Request

No. PTA250023

DESIGN AND CONSTRUCTION OF NEW ELECTRIC PASSENGER VESSELS

VESSEL DESIGN AND CONSTRUCT

|  |  |
| --- | --- |
|  | |
| Request Closes:  11.00 am Western Australian Time on Wednesday, 21 May 2025 | Enquiries:  Lisa Tierney  Telephone: +61 (08) 9326 2969  Email: lisa.tierney@pta.wa.gov.au | |

PUBLIC TRANSPORT AUTHORITY  
SUPPLY OF GOODS GENERAL CONDITIONS OF CONTRACT

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FORMAL INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the.......................day of..................................20.......

**BETWEEN:**

**PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA** ABN 61 850 109 576 a body corporate constituted pursuant to the provisions of the Public Transport Authority Act 2003, Western Australia, and having its office at Public Transport Centre, West Parade, Perth in the State ("Public Transport Authority"); and:

**INSERT CONTRACTOR’S NAME**…………of ………Insert Contractor’s address ("the Contractor"), **ACN/ABN**: INSERT CONTRACTOR’S ACN/ABN

**BACKGROUND:**

The Contractor has agreed to design, construct and equip at least five Vessels (and up to five more at the option of the Public Transport Authority) as generally described in Display Tender PTA250023 at tenders.WA.gov.au and has represented that it has the necessary skills and resources to do so. In reliance on that representation the Public Transport Authority has agreed to engage the Contractor to supply the Vessel(s) on the terms set out in this Contract.

**AGREEMENT:**

In consideration of their mutual promises, the parties agree:

1. In this Contract, words and expressions have the same meanings as are respectively assigned to them in the General Conditions of Contract or elsewhere in the Contract.
2. The following documents comprise this Contract, namely:
   * + 1. this Formal Instrument of Agreement;
       2. the General Conditions of Contract; and
       3. the Annexure to the General Conditions of Contract containing Schedules numbered 1to 9.
3. In consideration of the payment by the Public Transport Authority to the Contractor of the Contract Price at the times and in the manner prescribed in the Contract, the Contractor covenants with the Public Transport Authority to design, construct and equip the Vessels in conformity in all respects with the provisions of the Contract.
4. In consideration of the design, construction and equipping of the Vessel(s) by the Contractor, the Public Transport Authority covenants with the Contractor to pay to the Contractor the Contract Price at the times and in the manner prescribed by the Contract and observe any other obligations on its part contained in the Contract.

EXECUTED BY THE PARTIES AS AN AGREEMENT

The **COMMON SEAL** of the )  
**PUBLIC TRANSPORT AUTHORITY** )  
**OF WESTERN AUSTRALIA** is )  
affixed in the presence of: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Chief Executive Officer

AND

|  |
| --- |
| **Execution clauses of *Contractor* to be Inserted, examples follow.** |

*Where Contractor is signing under The Common Seal*

|  |  |
| --- | --- |
| **THE COMMON SEAL** of **[*insert company name and ACN No.*]** was affixed by authority of its Directors in accordance with Section 127 of the Corporations Act 2001 (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Signature of Director/Secretary | Signature of Director |
|  |  |
|  |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Name (please print) | Name (please print) |

*OR*

*Where Contractor is a Company with two directors*

|  |  |
| --- | --- |
| **Executed** by **[*insert company name and ACN No.*]** in accordance with Section 127 of the Corporations Act 2001 (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Signature of Director/Secretary | Signature of Director |
|  |  |
|  |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Name (please print) | Name (please print) |

*OR*

*Where Contractor is a Company with one person appointed as sole director and sole company secretary*

|  |
| --- |
| **Executed** by **[*insert company name and ACN No.*]** its Sole Director and Sole Company Secretary in accordance with Section 127 of the Corporations Act 2001 (Cth): |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Sole Director & Secretary |
|  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Name (please print) |

*OR*

*Where Contractor is an Individual (If more than one, then produce separate sealing clause for each)*

|  |  |
| --- | --- |
| **Signed by:**  **[insert name ]**  **in the presence of:** | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Name |
|  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Witness (Signature) |
|  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Name (please print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |
| Address |

General Conditions of Contract

1. Definitions and Interpretation
   1. **Definitions**

In the Contract, except where the context otherwise requires:

**“Additional Vessels”** means each vessel ordered pursuant to the Option in addition to the Initial Vessels up to the number provided indescribed in Schedule 1.

**“Additional Milestone”** means each milestone referred to or described in Schedule 1.

**“AMSA”** means the Australian Maritime Safety Authority.

**“Annexure”** means the Annexure to these General Conditions, which comprises Schedule 1 to 10.

**“Authority”** means any:

* + 1. Government or government department;
    2. local government authority;
    3. Government or statutory authority; or
    4. other person (whether autonomous or not) who is charged with the administration of a law, that has a right to give any approval or impose any requirement in respect of the Works or the Shipyard;

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in Western Australia.

**“Change in Control”** means, in respect of a contracting party or a Guarantor, a change in the person or persons who, directly or indirectly, ultimately control that party other than as a result of any dealing in securities listed on a recognised stock exchange (where ‘control’ has the meaning given in the *Corporations Act 2001 (Cth));*

**“Confidential Information”** means any knowledge, information or know-how, including intellectual property and related documentation pertaining to or concerning Public Transport Authority, including Public Transport Authority’s business systems, customers, properties, assets and affairs, disclosed to the Contractor or which comes to the Contractor’s knowledge or into its possession under or in connection with this Contract (irrespective of whether that knowledge, information or know-how is owned by Public Transport Authority or disclosed before or after the execution of the Contract);

**“Contract”** means this contract made up of the documents listed in the Formal Instrument of Agreement;

**“Contract Price”** means the price payable by Public Transport Authority for the Initial Vessels and is as described in the Schedule of Prices as may be varied pursuant to the Contract terms;

“**Contractor’s Representative**” means the representative of the Contractor appointed under clause 16;

**“Cyber Security”** means reasonable, appropriate and comprehensive security measures and safeguards used to protect the confidentiality, integrity and availability of the IT Environment from cyber security incidents or threats;

**“Contractor”** means the party so described in the Formal Instrument of Agreement and includes the Contractor’s personal representatives, successors and permitted assigns, officers, employees, contractors, sub-contractors, consultants, agents and invitees;

**“Completed Vessel”** means the Vessel once it has achieved Vessel Completion, as certified by the Public Transport Authority in the relevant Milestone Determination Notice.

**“Core Milestone”** means each of the following Milestones:

* + 1. the Public Transport Authority’s and AMSA’s approval of the Design Documents as Final Design Documents. For the avoidance of doubt, this Milestone will not be achieved until the approval of both the Public Transport Authority and AMSA has been given;
    2. Vessel Completion; and
    3. completion of the Vessel Delivery Milestone;

**“Date of Delivery”** means the date specified as such in Schedule 1, as adjusted under the Contract;

**“Date for Vessel Completion”** means the Contractor’s obligation under clause 4 and 9.1;

**“Defect”** means any:

* + 1. defect, fault, failure or omission in the Works;
    2. part of the Works which is not in accordance with the requirements of the Contract (including the Public Transport Authority’s Function and Performance Specification and any applicable Legislative or Other External Requirements); and/or
    3. incidence of malfunction, intermittent condition or degradation of any Material or other thing forming part of the Vessel, which prevents its safe operation or would prevent the Vessel from passing any seaworthiness check,

and **Defective** has a similar meaning;

**“Defect Liability Period”** means:

* + 1. the period commencing on the date of completion of the Vessel Delivery Milestone for each Vessel, as certified by the Public Transport Authority in the relevant Milestone Determination Notice; and
    2. ending 12 months from the date in (a) above.

**“Design Documents”** means the Vessel drawings, specifications, samples, models, patterns, data and other materials and information created, developed or provided by or on behalf of the Contractor for or in connection with the Vessel.

**“Design Life”** means in respect of the Vessel and each component of it (including Material), the requirements and relevant period specified in Schedule 6, commencing on the date of completion of the Vessel Delivery Milestone, as certified by the Public Transport Authority in the relevant Milestone Determination Notice, and ending on the day after expiry of the relevant period specified in Schedule 6.

**“Final Design Documents”** means the Design Documents approved by the Public Transport Authority and AMSA under clause 6 below;

**“Function and Performance Specification”** means the requirements set out in Schedule 6 of the Contract, as amended by the Public Transport Authority from time to time;

**“Force Majeure Event”** means:

* + 1. named cyclone, earthquake, fire, explosion, lightning or flood (other than any flood which should have been reasonably anticipated) but excluding all other weather conditions regardless of severity; or
    2. acts of war, terrorist act (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth)), maritime or aviation disaster; or
    3. riot, sabotage, embargo, commotion or civil disturbance, blockade or picketing, except where the event arises in respect of any industrial action whatever; or
    4. epidemics or pandemics other than COVID-19; or
    5. nuclear event, ionising radiations or contamination by radioactivity,

which is beyond the reasonable control of the Affected Party, provided the event or circumstance was not caused or contributed to by the Affected Party;

**“General Conditions”** means these General Conditions of Contract;

**“GST”** means a goods and services tax imposed under the GST Act;

**“GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any amendment of that Law;

**“Hazardous Material”** means any substance, gas, liquid, chemical, mineral or other physical or biological matter (including radiation, radioactivity and magnetic activity):

**“Industrial Dispute”** means a dispute about an industrial or workplace issue and includes any picketing and demarcation issues.

**“Imported Content”** means the estimated duty paid value inclusive of the value of any goods and services (e.g. overseas freight, insurance, software in computers, consultancy or engineering effort), or any charges of overseas origin, together with Customs clearing charges;

**“Initial Vessels”** means the number of Vessels specified in Schedule 1 to be delivered pursuant to this Contract prior to the exercise of the Option for the Additional Vessels

**“Insolvency Event”** means any of the following:

* + 1. a ‘controller’ (as defined in the *Corporations Act 2001 (Cth*)), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a body corporate or any asset of a body corporate;
    2. a liquidator or provisional liquidator is appointed in respect of a body corporate;
    3. any application is made to a court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of appointing a person referred to in paragraphs (a) or (b) of this definition, winding up or de-registering a body corporate or proposing or implementing a scheme of arrangement (other than an application which is withdrawn, dismissed or set aside within 21 days after it is made);
    4. a body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving, an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent;
    5. a body corporate becomes, states in writing that it is or is deemed under any law to be, insolvent or unable to pay its debts as and when they fall due;
    6. the party commits an act of bankruptcy; and
    7. any act is done or event occurs which, under any applicable law from time to time in any jurisdiction, has an analogous or similar effect to any act or event described in paragraphs (a) to (f) of this definition (inclusive);

**“Insurances”** means the insurances described in and conforming to the requirements contained in Schedule 3 to the Annexure and ‘Insurance’ has a corresponding meaning;

**“Intellectual Property Right”** means all statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trademarks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967 (as amended in September 1979), whether or not registered or registrable, and includes the right to apply for the registration of such rights, and whether existing in Australia or otherwise.

**“IT Environment”** means the hardware, software and communications systems, networks and infrastructure (including the data and information the systems process, store, generate or transmit) used by a party’s personnel or customers at any location;

**“Legislative and Other External Requirements”** includes:

* + 1. Acts, ordinances, regulations, by-laws, orders, awards, proclamations and any enforceable government policies in each case applicable in the jurisdiction where the Works are being carried out;
    2. certificates, licences, consents, permits, approvals and requirements of an Authority
    3. applicable codes of practice, codes of conduct, guidelines and standards, including those issued by the Public Transport Authority; and
    4. fees and charges payable in connection with the foregoing,

whether in effect on or after the date of the Contract, and including any of the above which is amended or promulgated prior to the Contractor achieving completion of the Vessel Delivery Milestone in accordance with the Contract (including, without limitation, *the Privacy and Responsible Information Sharing Act 2024 (WA)*).

**“Marine Safety National Law”** means the [*Marine Safety (Domestic Commercial Vessel) National Law Act 2012*](https://www.legislation.gov.au/series/C2012A00121) *(Cth)* and the [*Marine Safety (Domestic Commercial Vessel) National Law Act 2012*](https://www.legislation.gov.au/series/C2012A00121)Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013 (Cth) and any marine orders made under either Act or any regulation.

