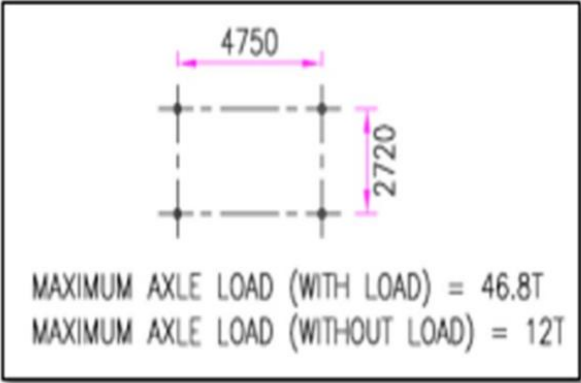
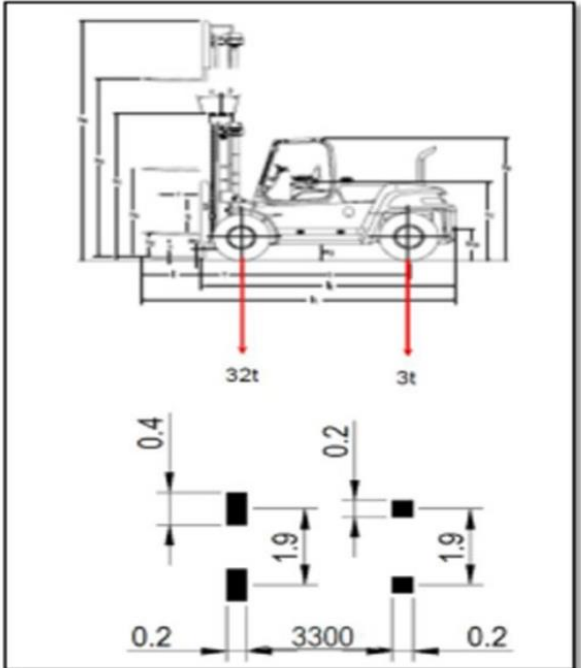
<p>Abnormal Vehicle Loading</p>	 <p>10 AXLES @ 1.83 CTS. = 16.47</p> <p>220t. GROSS WEIGHT CONFIGURATION No.1</p> <p>12 AXLES @ 1.67 CTS. = 18.37</p> <p>300t. GROSS WEIGHT CONFIGURATION No.2</p>
<p>120t 2-Axle Rough Terrain Mobile Crane. [Reference Crane: Grove RT9130E-2]</p>	 <p>16 492</p> <p>12 805</p> <p>5895</p> <p>4420</p> <p>4940</p> <p>8077</p> <p>9754</p> <p>4172</p> <p>17°</p> <p>20°</p> <p>2337</p> <p>4420</p> <p>4420</p> <p>5056</p> <p>1055</p> <p>1485</p> <p>3792</p> <p>3626</p> <p>24°</p> <p>GROVE</p> <p>RT9130E-2</p>

145t 3-Axle Rough
Terrain Mobile Crane
[Reference Crane: GR-
1450EX]



Note : Dimension is with boom angle at -1.5 degree.



<p>25t Terrex Franna Crane (anywhere on the wharf)</p>	 <p>4750</p> <p>2720</p> <p>MAXIMUM AXLE LOAD (WITH LOAD) = 46.8T MAXIMUM AXLE LOAD (WITHOUT LOAD) = 12T</p>
<p>16t Forklift (anywhere on the wharf)</p>	 <p>32t</p> <p>3t</p> <p>0.4</p> <p>0.2</p> <p>1.9</p> <p>1.9</p> <p>0.2</p> <p>3300</p> <p>0.2</p>

Schedule 7 - Form of Deed of Novation

Date

Parties

Pilbara Ports Authority ABN 94 987 448 870 of Level 5, 999 Hay Street, Perth, WA 6000
(Principal)

[ECI Contractor] ABN [insert] of [insert] (**ECI Contractor**)

[Subcontractor] ABN [insert] of [insert] (**Subcontractor**)

Background

- A The Principal and the ECI Contractor have entered into the Contract.
 - B The ECI Contractor and Subcontractor have entered into the Subcontract.
 - C Pursuant to the Contract, the Principal has notified the ECI Contractor that it is required to novate its rights under the Subcontract to the Principal.
 - D The parties have agreed to novate the Subcontract in order to substitute the Principal for the ECI Contractor on the terms contained in this deed.
-

Agreed terms

1 Definitions

In this deed these terms have the following meanings:

Date of Novation	The date upon which the Subcontractor executes this Deed.
Contract	The contract between Principal and the ECI Contractor dated [date] in relation to [describe].
Security	The guarantees (including deeds of guarantee and indemnity) required to be issued by a bank, insurer or guarantor under the Subcontract in respect of the performance by the Subcontractor.
Subcontract	The contract between the ECI Contractor and the Subcontractor dated [date] in relation to [describe].