**“Marine Surveyor”** means a marine surveyor appointed under clause 7;

**“Materials”** means all materials, goods, fittings and equipment purchased or required to be purchased by the Contractor to enable the completion of the Vessel in accordance with the Contract, including conformity with the Final Design Documents and the Function and Performance Specification;

**“Milestone”** includes each of the Core Milestones, each Additional Milestone (if any) and all other milestones identified in the Program;

**“Milestone Determination Notice”** means a notice issued by the Public Transport Authority under clause 9.12;

**“Milestone Payment”** means a payment to be made by the Public Transport Authority to the Contractor at each stage recorded in **Schedule 2;**

**“Milestone Target Date”** means the dates by which each Milestone is to be achieved as provided by clause 9.1;

**“Modern Slavery”** has the meaning given to that term in the *Modern Slavery Act 2018 (Cth)* and any analogous conduct prohibited by any other Legislative or Other External Requirements which apply to the Public Transport Authority, the Contractor or a subcontractor;

**“Modern Slavery Laws”** mean any of the following:

* + 1. *Modern Slavery Act 2018* (Cth);
    2. Divisions 270 and 271 of the *Criminal Code Act 1995 (Cth*);
    3. any law relating to Modern Slavery;

“**Moral Rights**” means the rights of integrity of authorship and the right not to have authorship falsely attributed, as defined by the *Copyright Act 1968 (Cth),* and rights of a similar nature, anywhere in the world, whether in existence before or after the date of the Contract.

**“Officer”** means a person, appointed from time to time by Public Transport Authority, and notified in writing to the Contractor to act as Public Transport Authority’s authorised representative for the purpose of the Contract and initially means the person so described in Schedule 1 to the Annexure.

**“Option”** means the Public Transport Authority option set out at Schedule 9 to purchase up to five additional vessels, either singly or in multiples to be constructed by the Contractor in accordance with this Contract.

**“Personal Information”** has the same meaning as in the *Privacy Act 1988 (Cth)*.

“**Pre-existing IPR**” of any party means any Intellectual Property Rights of, or licensed to, the party which are:

* + 1. pre-existing as at the date of the Contract, but does not include any Intellectual Property Rights created or developed by the Contractor or any of its personnel for the purposes of, or in anticipation of, performing the Contract, including carrying out the Works; or
    2. brought into existence independently of the performance of the party’s obligations under the Contract.

**“Probity Event”** includes any event or thing which occurs before or after the date on which the Contractor’s offer in relation to the Contract is accepted which:

* + 1. has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
    2. relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Works;
    3. involves a breach by a Relevant Person of any:
       1. Legislative and Other External Requirements; and/or
       2. any equivalent of Legislative and Other External Requirements in a foreign jurisdiction,

in relation to bribery, anti-corruption, dishonesty offences, or trust in public office offences; or

* + 1. involves a material failure by a Relevant Person to achieve or maintain:
       1. reasonable standards of ethical behaviour;
       2. the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Relevant Person to carry out and observe its obligations in connection with the Works; or
       3. other standards of conduct that would otherwise be expected of a party involved in a State or Public Transport Authority project.

**“Probity Investigation”** means any probity, criminal or security investigations to report on or check the character, integrity, experience or honesty of a person or entity, including:

* + 1. investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
    2. interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

**“Probity Requirements”** means full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics;

**“Public Transport Authority Data”** means all of the Public Transport Authority’s data and other information, including Personal Information, including data that is:

* + 1. uploaded or inputted into the Contractor’s IT Environment or the Public Transport Authority’s IT Environment, or processed, generated or stored or modified by, the Contractor or the Public Transport Authority; or
    2. otherwise provided directly or indirectly to the Contractor by or on behalf of the Public Transport Authority or another Authority, and includes activation and usage data;

**“Program”** means the program and construction plan for the Works prepared by the Contractor and accepted by the Public Transport Authority in accordance with clause 9.1; and includes any updates or amendments to the program and construction plan which have been approved by the Public Transport Authority in accordance with clause 9.3;

**“Related Body Corporate”** has the meaning set out in section 50 of the *Corporations Act 2001* (Cth);

**“Relevant Person”** means:

* + 1. the Contractor;
    2. any Related Body Corporate of the Contractor;
    3. any director, employee or officer of any of the above; and
    4. any subcontractor or consultant of the Contractor who is involved in any activity, function or task related to the Works or the Contractor’s obligations under this Contract;

**“Schedule of Prices”** means Schedule 2 to the Annexure;

**“Security and Emergency Management Procedures”** means the Public Transport Authority’s Security Policy and Procedures;

**“Security Breach”** means:

* + 1. any actual, apparent, potential or likely impairment, compromise or damage to the confidentiality, reliability, integrity, value, availability or assurance of the Public Transport Authority Data, or the Public Transport Authority’s IT Environment;
    2. any actual, apparent, suspected or likely misuse or loss of, interference with, unauthorised access to or use of, modification, destruction, deletion or disclosure of the Public Transport Authority Data or the Public Transport Authority’s IT Environment;
    3. any retention of Public Transport Authority Data beyond any timeframe for retention agreed between the parties; or
    4. a breach or likely breach by the Contractor of any of the obligations in the Contract relating to confidentiality, privacy or information security;

**“Shipyard**” means all premises or land where the Vessel is being constructed, the Works are being carried out or Materials are being stored, as stated in Schedule 1 and which cannot be changed unless otherwise agreed by the Public Transport Authority in writing (acting reasonably).

**“SOCI Act”** means the *Security of Critical Infrastructure Act 2018 (Cth)*, including the *Security of Critical Infrastructure (Critical Infrastructure Risk Management Program) Rules* (LIN 23/006) 2023 (Cth) and any other related rules and regulations;

**“SOCI Requirements”** means any or all:

* + 1. requirements of the *SOCI Act* that apply to the Contractor; and
    2. policies, directions, instructions, requests or requirements relevant to, associated with, or necessary for compliance by the Public Transport Authority with the *SOCI Act*, as set out in this Contract or as notified by the Public Transport Authority to the Contractor from time to time;

**“Spares”** means such spare parts as are specified in the Function and Performance Schedule to be supplied by the Contractor with the Completed Vessel

**“State”** means the State of Western Australia and includes any department, agency, or instrumentality of the State of Western Australia, and any Minister whether body corporate or otherwise;

**“Survey Requirements”** means designed and constructed in accordance with the *Marine Order 503 (Certificates of Survey - national law) 2018* and the *National Standard for Commercial Vessels*.

**“Unconditional Undertaking”** means an unconditional undertaking as provided for in clause 35 and Schedule 4;

**“Vessel”** means a vessel which is to be designed and constructed under and in accordance with the Contract, including all items, finishes and requirements (including the Vessel's engines, electrics and electronics) as specified in, and in accordance with, the Public Transport Authority’s Function and Performance Specification, and applicable Laws.

**“Vessel Completion”** means that stage of the Works when (in respect of each Vessel):

* + 1. the Vessel has been completed in accordance with the Contract and the Final Design Documents, including being fully constructed, fully operational as intended under the Contract, afloat (including meeting the weight budget specified in the Function and Performance Specification), fit for purpose, complying with all applicable Laws and the Survey Requirements and free of all Defects (including as required under clause 10.4(a));
    2. a certificate has been issued by the Marine Surveyor certifying that the requirements of paragraph (a) have been satisfied;
    3. an AMSA Certificate of Operation is capable of being obtained for the Vessel;
    4. the Vessel otherwise meets the Function and Performance Specification; and
    5. the parties have each signed an acknowledgement of acceptance and delivery which contains the date and time at which is deemed to have been handed over from the Contractor to the Public Transport Authority.

**“Vessel Delivery Milestone”** means the Contractor’s obligation under clause 9.13;

**“Vessel Operator”** means the Contractor’s obligation under clause 12(d);

**“Western Australian Industry Participation Strategy (WAIPS)”** means the Western Australian Industry Participation Strategy created pursuant to section 5 of the *Western Australian Jobs Act 2017 (*WA);

“**WAIPS Participation Plan**” means the participation plan submitted by the Contractor in its offer and completed via the WAIPS Portal;

**“WAIPS Participation Commitments”** means the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in relation to the industry engagement questions in section B of the WAIPS Participation Plan;

**“WAIPS Participation Plan Obligations”** means the Contractor’s obligations under clause 22.1;

**“WAIPS Portal”** means the online system at <https://waips.industrylink.wa.gov.au/> where all materials relating to WAIPS are created and can be accessed.

**“WAIPS Report”** means the report submitted by the Contractor in accordance with clause 22.2;

**“Works”** means the whole of the work which is or may be required to be carried out and completed by the Contractor, and handed over to the Public Transport Authority, in accordance with the Contract (including designing, constructing, equipping, testing, commissioning and delivering the Vessel(s) together with all Materials, Spares, plans, manuals and other documents required to be provided by the Contractor, and providing the warranties required by clause 12), as may be varied by the Public Transport Authority under the Contract, and, where the context permits, includes the Vessel in its then state.

**“WHS Act”** means the *Work Health and Safety Act 2020 (WA)* and regulations made under that Act;

**“WHS Laws”** means all laws (including the *Work Health and Safety Act 2020 (WA)*, the *Work Health and Safety Regulations 2022 (WA)* and mandatory codes of practice or guidelines) relating to work health and safety that are applicable to the provision of the Works;

**“WHS Notification Requirement”** means any requirement to notify WorkSafe WA or other regulator about an incident or event under WHS Laws;

* 1. Interpretation

In the Contract, unless the context otherwise requires:

* + 1. the words “include”, “includes”, “including” and other words introducing one or more examples of a thing are not to be construed as words of limitation;
    2. words indicating the singular include the plural and vice versa;
    3. words indicating a gender include any gender;
    4. reference to a person includes:
       1. reference to a natural person, firm, any company, partnership, joint venture, association, corporation or other body corporate and any Authority; and
       2. reference to the successors and permitted assigns of any of the entities mentioned in sub-clause (i).
    5. reference to a body of any nature (other than a party to the Contract) which ceases to exist or whose powers or functions are transferred to any other body, refers to the body which replaces it or which substantially succeeds to its powers or functions;
    6. clause and other headings and marginal notes are for convenience only and do not affect interpretation of the Contract;
    7. reference to a part, clause, party, schedule, annexure or exhibit includes a reference to any part, clause, party, schedule, annexure (including any attachment described as an Annexure) or exhibit of the Contract in each case, if applicable, as amended in accordance with the Contract;
    8. reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;
    9. reference to a document includes a reference to every agreement or deed which varies that document;
    10. reference to a thing (including a right or obligation) includes a part of that thing; and
    11. reference to a statute, regulation, proclamation, ordinance or by-law includes any statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes any regulation, proclamation, ordinance or by-law under the statute.
  1. General
     1. Except where otherwise provided:

all documents and all communications between the parties must be in the English language;

measurements and quantities must be in the metric units prescribed by the laws of Australia; and

references to currency are to Australian currency.

* + 1. The Contract contains the full and complete understanding of the parties and supersedes any agreement and any representation made or dated prior to the date of the Contract.
    2. No provision of the Contract will be construed adversely to a party solely on the ground that it was responsible for the preparation of the Contract or that provision.
    3. No party will be deemed to have waived any breach of any provision of the Contract unless such waiver is expressly stated in writing and is signed (as applicable) by the Officer (for the Public Transport Authority) or by a director of the Contractor. Any waiver will extend only to the particular breach expressly waived and will not limit or affect any right with respect to any other or further breach.
    4. Any consent or approval of the Public Transport Authority or the Officer required under the Contract must be in writing and may be given conditionally or unconditionally or withheld in each case in the Public Transport Authority’s or the Officer’s absolute discretion unless otherwise expressly provided. If a consent or approval is given conditionally, the Contractor must comply with each condition. A consent or approval of one thing does not apply to any other thing. The grant of consent or approval by the Public Transport Authority or the Officer does not in any way affect the obligations of the Contractor in respect of the subject of the consent or approval.
    5. Where more than one person comprises a party, each person:

is jointly and severally liable for the performance by that party of that party’s obligations under the Contract; and

must act jointly in relation to the exercise by that party of its rights under the Contract.

* + 1. If any provision of the Contract is held invalid or unenforceable for any reason, the other provisions of the Contract will not be affected by the invalidity or unenforceability and will remain valid in all respects unless the absence of the invalid or unenforceable provision would materially adversely affect a party.
    2. Unless a contrary intention is specifically expressed, no provision of the Contract limits any right of the Public Transport Authority whether under the Contract or under any Law.
    3. Figured prevail over scaled dimensions in a discrepancy.
    4. If a word is defined, another part of speech has a corresponding meaning.
    5. If time for doing any act or thing under the Contract ends on a day other than a Business Day, the time for doing that act or thing will be deemed to end on the next Business Day.
    6. Nothing contained in or implied by the Contract or any document contemplated by the Contract has the effect of constraining:
       1. the Public Transport Authority or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Act of Parliament; and
       2. the Auditor-General for the State or placing any fetter on its statutory rights, duties, powers and functions under the *Financial Management Act 2006* (WA).
  1. **Order of Precedence**

Where applicable, the order of precedence in the interpretation of the Contract will be:

* + 1. The Formal Instrument of Agreement;
    2. The General Conditions of Contract;
    3. Schedule 3 – Particulars of Required Insurances;
    4. Schedule 1 – Particulars of Items Referred to in the General Conditions;
    5. Schedule 6 – Function and Performance Specification;
    6. Schedule 2 – Schedule of Prices; then
    7. other Schedules to the Annexure.

1. Documents
   1. **Discrepancies**
      1. In construing the Contract, the following rules of construction apply:
         1. where inconsistent levels of quality or finishes are required or specified, or inconsistent numbers for the supply of any item, component or other thing are required or specified, the higher level or number shall apply unless the Officer, in their absolute discretion, directs otherwise;
         2. figured dimensions shall prevail over scaled dimensions;
         3. drawings made to larger scales shall take precedence over drawings made to smaller scales; and
         4. drawings showing particular parts of the Works shall take precedence over drawings for more general purposes.
      2. Otherwise:
         1. if there is any inconsistency or conflict between any provision or clause of the General Conditions and any provision or clause in any Schedule (except Schedule 6), the provision or clause in the General Conditions shall prevail to the extent of that inconsistency or conflict; or
         2. if there is any inconsistency or conflict between any provision or clause of the General Conditions and any provision or clause in Schedule6, the provision or clause in Schedule 6 shall prevail to the extent of that inconsistency or conflict.
      3. if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out the Works, that party must give the Officer written notice of it. The Officer will then, and upon otherwise becoming aware, direct the Contractor as to the interpretation and construction to be followed at the Contractor’s cost.
   2. **Public Transport Authority-supplied documents**
      1. As between the Public Transport Authority and the Contractor, the Function and Performance Specification, Works Requirements, and any other documents supplied by the Public Transport Authority to the Contractor under the Contract remain the Public Transport Authority’s property and any copy of them in the Contractor's custody or control must be returned to the Public Transport Authority either immediately on written demand or, in any event, by the date when all Works under the Contract have been completed.

Such documents must not be used, copied nor reproduced by the Contractor (or any person to whom it has given a copy of the document in accordance with the Contract) for any purpose other than the Works.

* 1. **Contractor-supplied documents**

Notwithstanding any other clause in the Contract:

* + 1. if the Contractor submits any document to the Public Transport Authority or the Officer under or in connection with the Contract or the Works (including any Design Documents), the Public Transport Authority and the Officer do not assume or owe any duty of care or other responsibility to the Contractor, and are not required to check that document for errors or omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract. The Contractor is not entitled to make any Claim in connection with the Public Transport Authority or the Officer not detecting or notifying the Contractor of any errors or omissions, inconsistencies, ambiguities or discrepancies in any document; and
       1. no review of or comment upon, or failure to review, approve or comment upon, or any other direction (including approval) in respect of, any document supplied by the Contractor by the Public Transport Authority or the Officer will:
          1. relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise under any Legislative or Other External Requirements or in equity; or
          2. prejudice the Public Transport Authority's rights against the Contractor whether under the Contract or otherwise according to law or in equity.
    2. Documents required by the Contract to be supplied by the Contractor (including copies of them) must be provided to the Public Transport Authority either immediately on written demand, within the times stated in the Contract (where applicable) or in any case by the Date of Delivery.
  1. **Availability of documents**

The Contractor must keep available to the Officer and the Public Transport Authority at each Shipyard one complete set of documents affecting the Works (including Design Documents) and must deliver a complete copy to the Public Transport Authority on demand.

1. Prior Work
   * 1. The Contractor acknowledges that the terms of the Contract apply to all work performed by the Contractor in connection with the Works, even if it was performed prior to the date of the Contract.
     2. Any payment made to the Contractor by the Public Transport Authority in connection with the Works undertaken or provided by the Contractor prior to the date of the Contract will be treated as a payment under the Contract and will be in part discharge of the Public Transport Authority’s obligation to pay the Contract Price to the Contractor.
2. Performance and payment
   * 1. The Contractor must proceed with the Works with due expedition, without delay and in accordance with the Program. It must carry out and complete the Works in accordance with the Contract, including the Function and Performance Specification, the Final Design Documents, all applicable Legislative or Other External Requirements and Survey Requirements and all directions given by the Officer under, and consistent with, the Contract.
     2. The Contractor must:
        1. design, construct and equip the Vessel in accordance with the Function and Performance Specification, the Final Design Documents, all applicable Legislative or Other External Requirements and the Survey Requirements; and
        2. achieve:
           1. Vessel Completion on or before the Date for Vessel Completion; and
           2. completion of the Vessel Delivery Milestone on or before the Date of Delivery.
           3. the completion of each other Milestone by its Milestone Target Date.
     3. In consideration of the Contractor’s performance of its obligations under the Contract, including completing the Works, the Public Transport Authority will pay the Contractor the Contract Price at the times and in the manner provided for in the Contract.
     4. The Contractor acknowledges and agrees that the Contract Price includes, and is sufficient to cover:
        1. all costs and expenses that the Contractor may incur in performing its obligations under the Contract (including the cost of Materials and Spares) and of all matters and things necessary for the due and proper performance and completion of the Contract; and
        2. the Contractor's profits and overheads.
3. Contractor’s General Obligations
   1. The Contractor warrants:
      1. it is competent and has the necessary skills to carry out and complete the Works;
      2. it will at all times employ suitably qualified and experienced employees, subcontractors and suppliers;
      3. it will exercise due care, skill and diligence and act in accordance with good international shipbuilding and marine engineering practice, in the carrying out and completion of the Works;
      4. it will prepare the Design Documents with due skill and care and in accordance with the Public Transport Authority’s requirements as set out in the Function and Performance Specification;
      5. it will carry out and complete the Works in accordance with the Final Design Documents;
      6. the Completed Vessel will:
         1. meet all the requirements of the Function and Performance Specification;
         2. be fit for purpose; and
         3. function as intended and expected for its expected operational life.
   2. The Contractor acknowledges that the Public Transport Authority entered into the Contract in reliance on each of the warranties set out in clause 5.1 above.
   3. If the Contractor needs to apply for a general exemption under the Marine Safety National Law, it must first agree that exemption with the Public Transport Authority in writing (including providing written reasons to the Public Transport Authority as to why the exemption is required) and, if (and only if) the Public Transport Authority gives its written agreement to the exemption (which may be given or withheld in the Public Transport Authority’s absolute discretion), obtain AMSA’s approval to that exemption in writing. An exemption under the Marine Safety National Law will only be effective if given by AMSA in writing.
   4. **Contractor to remain responsible**
      1. The Contractor acknowledges and agrees that if the Public Transport Authority (or a third party at the request of the Public Transport Authority) performs an obligation of the Contractor under the Contract, completes any Works or rectifies any Defect, as permitted by any provision of the Contract,
         1. that does not relieve the Contractor from any liability or obligation, nor affect any warranty given by the Contractor, under the Contract; and
         2. the Contractor will remain responsible for the obligation performed, Works completed or Defect rectified as if that obligation, Works or rectification work (as applicable) had been carried out by the Contractor itself; and
      2. the warranties given by it in the Contract remain unaffected notwithstanding:
         1. any receipt or review of, comment or direction on, or approval or rejection of the Design Documents or any other Contractor Deliverable (as defined in clause 24.1) by the Public Transport Authority or the Officer; or
         2. any variation made to the Contract.
      3. The Contractor must carry out and complete the Works in a conscientious and expeditious manner in accordance with the Contract and the best practices of all relevant trades and third party suppliers to the satisfaction of the Officer.
      4. Except where otherwise stated in Schedule 1 the Contractor must provide all materials, labour, plant, equipment, tools, fuels, oils, accommodation, meals and everything whether of a temporary or a permanent nature required and suitable for the completion of the Works.
      5. The Contractor warrants that:
         1. as at the date of the Contract, no conflict of interest exists or is likely to arise in the performance of the Works;
         2. It will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of its obligations; and
         3. If any such conflict of interest or a risk of such conflict of interest arises, the Contractor must notify the Public Transport Authority immediately in writing of that conflict of interest or take all steps required by the Public Transport Authority to avoid or minimise the conflict of interest or risk of conflict of interest.
      6. Each party must do all things necessary to give full effect to the Contract and the transactions contemplated by the Contract.
   5. **Application of Contract to multiple Vessels**
      1. The expressions below:
         1. Additional Milestone;
         2. Completed Vessel;
         3. Core Milestone;
         4. Date for Vessel Completion;
         5. Date of Delivery;
         6. Defect;
         7. Defect Liability Period;
         8. Design Documents;
         9. Design Life;
         10. Final Design Documents;
         11. Liquidated Damages;
         12. Milestone;
         13. Milestone Determination Notice;
         14. Milestone Target Date;
         15. Vessel Completion; and
         16. Vessel Delivery Milestone,

apply separately to each Vessel, including any Additional Vessels, and references in the Contract to the Works, Function and Performance Specification, Materials and Spares mean so much of the Works, Function and Performance Specification, Materials and Spares as apply to each Vessel.

Except where expressly varied in writing, all other terms of the Contract shall remain in full force and effect and shall apply to each Vessel designed, constructed and equipped by the Contractor for the Public Transport Authority.