2 Novation of Contract

2.1 Novation

The parties agree to novate the Subcontract in order to substitute the Principal for the ECI Contractor, on and from the Date of Novation.

2.2 Principal's obligations

- (a) The Principal must perform the obligations and assume all of the liabilities of the ECI Contractor under the Subcontract in favour of the Subcontractor, except obligations and liabilities of the ECI Contractor which were incurred before the Date of Novation.
- (b) The Principal will be bound by the Subcontract as if it was an original party to the Subcontract in place of the ECI Contractor.

2.3 Acknowledgment

The Principal and the Subcontractor acknowledge that the Subcontract continues in full force on and from the Date of Novation in accordance with its terms as novated by this deed.

3 Adjustment of relationships

3.1 Release by Subcontractor

- (a) The Subcontractor releases the ECI Contractor from all obligations and liabilities of the ECI Contractor arising out of or in connection with the Subcontract, except those obligations and liabilities which have been notified by the Subcontractor to the Principal in accordance with **clause 5.2** before the Date of Novation.
- (b) The Subcontractor releases the Principal from all obligations and liabilities arising out of or in connection with the Subcontract in relation to events which occurred or work which was performed prior to the Date of Novation.

3.2 Release by Contractor

The ECI Contractor releases and discharges the Subcontractor from all obligations and liabilities of the Subcontractor arising out of or in connection with the Subcontract, except those obligation and liabilities which arose before the Date of Novation.

3.3 Subcontractor's obligations

- (a) The Subcontractor must perform its obligations under the Subcontract in favour of the Principal, including obligations which were incurred or which relate to events occurring before the Date of Novation.
- (b) The Subcontractor will continue to be bound by the Subcontract as if the Principal was an original party to the Subcontract in place of the ECI Contractor.

3.4 Rights of Principal

The Principal is entitled to exercise all of the rights to which the ECI Contractor was entitled in relation to the Subcontract, including rights which arose before the Date of Novation.

4 Insurance and security

- (a) The Subcontractor must take the necessary steps to ensure that, for all insurances required to be effected by the Subcontractor under the Subcontract, the Principal is named in place of the ECI Contractor as required by the Subcontract.
- (b) The Subcontractor must replace or procure the replacement of the Security with security on similar terms in favour of the Principal.

5 Representations and warranties

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Date of Novation:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed; and
- (c) this deed is its valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms, subject to principles of equity and rules affecting creditors' rights generally.

5.2 Notification of claims

The Subcontractor represents and warrants that all claims that it may have against the ECI Contractor as at the Date of Novation have been notified in writing to the Principal and the ECI Contractor with reasonable details. Any such claims made against the ECI Contractor as at the Date of Novation and not so notified by the Date of Novation shall be absolutely barred on and from that date.

5.3 Survival

The representations and warranties in this **clause 5** survive the execution of this deed and the novation of the Contract.

6 General

6.1 Legal costs

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

6.2 Amendment

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

6.3 Waiver and exercise of rights

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

6.4 Rights cumulative

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

6.5 Consents

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

6.6 Further steps

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

6.7 Governing law and jurisdiction

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

6.8 Liability

If the Subcontractor comprises more than one person:

- (a) the obligations of those persons are joint and several; and
- (b) subject to the terms of this deed, the Principal may proceed against any or all of them for any failure of the Subcontractor to comply with an obligation under this deed.

6.9 Counterparts

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

6.10 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed are merged in and superseded by this deed and are of no effect whatever. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

6.11 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;

- (vi) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
- (viii) this deed includes all schedules and annexures to it; and
- (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this deed; and
- (x) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

6.12 Headings

Headings do not affect the interpretation of this deed.

Execution

Executed as a deed.

Executed by Pilbara Ports Authority
ABN 94 987 448 870 pursuant to
section 156 of the *Government Trading*
Enterprises Act 2023 (WA):

.....
Name (print)

.....
Signature

.....
Office (print)

.....
Name (print)

.....
Signature

.....
Office (print)

.
Executed by [ECI Contractor]in
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

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

Executed by [Subcontractor]in
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

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

.....
Director

.....
Name of Director (print)

.....
Director

.....
Name of Director (print)

Execution

Executed as a deed.

Executed by Pilbara Ports Authority
ABN 94 987 448 870 pursuant to
section 156 of the *Government Trading*
Enterprises Act 2023 (WA):

.....
Name (print)

.....
Name (print)

.....
Signature

.....
Signature

.....
Office (print)

.....
Office (print)

.
who each declare no notice of termination of their authority to sign has been given.

Executed by [ECI Contractor] in
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)