1. Scope, Design Documents and Options
   1. The Contractor has full responsibility for designing, constructing and completing the Vessel in accordance with the Contract and Function and Performance Specification.
      1. With respect to the Design Documents:
         1. The Contractor must:
            1. prepare and develop the design of the Vessel so that the Design Documents fully comply with the Contract, the Function and Performance Specification, all applicable Legislative or Other External Requirements and the Survey Requirements and are fit for purpose; and
            2. progress the design of the Vessel to meet the Core Milestone (a) and in accordance with the Program.
         2. The Contractor must provide the Public Transport Authority with an opportunity for interim review of the Design Documents before the Design Documents are submitted to the Public Transport Authority for approval as Final Design Documents, and must allow 10 Business Days for such review in its Program.
         3. The Contractor must, whenever requested by the Public Transport Authority, provide to the Public Transport Authority the Design Documents (in their then state) in the number of copies and format required by the Public Transport Authority. In its absolute discretion, the Public Transport Authority may or may not review or provide any comment on any draft Design Document.
         4. The Public Transport Authority will review the Design Documents when they are complete (and, in the Contractor’s opinion, ready for construction) and have been submitted to the Public Transport Authority for approval. The Public Transport Authority will notify the Contractor in writing within ten (10) Business Days of the time they are received whether or not they are approved (and, if not approved, the Public Transport Authority will give reasons). If the Public Transport Authority approves the Design Documents, those Design Documents will become the Final Design Documents. The Public Transport Authority may reject the Design Documents if in the reasonable opinion of the Public Transport Authority, the Design Documents fail to comply with any applicable Legislative or Other External Requirements or the Survey Requirements or do not meet the requirements of the Function and Performance Specification.
         5. If the Public Transport Authority does not approve the Design Documents, the Contractor must within 10) Business Days amend the Design Documents so that they comply with the Survey Requirements, all applicable Legislative or Other External Requirements and the Function and Performance Specification, and re-submit the Design Documents to the Public Transport Authority for approval.
         6. The process in this clause 6 will be repeated until the Design Documents are approved by the Public Transport Authority as Final Design Documents.
         7. Notwithstanding any other clause in the Contract, a direction by the Public Transport Authority or the Officer to vary any part or other thing in the Final Design Documents will be a variation to the Works for the purposes of clause 1 only to the extent that the Final Design Documents, before such variation, complied, or would have complied, with all applicable Legislative or Other External Requirements, the Survey Requirements and the Public Transport Authority's Function and Performance Specification.
         8. Notwithstanding the Public Transport Authority's approval of the Design Documents, such approval is conditional on the Contractor obtaining approval of the Design Documents from AMSA. The Design Documents will not constitute Final Design Documents until approved by both the Public Transport Authority and AMSA.
         9. The Contractor must preserve in good order and maintain all templates, patterns and scale drawings prepared or used in connection with the Works until such time as the foregoing are provided to the Public Transport Authority under the Contract.
         10. The Contactor will ensure that all of the above steps are completed in sufficient time to meet Core Milestone (a).
         11. The Contractor must ensure that it has obtained approval of the Design Drawings from AMSA before starting work.
   2. **Options**
      1. The Public Transport Authority may, by written notice given to the Contractor at any time before the end of the period stated in exercise the Option.
      2. The Option may be exercised multiple times, for any number of Vessels on each occasion, provided that the total number of Additional Vessels may not exceed the number stated in Schedule 1.
      3. Commencing upon the issue of a notice by the Public Transport Authority under clause 6.2(a), the Public Transport Authority and the Contractor must perform their obligations under the Contract on the basis that the Contract Price (and the Contract Payments) and the provisions of the Contract will be adjusted as set out in Schedule 9 for the relevant Option.
      4. The Public Transport Authority and the Contractor acknowledge and agree that:
         1. the Public Transport Authority will pay to the Contractor the sum of $1.00 in consideration for the granting of the Option;
         2. the Public Transport Authority is not under any obligation whatsoever to exercise an Option; and
         3. the Contractor is not entitled to make, nor will the Public Transport Authority be liable upon, any claim for any loss, damages or expense in respect of the Public Transport Authority not exercising, any Option;
         4. where the Public Transport Authority does not exercise its discretion to exercise an Option, the Public Transport Authority may, either by itself or by third parties, undertake the work contemplated by the relevant Option.
         5. the exercise of an Option by the Public Transport Authority under this clause 6.2 will not:
            1. relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under the Contract); or
            2. limit or otherwise affect the Public Transport Authority's rights against the Contractor or the Contractor's rights against the Public Transport Authority (including those arising out of any warranties given under the Contract),

whether under the Contract or otherwise under any Legislative or Other External Requirements or in equity.

1. Marine Surveyor / Shipyard
   1. Before commencing the Works, the Contractor must, at its cost, engage an AMSA-accredited and experienced Marine Surveyor approved by the Public Transport Authority (acting reasonably) to:
      1. oversee and inspect the Works for compliance with the Marine Safety National Law and the Survey Requirements; and
      2. do and provide all such things the Marine Surveyor is required by the Contract to do and provide.
   2. The Contractor must:
      1. ensure the Marine Surveyor is available for consultation with the Officer as and when reasonably required by the Officer; and
      2. not replace the Marine Surveyor without the prior written approval of the Officer (which will not be unreasonably withheld).
      3. nominate a Shipyard within Australia or New Zealand; and
      4. ensure the Works are in an exclusive and distinct area within the Shipyard, and any Materials in the Contractor's custody or control are stored in the same area or such other area or place as has been notified to and agreed by the Public Transport Authority.
      5. Seek approval in writing from the Public Transport Authority to nominate an alternative Shipyard/s.
   3. **Access for the Public Transport Authority and other authorised persons**

The Contractor must allow the Public Transport Authority, and persons authorised by the Public Transport Authority, to have access to the Works and Shipyard at all reasonable times for any purpose, including to:

* + 1. carry out inspections of the Vessel in its then state; and
    2. conduct work health and safety and environmental compliance audits.
  1. **Nuisance**
     1. Without limiting or otherwise restricting any other provision of the Contract, the Contractor must perform the Works so as to avoid any unreasonable disturbance, nuisance and inconvenience to others, including the Public Transport Authority and/or occupiers of adjoining and neighbouring properties and other areas of the Shipyard. The Contractor must comply with the reasonable requirements of the Public Transport Authority in complying with this clause.
     2. The Contractor indemnifies the Public Transport Authority against any liability, loss, claim or expense in any way connected with, any breach by the Contractor of its obligations under this clause.

1. No obligation to inspect
   1. The Contractor acknowledges and agrees that:
      1. the Public Transport Authority owes no duty to the Contractor to:
         1. inspect the Vessel or the Works; or
         2. review the Vessel or the Works for errors or omissions, discrepancies, ambiguities, inadequacies, inconsistencies or deficiencies or compliance with the requirements of the Contract if it does so inspect; and
      2. no inspection or review of the Vessel or the Works (including any Materials, Spares or other things to be supplied by the Contractor in connection with the Contract) by the Public Transport Authority under the Contract will in any way lessen or otherwise affect:
         1. the Contractor’s obligations whether under the Contract or otherwise under any Legislative or Other External Requirements or in equity; or
         2. the Public Transport Authority’s rights against the Contractor whether under the Contract or otherwise at law or in equity.
2. Programming and Milestones
   1. **Program**

The Contractor must, within 15 Business Days of the date of the Contract, provide the Public Transport Authority with a program for the Works which must:

* + 1. be in the form required by the Public Transport Authority;
    2. identify each Milestone and contain the details required by the Contract;
    3. allow sufficient time for the Public Transport Authority’s review of the Design Documents (as agreed between the Contractor and the Public Transport Authority);
    4. show all of the Contractor's bona fide planned work activities and sequences for achieving:
       1. Vessel Completion by a specified Date for Vessel Completion; and
       2. completion of the Vessel Delivery Milestone by the Date of Delivery; and
    5. contain any other details required by the Function and Performance Specification.

If that program is satisfactory to the Public Transport Authority, it will become the ‘**Program**’.

* 1. The Program must show each Milestone and identify the date by which completion of each Milestone will be achieved (each such date being a Milestone Target Date), which for the achievement of:
     1. The Date for Vessel Completion must be a date that is no later than ten (10) Business Days prior to the Date of Delivery ; and
     2. completion of the Vessel Delivery Milestone must be by the Date of Delivery.
     3. The Date for Vessel Completion and the Date of Delivery may only be adjusted under clause 9.3 or clause 11.3;
     4. The completion of each Milestone must be certified by the Public Transport Authority in accordance with clause 9.12.
  2. **Updating the Program**
     1. If:

(i) the actual progress of the Works falls significantly behind or otherwise departs significantly from the time line in the Program; or

(ii) an extension of time has been granted by the Public Transport Authority under clause 9.11 or clause 11.3; or

(iii) otherwise, if directed by the Public Transport Authority in writing,

the Contractor must promptly submit to the Public Transport Authority for its approval a revised program complying with clause 9.1, except that the Date for Vessel Completion and the Date of Delivery must not be changed unless an extension of time is granted by the Public Transport Authority under clause 9.11 or a unilateral extension of time is granted by the Public Transport Authority under clause 11.3

* + 1. If the Public Transport Authority rejects a revised program submitted by the Contractor under clause 11.3, the Contractor must promptly amend the revised program and resubmit it to the Public Transport Authority for approval.
    2. Unless the Public Transport Authority approves a revision to the Program, any proposed revision shall be of no effect.
  1. **Reviews of Program**

No review by the Public Transport Authority of, nor any comment or direction (including an approval) by the Public Transport Authority upon or in connection with the Program:

* + 1. relieves the Contractor from any of its liabilities or obligations, including the obligation to complete the Vessel by the Vessel Completion Date or any part of the Works by the required date in the Program;
    2. evidences or constitutes a direction by the Public Transport Authority to accelerate, disrupt, prolong or vary any or all of the Works; or
    3. affects the time for performance of the Public Transport Authority's obligations or functions.
  1. **Acceleration by Contractor**
     1. The Public Transport Authority and its consultants, agents and other contractors are not obliged to do or refrain from doing anything to enable the Contractor to complete the Vessel by the Vessel Completion Date or any part of the Works by the required date in the Program.
     2. The time for performance of the Public Transport Authority's obligations is not affected by the Contractor's desire or attempts to complete the Vessel earlier than the Vessel Completion Date or any part of the Works earlier than the required date in the Program.
  2. **Acceleration as alternative to extension of time**
     1. Where the Contractor is otherwise entitled to an extension of time under clause 9.3, the Public Transport Authority may, instead of granting a reasonable extension of time, direct the Contractor in writing to accelerate the performance of the Works so as to overcome the whole or part of the delay which gave rise to the entitlement to an extension of time and the Contractor must comply with that direction unless the Contractor notifies the Public Transport Authority in writing that it would be unsafe or unlawful for the Contractor to so comply. If the Public Transport Authority disagrees with the Contractor’s notice, without limiting any other right or remedy of the Public Transport Authority, the Public Transport Authority may raise a dispute under clause 40.
     2. If the Public Transport Authority directs the Contractor to accelerate the performance of the Works so as to overcome:
        1. the whole of the delay in question, the Contractor will no longer be entitled to any extension of time for that delay; or
        2. part (but not the whole) of the delay in question, the Contractor will no longer be entitled to any extension of time for that part of the delay, but the Public Transport Authority will grant a reasonable extension of time under clause  9.10 for the balance of the delay.
     3. No direction by the Public Transport Authority will constitute a direction under clause 9.6(a) unless it is in writing and expressly states that it is a direction under clause 9.6(a).
     4. If compliance with a direction to accelerate given under clause 9.6(a) causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference will be valued under clause 1 as if it were a variation.
     5. No direction by the Public Transport Authority under clause 37.1 will in any way lessen or affect, or make the Public Transport Authority assume liability for, any of the Contractor’s other obligations under the Contract, including in respect of work health and safety, and the Contractor must comply with all applicable Legislative or Other External Requirements at all times in complying with the direction.
  3. **Progress and survey reports**
     1. Without limiting or otherwise restricting any other provision of the Contract, the Contractor must provide to the Public Transport Authority in writing, on the first Business Day of each month, and within three (3) Business Days of any request by the Public Transport Authority for such a report, a written progress report which must include the following information:
        1. a summary of work completed since the previous progress report, including photographs of the Works;
        2. a description of all work that is likely to be completed by the first Business Day of the next month;
        3. progress against the Program (including Milestones);
        4. a summary of extension of time claims (if any);
        5. a summary of variation claims (if any);
        6. a summary of invoices issued; and
        7. anything else reasonably requested by the Public Transport Authority.
     2. As and when reasonably requested by the Public Transport Authority, the Contractor must provide to the Public Transport Authority (in such format required by the Public Transport Authority) a survey report of the Vessel prepared by the Marine Surveyor, which satisfies the requirements of Annexure 1 of the Marine Surveyors Accreditation Guidance Manual.
  4. **Notice of delay**

If the Contractor becomes aware of anything which will or may cause delay to the Works, the Contractor must promptly give the Public Transport Authority written notice of that cause and the estimated delay. The estimate must be updated as further information becomes available. The Contractor must also promptly give the Public Transport Authority written notice when the actual or potential cause of delay ceases to exist.

* 1. **Claim for extension of time**
     1. Subject to clause 9.3, the Contractor will only be entitled to an extension of time to the date for Vessel Completion or the Date of Delivery, if the Contractor is or will be delayed from achieving Vessel Completion by the Date for Vessel Completion or the completion of the Vessel Delivery Milestone by the Date of Delivery (as applicable) as a result of:
        1. any act, default or omission (not authorised by the Contract) of the Public Transport Authority or the Officer;
        2. weather conditions in excess of the weather conditions stated in Schedule 7 of the Annexure which interrupt or prevent the carrying out of sea trials required under clause 9.13 of the Contract;
        3. the shutdown of the whole of a Shipyard for not less than one (1) full working day due to a COVID-19 directive and where there is no alternative Shipyard available; or
        4. the occurrence of a Force Majeure Event,

(each of the above being a **Qualifying Cause**); and

* + - 1. the Contractor gives the Public Transport Authority, within five (5) Business Days of the first occurrence of the Qualifying Cause, a written claim for an extension of time which:
         1. explains in detail the facts relied upon in asserting the existence of a Qualifying Cause and the reason(s) why the Qualifying Cause will delay the Date for Vessel Completion or the Date of Delivery (as applicable) (including the extent of the delay); and
         2. provides details of all measures it has taken to prevent or mitigate the delay.
    1. If further delay results from a Qualifying Cause evidenced in a claim under clause 9.9(a)(ii), the Contractor may claim an extension of time for the further delay by promptly giving the Public Transport Authority a written claim which explains in detail the reason(s) for that further delay.
  1. **Assessment**
     1. When both Qualifying Causes and non-Qualifying Causes of delay contribute to a delay which is the subject of a request for an extension of time, the Public Transport Authority will (acting reasonably) apportion the resulting delay to the Works according to the respective causes’ contribution.
     2. In assessing each request for an extension of time, the Public Transport Authority will reduce any extension of time it would have otherwise assessed to the extent that the Contractor has:
        1. caused or contributed to the Qualifying Cause or any subsequent delay; or
        2. failed to take all reasonable measures to prevent or mitigate the delay.
  2. **Notification of Extension of time**

Within ten (10) Business Days after receiving the Contractor’s claim for an extension of time, the Public Transport Authority must assess the request and, where an extension of time is approved, give to the Contractor a written direction evidencing the amount of any additional time that has been granted.

* 1. **Completion of Milestones**
     1. The Contractor must give the Public Transport Authority a written notice at least ten (10) Business Days prior to the date on which it expects to complete each Milestone stating the anticipated date of completion of the relevant Milestone.
     2. The Contractor must:
        1. notify the Public Transport Authority, in writing, when completion of a Milestone has been achieved; and
        2. provide such evidence and documentation required by the Contract (or the Public Transport Authority, acting reasonably), and do all such other things necessary (including facilitating an inspection of the Vessel by the Public Transport Authority or the Officer (upon request) on a date and at a time and location suitable to the Public Transport Authority or the Officer (acting reasonably)), to enable the Public Transport Authority to verify completion of the Milestone.
        3. Within ten (10) Business Days (or such other time as determined by the Public Transport Authority, acting reasonably) after receipt of the Contractor’s notice under clause 9.12(b), the Public Transport Authority must prepare a Milestone Determination Notice that will:
        4. either certify that the relevant Milestone has been completed (including the date it was completed), or specify the matters which remain outstanding before the Milestone will be completed; and
        5. be signed by (or on behalf of) the Public Transport Authority.
     3. If a Milestone Determination Notice specifies that matters remain outstanding so that completion of a Milestone has not been achieved, the Contractor must promptly attend to those matters and clauses 9.12(b) and 9.12(c) will continue to re-apply until the Public Transport Authority has certified in a Milestone Determination Notice that the relevant Milestone has been completed and the date it was completed.
     4. If the Public Transport Authority (or the Officer) and the Contractor are unable to agree on whether a Milestone has been completed, or which matters remain outstanding before a Milestone will be completed, the dispute resolution provisions in clause 40 will apply.

* 1. **Vessel Delivery Milestone**
     1. The Date of Vessel Completion must be no later than ten (10) Business Days prior to the Date of Delivery, and, provided that it has achieved Vessel Completion, it must then:
        1. deliver the Completed Vessel to the Public Transport Authority in accordance with clause 9.13
        2. provide all of the information required by clause 9.13(c) to the Public Transport Authority; and
        3. supply to the Public Transport Authority any Spares,

(together constituting the Vessel Delivery Milestone) on or before the Date of Delivery. For the avoidance of doubt, Vessel Completion must be achieved before the Contractor can achieve completion of the Vessel Delivery Milestone.

* + 1. Unless directed otherwise by the Public Transport Authority in writing, the Completed Vessel must be delivered to the Public Transport Authority:
       1. afloat on a rising tide:
       2. at a place nominated by the Public Transport Authority; and
       3. on a day and at a time agreed by the parties (acting reasonably).
    2. On or before delivery of the Completed Vessel to the Public Transport Authority, and as a condition precedent to achieving completion of the Vessel Delivery Milestone, the Contractor must prepare and give to the Public Transport Authority (in the format required by the Public Transport Authority):
       1. two (2) complete sets of general arrangement and as-built drawings of the Completed Vessel;
       2. two (2) complete sets of drawings of electrical installations of the Completed Vessel;
       3. a complete set of all literature and instructions necessary for the operation, maintenance and repair of the Completed Vessel, which must be packaged appropriately for storage within the wheelhouse;
       4. a declaration or warranty signed on behalf of the Contractor in a form satisfactory to the Public Transport Authority (acting reasonably) that the Completed Vessel is free from any claim, lien, charge, mortgage or other encumbrance of any nature (including any security interest under the Personal Property Securities Act 2009 (Cth) which is not in favour of the Public Transport Authority);
       5. builder's plate;
       6. reports of all tests and trials carried out on or in connection with the Completed Vessel;
       7. original signed documentation (from suitably qualified certifiers) that the Vessel meets all Survey Requirements and any other applicable standards notified by the Public Transport Authority;
       8. a list of all suppliers (names and addresses) used for the supply of goods or services in connection with the Completed Vessel;
       9. third party testing, installation, commissioning and inspection reports;
       10. all supplier and manufacturer warranties required by clause 12;
       11. originals of all approvals, consents, certificates, licences and other documents issued by any federal or state authorities for or in connection with the Works; and
       12. any other documents specified in the Function and Performance Specification or the Contract.
    3. On or before delivery of the Completed Vessel to the Public Transport Authority, the Contractor must provide persons nominated by the Public Transport Authority with knowledge transfer and training (including physical demonstrations) as (and when) required by the Public Transport Authority on the operation, maintenance and repair of the Vessel.

1. Tests and Sea Trials
   * 1. The Contractor must, at its cost, carry out all tests, including sea trials of the Vessel:
        1. required by the Contract (including as detailed in the Function and Performance Specification);
        2. in accordance with any timing and procedure set out in the Contract or, if no timing and procedure exists, as reasonably directed by the Officer; and
        3. in compliance with all applicable Legislative or Other External Requirements
     2. All sea trials of the Vessel must:
        1. be conducted in the presence of such persons as are nominated by the Public Transport Authority, the Officer, AMSA, the Marine Surveyor and all relevant authorities;
        2. be conducted in weather conditions stated in Schedule 7
        3. be in accordance with the requirements and manner for the conduct of sea trials described in the Function and Performance Specification, including providing for any adjustments to the Vessel reasonably required by the Public Transport Authority; and
        4. in any event, be of sufficient scope and duration to enable the parties to verify and establish that the Vessel conforms in all respects with the Contract and the Function and Performance Specification.
     3. The Contractor will at all times be responsible for the conduct and safe navigation of the Vessel during a sea trial (including providing sufficient crew), notwithstanding the Public Transport Authority or the Officer or other representative of the Public Transport Authority having (or being given) control of the Vessel at any time during a sea trial. The Contractor has the right to repeat any sea trial, at its cost, subject to appropriate notice to the Public Transport Authority and its compliance with clauses 10(a) and 10(b).
     4. In addition to any tests or trials that the Contractor undertakes, is required to undertake or plans to undertake under the Contract, at any time before the Date for Vessel Completion the Public Transport Authority may give a direction that the Vessel or any other part of the Works be further tested or trialled (**Additional Testing**).
     5. The Contractor must give such assistance and samples and make accessible such parts of the Vessel or any other part of the Works (as applicable) as may be directed by the Public Transport Authority for the conduct of any Additional Testing.
     6. The Contractor is not entitled to rely upon any Additional Testing carried out by or at the direction of the Public Transport Authority for the Contractor's own purposes.

* + 1. Representatives of the Public Transport Authority must be:
       1. provided with access to the Shipyard and the Vessel for the purpose of observing and having oversight of the Works at any time during which the Works are being carried out; and
       2. notified of and permitted to be present to observe any test (not solely Additional Testing) of the Vessel or any other part of the Works, including on board the Vessel where possible.
  1. **Notice**

The Public Transport Authority or the Contractor (whichever is to conduct a test) must give at least ten (10) Business Days' written notice to the other of the date, time, expected duration, plan and place of any test to be carried out under the Contract, including sea trials required under the Contract and any Additional Testing. Notwithstanding the foregoing, the Shipyard must be the start and end place for the sea trials. If the Contractor does not attend any Additional Testing to be conducted by the Public Transport Authority, that testing may nevertheless proceed.

* 1. **Completion and results**
     1. If any tests carried out under the Contract, including sea trials under clause 9.13(e), reveal any Defect or other deficiency (including technical deficiency) in the Vessel or any other part of the Works (as determined by the Public Transport Authority, acting reasonably), the Contractor must, at its cost, immediately rectify that Defect or deficiency to the reasonable satisfaction of the Public Transport Authority. The Public Transport Authority may require the Contractor to carry out further sea trials in accordance with clauses 10(a), 10(b) and 10.2 to demonstrate that the Defect or other deficiency has been rectified, and such sea trials will be conducted at the Contractor’s cost.
     2. The results of any tests conducted by or on behalf of the Contractor under or in connection with the Contract must be promptly provided by the Contractor to the Public Transport Authority.
     3. Notwithstanding any other clause in the Contract, the Contractor’s compliance with this clause 10.4 is a condition precedent to the achievement of the Vessel Completion Milestone.

1. Liquidated damages
   * 1. If the Contractor fails to achieve completion of the Vessel Delivery Milestone by the Date of Delivery, the Contractor must pay to the Public Transport Authority on demand liquidated damages at the rate specified in Schedule 1 of the Annexure for every day after the Date of Delivery until and including the earliest of:
        1. the date that any cap specified in Schedule 1 has been reached;
        2. the date certified by the Public Transport Authority in the relevant Milestone Determination Notice as being the date on which completion of the Vessel Delivery Milestone is achieved; or
        3. the termination of the Contract.
     2. The amount of liquidated damages specified in clause 11(a) is an agreed genuine pre-estimate of the Public Transport Authority's loss if completion of the Vessel Delivery Milestone is not achieved by the Date of Delivery and the Contractor agrees that the liquidated damages are not, and are not intended to be, a penalty.
     3. The amount of liquidated damages payable under clause 11(a) will be a debt due from and immediately payable by the Contractor to the Public Transport Authority.
   1. **If liquidated damages void, invalid or inoperative**

If clause 11 (or clause 49(d)) is found, for any reason, to be void, invalid or otherwise inoperative, so as to disentitle the Public Transport Authority to liquidated damages in respect of the Contractor's delay, the Public Transport Authority will be entitled to recover damages from the Contractor for such failure under general law. Those damages will not be limited to the liquidated damages that the Public Transport Authority would otherwise (but for the disentitlement) have been entitled to recover from the Contractor.

* 1. **Unilateral extension of time**

The Public Transport Authority may unilaterally extend time under the Contract at any time at its discretion whether or not a request for an extension of time has been made by the Contractor.

1. Supplier and manufacturer warranties
   * 1. Without limiting or otherwise restricting any other provision of the Contract, the Contractor must ensure that the Public Transport Authority and the Contractor have the joint and several benefit (including through assignment if required) of any manufacturer(s) and supplier(s) warranties (including original equipment manufacturer (OEM) warranties) in relation to the Works, the Completed Vessel, all Materials and Spares, including where such warranties continue to operate beyond the expiration of the applicable Defect Liability Period. The warranties must:
        1. be in a form that can be directly enforced by each Beneficiary (as that term is defined in clause 12(d)(ii) below) against the parties giving the warranties;
        2. be obtained for every item or component of the Vessel which the Contractor acquires for or in connection with the Works; and
        3. in respect of:

(A) the hull and superstructure, be for a period of at least 24 months from the date of completion of the Vessel Delivery Milestone, as certified by the Public Transport Authority in the relevant Milestone Determination Notice; and

(B) all other Materials and Spares, and any other things (including alternate parts) supplied to the Public Transport Authority under or in connection with the Contract, be for a period at least as long as the relevant manufacturer or supplier usually provides, but in any event no less than 12 months from the date of completion of the Vessel Delivery Milestone, as certified by the Public Transport Authority in the relevant Milestone Determination Notice.

* + 1. In addition to clause 12(a), all Materials and Spares, and any other parts or components (including alternate parts), provided to the Public Transport Authority under or in connection with the Contract must be serviceable (and an after-sales support service must be available) within the State.
    2. All warranties to be provided under clause 12(a) must be delivered by the Contractor to the Public Transport Authority on or before the Date of Delivery or if the Contract is terminated, immediately upon termination.
    3. The Contractor acknowledges and agrees that:
       1. the Public Transport Authority’s ownership or use of the Completed Vessel may from time to time be transferred, assigned or leased by the Public Transport Authority or the Public Transport Authority’s nominee, agent or assignee to any third party for the operation, maintenance and/or repair of the Vessel (each such third party being a Vessel Operator); and
       2. all warranties given by the Contractor in respect of the Vessel (including the Completed Vessel) under the Contract,
          1. are given in favour of, and may be enforced by, the Public Transport Authority, the Public Transport Authority’s nominee, agent or assignee, and any and each Vessel Operator (each a Beneficiary); and
          2. are capable of being assigned, or the benefit otherwise transferred, by any Beneficiary, or any of their successors, to any person without the consent of the Contractor.
  1. **Supplier details**

The Contractor must, promptly following a request from the Public Transport Authority, provide to the Public Transport Authority the names and contact details of each person or entity which supplies or provides to the Contractor any Materials, Spares, services or work for or in connection with the Works.

1. Payment
   1. **Invoices**
      1. Subject to clause 13.1(b), the Contractor is only entitled to invoice the Public Transport Authority for a Contract Payment at the relevant time specified in Item 2 of Schedule 1 of the Annexure.
      2. Each invoice submitted by the Contractor for a Contract Payment must:
         1. identify the relevant Contract Payment to which the invoice relates;
         2. provide details of any amount included for Materials or Spares in accordance with clause 13.3;
         3. attach the information required under clause 14.1; and
         4. include any other information reasonably requested by the Public Transport Authority (which may include attaching evidence of work performed or a copy of the relevant Milestone Determination Notice certifying that completion of the relevant Milestone has been achieved).
      3. Within ten (10) Business Days after receipt of an invoice issued by the Contractor in accordance with the Contract, the Public Transport Authority must, unless the Public Transport Authority agrees to pay the whole of the amount claimed in the relevant invoice, assess the invoice and issue a payment schedule to the Contractor, which:
         1. identifies the invoice to which the payment schedule relates; and
         2. certifies the amount the Public Transport Authority reasonably considers to be due to the Contractor or the Public Transport Authority, as the case may be, and setting out the reasons for the difference,

(**Payment Schedule**).

* + 1. The Public Transport Authority may allow in any Payment Schedule adjustment for amounts paid under the Contract and amounts that otherwise may be retained, deducted or claimed by the Public Transport Authority from the Contractor (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under or in connection with the Contract, including pursuant to the Public Transport Authority’s right to set-off under clause 14.4.

* 1. **Payment of invoices**
     1. Subject to clause 13.1 (compliance with which is a condition precedent to the Contractor’s entitlement to any payment), the Public Transport Authority must, within 30 Business Days after receiving an invoice validly issued in accordance with the Contract, pay to the Contractor either:
        1. the amount of that invoice; or
        2. the amount certified by the Public Transport Authority in the relevant Payment Schedule as being payable by the Public Transport Authority to the Contractor (if any).
     2. The Contractor must pay to the Public Transport Authority any amount certified in a Payment Schedule as being payable by the Contractor to the Public Transport Authority within ten (10) Business Days of receiving the relevant Payment Schedule.
     3. The Public Transport Authority may correct any error in, or otherwise modify, any previous Payment Schedule and where, in doing this, the Public Transport Authority assesses that a further amount is due from the Contractor to the Public Transport Authority, the Contractor must, within ten (10) Business Days of receiving the corrected or modified Payment Schedule, pay that amount to the Public Transport Authority.
     4. Unless otherwise agreed, all payments to be made to a party under the Contract will be made by direct deposit to an Australian bank account nominated in writing by that party.
     5. Any payment made by the Public Transport Authority to the Contractor under or in connection with the Contract is deemed to be a payment on account only and is not evidence of the value of the Works or that the Works have been satisfactorily completed. Nor does the issue of a Payment Schedule by the Public Transport Authority under clause 13.1(c) constitute approval of any part of the Works or other matter, and does not prejudice any Claim that the Public Transport Authority may have against the Contractor.
  2. **Payment for Materials and Spares**
     1. Unless otherwise agreed by the Public Transport Authority, the Public Transport Authority will not be required to pay the Contractor any amount on any invoice which represents Materials or Spares unless:
        1. the amount has been agreed as part of the Contract Price (that is, as part of a Contract Payment);
        2. in the case of Materials, they are affixed to, incorporated in or otherwise installed on the Vessel; and
        3. the Contractor satisfies the Public Transport Authority (or its Representative) that the subject Materials have been paid for, properly stored and protected, and labelled the property of the Public Transport Authority and will upon payment by the Public Transport Authority be the unencumbered property of the Public Transport Authority.
     2. Upon payment to the Contractor, the subject Materials and Spares become the unencumbered property of the Public Transport Authority (and the Contractor must ensure this).
  3. **Reimbursements**

Where a party must pay to another party (**other party**) an outgoing of the other party, the amount payable is the sum of:

* + 1. the amount of the outgoing less any input tax credit in respect of it to which the other party, or its GST group representative member, is entitled; and
    2. if the amount payable is subject to GST, an amount equal to that GST.

1. Payment of workers, consultants and subcontractors
   1. **Workers, consultants and subcontractors**

The Contractor must, when giving an invoice to the Public Transport Authority under clause 13.1, also give to the Public Transport Authority documentary evidence of the payment of moneys due and payable to all workers, consultants and subcontractors (if any) engaged in the Works the subject of the invoice (whether employed by the Contractor or any other person) in the form required by the Public Transport Authority and duly executed.

* 1. **Withholding payment**
     1. Notwithstanding any other clause in the Contract, but subject to clause 14.2(b), the Public Transport Authority may withhold payment of an invoice issued by the Contractor under clause 13.1 until the Contractor complies with clause 14.1.
     2. The Public Transport Authority must not withhold payment of an invoice in excess of the moneys evidenced pursuant to clause 14.1 as due and payable to workers, consultants and subcontractors.
  2. **Final Payment Claim** 
     1. Notwithstanding clause 13.1 the Contractor must give to the Public Transport Authority written notice of any Claim it may have against the Public Transport Authority, together with any final invoice, no later than the date that is ten (10) Business Days after the completion of all Works under the Contract or under any Option, as the case may be. (**Final Payment Claim**).
     2. The Contractor’s liability under the Contract or otherwise is not affected by the issue of any Payment Schedule in response to the Final Payment Claim submitted by the Contractor. The Contractor’s liability continues until any limitation period under statute expires.
     3. On and from the date of the Final Payment Claim, to the extent permitted by law, the Contractor irrevocably and unconditionally releases the Public Transport Authority from any claim of any nature whatsoever in respect of any fact, matter or thing arising out of, or in any way connected with, the Works, the Vessel (including the Completed Vessel) or the Contract that occurred prior to the completion of all Works under the Contract or under any Option, as the case may be. .
  3. **Set-off**
     1. If:
        1. there is a debt or other moneys due from the Contractor to the Public Transport Authority; or
        2. the Public Transport Authority has a claim to money against the Contractor, whether for damages (liquidated or unliquidated) or otherwise, arising out of or in any way in connection with the Contract or the Works or on any other legal or equitable basis,

then the Public Transport Authority may, at its option (and in its absolute discretion), do one or more of the following:

* + - 1. set-off or deduct from amounts otherwise payable by the Public Transport Authority to the Contractor any debt or other moneys due from the Contractor to the Public Transport Authority; or
      2. have recourse to the Unconditional Undertaking referred to in clause 35 or any other security or sum held by the Public Transport Authority under the Contract.
    1. Nothing in clause 14.4(a) affects the right of the Public Transport Authority to recover from the Contractor the whole of the debt or claim or any balance that remains owing.
    2. Clause 14.4 will survive the termination of the Contract.

1. GST
   1. **Preliminary**

Words or expressions used in this clause that are defined in the GST Act have the same meaning given to them in that Act.

* 1. **GST Exclusive**

Unless otherwise stated, any amount specified in the Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

* 1. **Liability to pay GST**

If a party makes a taxable supply under the Contract, the recipient of the taxable supply must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

* 1. **Tax invoice**

Notwithstanding the foregoing, the Public Transport Authority is not obliged under the Contract to pay the amount of any GST payable until the Contractor provides it with a valid tax invoice for the taxable supply.

* 1. **Adjustment Event**

If an adjustment arises in relation to a taxable supply made by the Contractor under the Contract, the amount paid or payable by the Public Transport Authority pursuant to clause 40.3 will be amended to reflect this and a payment will be made by the recipient to the Contractor or vice versa as the case may be.

* 1. **Reimbursement of expenses**

If a third party makes a taxable supply and the Contract requires a party to the Contract to pay for, reimburse or contribute to any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof, but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

1. Representatives
   1. **Appointment and replacement**
      1. Each party must appoint and notify to the other in writing its representative under the Contract. The initial representative for a party is the person named in the relevant Item of the Annexure as being the Officer or the Contractor’s Representative.
      2. Subject to clause 16.1(c), a party must notify the other party immediately should its representative be removed or replaced, together with the contact details of its new representative, or of any change to its representative's contact details.
      3. The Contractor must not remove or replace its representative without the prior written approval of the Public Transport Authority (which will not be unreasonably withheld).
   2. **Responsibility** 
      1. Each party will be responsible for the acts, omissions and defaults of its representative.
      2. Any direction made or given by the Public Transport Authority, the Officer or a person acting within his or her delegation under clause 16.5(b) to the Contractor’s Representative under the Contract will be deemed to have been made or given to the Contractor.
   3. **Role**

Unless otherwise agreed, the role of the representative of a party is to:

* + 1. be responsible for the day-to-day administration of the Contract on behalf of that party;
    2. monitor the activity of the other party under the Contract and to investigate any issues relating to the conduct of the other party under the Contract;
    3. provided formal dispute resolution processes (including under clause 40) have not commenced, resolve any problems, disputes or differences arising between the parties or personnel of the parties; and
    4. discuss any other matter determined by a representative to be appropriate for discussion at a meeting of representatives.
  1. **Meetings**

Meetings of the representatives are to take place at least monthly (or at such other time as agreed by the parties) and may take place over the phone or in person.

* 1. **Officer and delegates**
     1. The Public Transport Authority will ensure that, at all times, there is a person appointed to act as the Officer and represent the Public Transport Authority under the Contract, including by issuing notices and performing other actions under the Contract on behalf of the Public Transport Authority (including assessing and granting extensions of time under clause 9.10 and directing variations under clause 37 ), subject to any limitations of authority imposed on the Officer by the Public Transport Authority or the Contract.
     2. The Officer may, with the approval of the Public Transport Authority, delegate any of their functions or powers under the Contract to others by written notice to the Contractor (each such person being a “Delegate”). The Officer may, by written notice to the Contractor, revoke or vary any such delegation.
     3. The Officer and each Delegate will at all times act as a servant or agent of the Public Transport Authority and not as an independent certifier, assessor or valuer.
     4. Except where the Contract otherwise provides, the Officer, or a Delegate (as applicable) may give a direction orally but must as soon as practicable confirm it in writing. If the Contractor requests the Officer or the Delegate (as applicable) to confirm an oral direction in writing, the Contractor will not be bound to comply with the direction until that written confirmation has been provided.

1. Change in Control
   * 1. Except where clause 17(b) applies, the Contractor shall provide the Public Transport Authority with reasonable prior written notice of any proposed Change in Control of the Contractor or the issuer of the Unconditional Undertaking **(“Guarantor”)** referred to in clause 35**.**
     2. If either of the Contractor or the Guarantor is a listed company and are precluded by the rules governing their listing from making any prior disclosure, the Contractor shall notify the Public Transport Authority of any Change in Control of the Contractor or Guarantor as soon as listing obligations permit it to do so. Notice is not effected merely by release of information to the relevant recognised stock exchange.
     3. In the event of a proposed Change in Control or an actual Change in Control occurring, the Contractor or Guarantor shall provide the Public Transport Authority with any documentation or information requested by the Public Transport Authority and the Contractor must attend any meetings reasonably requested by the Public Transport Authority, including arranging for attendance at those meetings by the third party acquiring or exercising control over the Contractor or Guarantor. The Public Transport Authority will utilise the information so obtained to determine, in its absolute discretion, whether the proposed or actual Change in Control will have any prejudicial effect on the Public Transport Authority or the State's interests, or the performance by the Contractor of its obligations under this Contract or the performance of the obligations of the Guarantor or will result in any Probity Event **("Unacceptable Effects")**.
     4. In determining whether or not the proposed or actual Change in Control will have any Unacceptable Effects, and any conditions to impose on a proposed or actual Change in Control, the Public Transport Authority will consider matters including:
        1. the impact or potential impact of the Change in Control on the financial, managerial and technical capacity of the Contractor and the Guarantor;
        2. whether each of the persons involved in the proposed Change in Control is reputable and solvent;
        3. whether the proposed Change in Control will have any prejudicial effect on the Public Transport Authority’s or the State's interests or give rise to a Probity Event;
        4. the impact or potential impact of the Change in Control on:
           1. the ability and/or willingness of the Contractor to perform its obligations under the Contract; and/or
           2. ability and/or willingness of the Guarantor to perform its obligations under the Contract; and
           3. any security or contract related to the Contract, including any contract with a subcontractor.
     5. If the Public Transport Authority determines that the proposed or actual Change in Control will have any Unacceptable Effects and any conditions of the Public Transport Authority cannot be satisfied, the proposed or actual Change in Control will constitute a substantial breach of the Contract and clause 50 shall apply.
2. Work Health and Safety Requirements
   * 1. The Contractor must comply with
        1. all Legislative and Other External Requirements and the WHS Laws; and
        2. the Shipyard’s and Contractor’s own safety plans.
     2. The Public Transport Authority is committed to ensuring, so far as is practicable, a working environment for all works, workers and members of the public, that is safe and without risk to health.
     3. The Contractor must at all times discharge its responsibilities under all statutory requirements relating to work, health and safety, including the WHS Laws, that are applicable to the Works, including identifying and exercising all necessary precautions for the safety and health of all persons including:
        1. the Contractor’s employees;
        2. any subcontractor and their employees;
        3. the Public Transport Authority’s employees, agents, contractors and subcontractors; and
        4. any other person,

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

* + 1. Without limiting the Contractor’s obligations under the Contract, the Contractor must:
       1. comply with the WHS Notification Requirements and also notify the Public Transport Authority as soon as practicable after any incident which necessitates such notification being made; and
       2. consult, cooperate and coordinate with the Public Transport Authority in respect of the discharge of the parties’ obligations under WHS Laws in connection with the Works and provide all information and documents to the Public Transport Authority that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.
    2. The Contractor agrees to consult, cooperate and coordinate activities with the Public Transport Authority and every other person having duties under the WHS Laws in relation to the Contract and the Works.

1. Security and Emergency Management
   * 1. The Contractor shall establish, document, implement and maintain security and emergency management procedures appropriate for the completion of the Works under the Contract, that where applicable and practicable, align with the Public Transport Authority’s Security and Emergency Management Procedures.
     2. The Contractor must manage all potential or actual security incidents and emergencies in accordance with its security and emergency management procedures.
     3. The Contractor must allow Public Transport Authority personnel to inspect its work environment on an as-required basis.

1. Environmental Management Requirements
   * 1. Where the Contractor is working on or about Public Transport Authority property:
        1. the Contractor must comply with the Public Transport Authority’s Environment Policy and Objectives as amended from time to time and with all other specific requirements which are set out in this Contract; and
        2. the Contractor must comply with all applicable environmental laws, regulations, codes of practice and standards.
     2. No later than 14 days prior, and as a condition precedent to the Contractor commencing the Works, the Contractor must:
        1. have in place an AS/NZS ISO14001 certified environmental management system that identifies risks (including environmental risks relating to each Shipyard) and actions and controls to avoid, minimise and mitigate potential environmental impacts during the performance of the Works (**EMS**); and
        2. prepare an environmental management plan (**EMP**) for the Works in accordance with the ‘Guideline for the Preparation of Environmental Management Plans’ (DIPNR, 2004) and provide a copy of the EMP to the Officer for the Public Transport Authority’s review and comment.

(c) Environmental aspects to be considered include noise, vibration, atmospheric emissions, soil and water pollution and/or contamination, flora, fauna, drainage and hydrology, visual intrusion, waste disposal, heritage and social impacts.

(d) Where environmental risks are identified that are not covered by existing laws or regulations, or where it is deemed the requirements of law or regulation do not offer sufficient protection to the environment, the Contractor must apply environmental performance standards based on:

(i) an assessment of environmental impacts from its operations;

(ii) relevant international standards and best practice; and

(iii) environmental risk management principles.

* + 1. The Contractor must ensure subcontractors, consultants and suppliers are aware of and comply with this clause.
    2. The Contractor must ensure that any new plant, equipment or processes used when carrying out the Works will be designed or selected to take into account any likely changes in environmental standards which may evolve in the future.
    3. The Contractor must institute environmental management systems and procedures to identify, assess, control and minimise environmental risks arising from its operations, designs and services, which are consistent with the Public Transport Authority’s environmental policy and objectives, and which include:
       1. consultation with the community where activities may adversely impact on their local environment;
       2. development of environmental emergency response plans to respond to potential environmental risks from its operations;
       3. immediate advice to the Public Transport Authority of any environmental incident which occurs on the Public Transport Authority’s property; and
       4. monitoring and auditing of environmental performance to ensure compliance with the Public Transport Authority’s requirements and take corrective action if required.
    4. The Contractor will have access to the Public Transport Authority’s environment policy and objectives upon request.
    5. The Contractor acknowledges that any review or comment by or on behalf of the Public Transport Authority of the EMP does not constitute verification or approval by the Public Transport Authority of the content of the EMP.
    6. The Contractor must:
       1. maintain and comply, and ensure its personnel comply, with the EMS and the EMP at all relevant times until the date of completion of all Works under the Contract or under any Option, as the case maybe; and
       2. comply, and ensure its personnel comply, with all Legislative or Other External Requirements concerning environmental matters which apply or may apply to the Works and/or each Shipyard and with any other environmental requirements issued by the Public Transport Authority, or any Authority, to the Contractor from time to time.
    7. Without limiting clause 20(g), in the performance of the Works, the Contractor:
       1. must not pollute, contaminate or otherwise damage the environment; and
       2. ensure that potential pollutants are prevented from being discharged onto or from a Shipyard.
    8. The Contractor must notify the Public Transport Authority in writing immediately upon becoming aware of:
       1. the occurrence of an accident which may involve potential or actual harm to a person, property (including the Vessel) or the environment (including where pollution, a contaminant or Hazardous Material leaks, spills or escapes onto a Shipyard or any adjacent land, waters or air (**Environmental Incident**)); or
       2. any order, direction, dispute, complaint or claim being made by any person or entity against the Contractor or any of its personnel in relation to the Works,

and the Contractor’s notice must include all details within the knowledge of the Contractor as to the cause and likely consequences of any event listed in clause 20(i)(i) and its methodology for remediating any harm caused by the event and to prevent the same or similar event from reoccurring, including training. The Contractor must, at its cost, immediately contain and/or remediate the effects of any Environmental Incident.

* + - 1. Without limiting or otherwise restricting this clause 20, the Contractor must ensure that the Contractor or operator of each Shipyard:
         1. holds an environment protection licence issued by the State (EPL), which enables the Works to be undertaken at the relevant Shipyard; and
         2. maintains that EPL until the date of completion of all works under the Contract or any Option, as the case may be.
    1. Whenever requested by the Public Transport Authority, the Contractor must promptly provide documentary evidence of its compliance with this clause 20(i)(iii).
    2. Without limiting the previous paragraphs in this clause, the Contractor must comply with all applicable environmental laws, regulations, codes of practice and standards relevant to the Works and Materials.
  1. **IMO Hazardous Materials Inventory**
     1. The Contractor must take full account of the IMO Guidelines on Ship Recycling, Resolution A.962 (23), with amendments in force as of the date of the Contract, by:
        1. taking due account of the Vessel’s ultimate disposal when designing and constructing the Vessel by:
           1. using Materials which can be recycled safely and in an environmentally sound manner; and
           2. minimising the use of Materials known to be potentially hazardous to health and the environment; and
        2. providing the Public Transport Authority with a list of any and all Hazardous Materials utilised in the construction of the Vessel, its equipment and systems. Such list must contain the location and the approximate quantity/volume of each identified Hazardous Material on board the Vessel.

1. Quality Assurance

The Contractor must maintain and carry out quality assurance activities generally in accordance with the standard specified in Schedule 1 to the Annexure, sufficient to ensure that Works are completed and Materials are provided in accordance with the requirements of the Contract.

1. Western Australian Industry Participation Requirements
   1. **The WAIPS Participation Plan**
      1. The Contractor must, in performing its obligations under the Contract, comply with the WAIPS Participation Commitments.
      2. The Contractor acknowledges and agrees that its WAIPS Participation Plan Obligations apply from the date of award of this Contract until all its obligations under the Contract have been achieved.
      3. The Contractor acknowledges and agrees that the WAIPS Participation Plan Obligations include the Contractor ensuring its subcontractors (at any tier) do what is necessary to enable the Contractor to comply with clauses 22.1(a) and 22.1(b).
      4. The WAIPS Participation Plan must not be amended without the prior written approval of the Public Transport Authority.
   2. **WAIPS Participation Plan Reporting**

The Contractor must submit to the Public Transport Authority, no later than 2 months after the end of the Contract, a WAIPS Report for the whole of the Contract.

* 1. Any WAIPS Report submitted by the Contractor must be:
     1. accurate, up to date, comprehensive, sufficiently detailed and in no way misleading or deceptive;
     2. verified and endorsed by a duly authorised officer of the Contractor; and
     3. in the format of the WAIPS Report form which can be found and completed on the WAIPS Portal.
  2. **Verification of the Contractor’s compliance with the WAIPS Participation Plan**

The Contractor must:

* + 1. permit the Public Transport Authority, or its duly authorised representative, from time to time to inspect and verify at the Public Transport Authority’s expense, all records maintained by the Contractor for the purpose of the Contract or relating to compliance with WAIPS Participation Commitments;
    2. permit the Public Transport Authority, or its duly authorised representative, from time to time to undertake a review of the Contractor’s performance of the WAIPS Participation Plan Obligations;
    3. ensure that its employees, agents and subcontractors (at all tiers) give all reasonable assistance to any person authorised by the Public Transport Authority to undertake such review or inspection; and
    4. permit the Public Transport Authority to make inquiries of third parties to verify the Contractor’s compliance with this clause 22.
  1. **Use of Information**

Both the Public Transport Authority and the State may use or disclose the WAIPS Participation Plan, any report provided under clause 22.2 or any information or documentation referred to in clause 22.4 for the legitimate purposes of or relating to government or the business of government.

* 1. **Compliance with WAIPS Participation Plan**

The Contractor acknowledges that failure to comply with the WAIPS Participation Plan Obligations or any other obligations under this clause 22.6, may result in the State (including any agency, department, authority or instrumentality of the State) not awarding a supply contract or supply contracts, to the Contractor in the future.

* 1. **Clause survives**

Clause 22 survives the termination or expiration of the Contract.

* 1. **Industrial Relations**

In carrying out the Works, the Contractor must:

* + 1. assume sole responsibility for and manage all aspects of industrial and workplace relations;
    2. ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Legislative or Other External Requirements, are always observed in full; and
    3. keep the Public Transport Authority fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the Works,

to the extent such matters relate to the Contractor's or its subcontractors' personnel, including employees or contractors.

* 1. **No Claims re Industrial Disputes**
     1. Without limiting or otherwise restricting any other provision of the Contract, the Contractor is not entitled to make, the Public Transport Authority will not be liable upon, and the Contractor releases the Public Transport Authority from, any claim by or on behalf of the Contractor arising out of, or in any way in connection with, any Industrial Dispute.
     2. To the extent permitted by law, the Contractor indemnifies the Public Transport Authority against any Loss suffered or incurred by the Public Transport Authority arising out of or in any way in connection with any Industrial Dispute.

1. Indemnities and Exclusions
   * 1. Subject to clause 23(b), the Contractor must indemnify the Public Transport Authority, the State and their respective employees, agents and officers against any liability, loss or expense incurred in respect of:
        1. loss of, or damage to, or loss of use of any property of the Public Transport Authority; and
        2. any claim by any person against the Public Transport Authority in respect of:
           1. personal injury, death, disease or illness (including mental illness);
           2. loss of, or damage to, or loss of use of, property; or
           3. any act, error or omission,

arising out of or as a consequence of the carrying out of the Contractor’s obligations under the Contract.

* + 1. The Contractor’s liability in clause 23(a) will be reduced proportionally to the extent that any negligent act or omission of the Public Transport Authority or its employees or agents has contributed to the loss, loss of use, damage, injury, death, disease or illness (including mental illness).
    2. Clause 23(a) does not lessen or otherwise affect the Contractor’s or the Public Transport Authority’s other rights and obligations under the Contract or the general law.
    3. The indemnity in clause 23(a) survives the termination or expiration of the Contract.

1. Intellectual Property Warranties and Indemnity
   1. **Warranty**

The Contractor warrants to the Public Transport Authority that:

* + 1. to the extent any Pre-existing IPR is used by it (whether directly or indirectly) in the performance of its obligations under the Contract, it owns, or is licensed by the relevant owner to use and sub-licence, all such Pre-existing IPR;
    2. in performing its obligations under the Contract, including carrying out the Works, the Contractor will not infringe the Intellectual Property Rights of any person; and
    3. the Public Transport Authority’s use (including the use by the Public Transport Authority’s agents, any third parties authorised by the Public Transport Authority or the Public Transport Authority’s sub-licensees) of any design (including the Design Documents and the Final Design Documents), materials, documents, data, specifications, plans, methods of working and any other information (in any format) created, developed or supplied by or on behalf of the Contractor in connection with the Works, the Vessel or the Contract (**Contractor Deliverables**) for any purpose will not infringe the Intellectual Property Rights of any person.
  1. **Ownership**
     1. The Contractor assigns (and warrants that it is capable of so assigning) to the Public Transport Authority all existing and future Intellectual Property Rights subsisting in and to the Vessel, Design Documents, Final Design Documents and any other Contractor Deliverable (including any Contractor Deliverables which have been jointly created or developed by the Public Transport Authority and the Contractor) immediately upon their creation or development, excluding all Pre-existing IPR.
     2. The Contractor must do all things reasonably required, including executing any documents, to give effect to the assignment of the Intellectual Property Rights from the Contractor to the Public Transport Authority, as required by clause 24.2(a), and to ensure the Public Transport Authority has all right, title and interest in those Contractor Deliverables.
  2. **Pre-existing IPR**
     1. Each party will retain its Pre-existing IPR and nothing in the Contract assigns or transfers the Pre-existing IPR of any party to another. No party may assert or bring any claim for ownership of any or all of the other party’s Pre-existing IPR.
     2. To the extent any of the Contractor’s Pre-existing IPR is used (whether directly or indirectly) in the performance of its obligations under the Contract and is necessary for the Public Transport Authority to obtain the full benefit and enjoyment of the Vessel and the Works, the Contractor grants to the Public Transport Authority (or will procure the grant of from any third party owner) a non-exclusive, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights subsisting in the Contractor’s Pre-existing IPR to use that Pre-existing IPR for the purpose of:
        1. procuring any works, activities, goods or services for any further upgrade, refurbishment, modification, alteration, replacement of parts or life extension works in respect of the Vessel;
        2. procuring vessels which are the same or similar to the Vessel; and/or
        3. any person operating, maintaining and repairing the Vessel for the operational life of the Vessel.
  3. **Moral Rights**
     1. The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in any Contractor Deliverables and the Vessel to the extent necessary to ensure that the Public Transport Authority may do or authorise any acts or omissions consistent with the ownership and licence granted by clauses 24.2(a) and 24.3(b), respectively, without infringing any Moral Rights.
  4. **Indemnity**

The Contractor bears the risk of and will indemnify (and keep indemnified) the Public Transport Authority (and anyone receiving a right through it to exercise any Intellectual Property Right assigned, granted or licensed to the Public Transport Authority under the Contract) from and against any loss, claim or other liability arising out of or in connection with any:

* + 1. alleged or actual infringement of the Intellectual Property Rights of any person in or associated with the Contractor Deliverables or the Vessel (including the Completed Vessel); or
    2. breach by the Contractor (including through its personnel) of any of clauses 24.1 to 24.4,

except that the Contractor’s liability to indemnify the Public Transport Authority under this clause 24.5 is reduced proportionally to the extent the Public Transport Authority’s negligent, deliberate, fraudulent or reckless act or omission causes or contributes to the infringement or breach.

* 1. **Intellectual Property licence**

The Public Transport Authority grants to the Contractor a royalty-free licence to use any Pre-existing IPR of the Public Transport Authority for the sole purpose of carrying out its obligations under the Contract.

* 1. **Survival of clause**
     1. Clause 24 survives the termination or expiration of the Contract.

1. Insurances
   * 1. The Contractor must comply with all requirements in relation to the Insurances.
     2. Requirements in respect of Insurances do not limit the Contractor’s other liabilities under the Contract or prohibit the Contractor from insuring for sums or risks greater than those set out in Schedule 3.
     3. The Public Transport Authority makes no representation or warranty that:
        1. any insurance effected by the Public Transport Authority which purports to cover the Contractor, sub-contractors or any other person; or
        2. any of the Insurances,

will be adequate to cover all or any aspects of the risks associated with the Contract.

* + 1. Any event which does or could potentially give rise to a claim under the Insurances must be reported to all relevant insurers strictly in accordance with the terms of such Insurances, and reported also to the Public Transport Authority in accordance with the following procedures:
       1. an event which, but for the intervention of some fortuitous occurrence would have given rise to a claim, is to be treated as if it were an event which could potentially give rise to a claim.
       2. the Contractor must give immediate verbal notice to the Officer followed by detailed written notice to the Public Transport Authority within two days of the event.
       3. the Contractor must comply with all applicable requirements of the relevant Insurance policy in respect of the event and any claim.
       4. the Contractor must provide the Public Transport Authority with further reports in relation to the claim without delay and do such other things as may be reasonably required by the Public Transport Authority from time to time.
    2. If the Contractor fails to carry out any of its obligations under clause 25, the Public Transport Authority may, without limiting its other rights, suspend payment of any money due by the Public Transport Authority to the Contractor.

1. Assignment and sub-contracting
   * 1. The Contractor must not sub-contract the whole of the Works and must not assign the Contract or assign, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit arising under the Contract.
     2. The Contractor must not sub-contract any part of the Works without the prior written consent of the Officer.
     3. If the Contractor sub‑contracts any part of the Works under clause 26(b), the Contractor must ensure that the sub-contract contains an obligation on the part of the sub-contractor to comply with this Contract in connection with the performance of the work under the sub‑contract and not to do or omit anything which results in the Contractor being in breach of this Contract.
     4. The consent of the Officer under clause 26(b) does not relieve the Contractor from any liability or obligation under the Contract.
2. Quality of Materials
   * 1. All Materials for the Works must conform to the Function and Performance Specification and to samples provided (if any) specified in Schedule 1 to the Annexure.
     2. Where no standards are specified in the Function and Performance Specification, Materials must comply with the appropriate and current standard of the Standards Association of Australia or, if there is no such standard, with the appropriate and current standard of the International Standards Organisation.
     3. Materials supplied must be fit for their purpose as stated in the Function and Performance Specification and be fully capable of their intended use.
     4. All Materials must be new, sound, of uniform quality and be free of defects.
3. Specified brands

Where a particular brand of Materials or part number is specified in the Contract, another brand or part number must not be supplied unless approved in writing by the Public Transport Authority.

1. Testing of Materials
   * 1. Materials are subject to such tests as are required by the Contract or as may be reasonably directed by the Officer to establish the conformity of Materials and workmanship with the Contract.
     2. Except as otherwise stated in Schedule 1 to the Annexure, the work of testing and the related cost is the responsibility of the Contractor.
2. Delivery of Materials
   * 1. The Contractor must ensure that Materials are delivered by such date as will ensure that there is no delay to the progress of the Works.
     2. Upon it becoming evident to the Contractor that delivery of Materials is likely to be delayed and will delay the progress of the Works, the Contractor must promptly notify the Public Transport Authority in writing. Notification of delay will not release the Contractor from its obligation to complete the Works in accordance with the Program or from any other obligation under the Contract, unless the Public Transport Authority otherwise agrees in writing. The Contractor is not entitled to any increase in the Contract Price or damages, costs or expenses in connection with delay.
     3. The Contractor may apply for an extension of time in accordance with the provisions of this Contract.
3. Acceptance of Materials
   * 1. The risk of any damage, deterioration, theft or loss of Materials will remain with the Contractor at all times until completion of the Vessel Delivery Milestone except where the damage, deterioration, theft or loss results from a negligent act or omission of the Public Transport Authority or its agents or employees.
     2. Where, prior to completion of the Vessel Delivery Milestone, Materials are found to be Defective or not in accordance with the Contract, the Public Transport Authority may reject any or all of the Materials (“**Rejected Materials**”).
4. Rejection and Removal of Materials
   * 1. The Officer must notify the Contractor within 14 days of delivery of any Rejected Materials and may direct that Rejected Materials be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.
     2. Nothing in clauses 30 to 32 creates an obligation on the Public Transport Authority to identify Materials that do not meet the terms of the Contract or removes the Contractor’s obligation to complete the Works in accordance with the Contract.
5. Title and Risk
   1. **Title**
      1. Title in the Vessel in its then state of construction and any Materials and Spares in the custody of the Contractor vests in the Public Transport Authority at the time payment is made by the Public Transport Authority under the Contract for the Vessel in its then state of construction and any such Materials and Spares.
      2. The Contractor grants the Public Transport Authority a security interest over the Vessels and all Materials and Spares in the ownership, custody or control of the Contractor (**the Collateral**).
      3. The Public Transport Authority will register on the Personal Property Securities Register established under the PPSA, a security interest over the Collateral and the Contractor shall fully co-operate with the Public Transport Authority in achieving such registration and comply with terms of Schedule 4.
      4. The Vessel shall be delivered to the Public Transport Authority free of any mortgage, lien, charge, security interest or other encumbrance.
   2. **Risk**
      1. Until the date of completion of the Vessel Delivery Milestone, as certified by the Public Transport Authority in the relevant Milestone Determination Notice, the Contractor holds those parts of the Works as and when they are paid for by the Public Transport Authority under the Contract at its risk as bailee for the Public Transport Authority, and the Contractor holds at its risk any other parts of the Works under the Contract.
      2. The Contractor must hold all Materials and Spares as and when they are paid for by the Public Transport Authority under the Contract in a manner so that they are readily distinguishable from other equipment and items owned by the Contractor or other persons.
      3. Without limiting any other provision in the Contract, risk in:
         1. the Vessel (and any Materials and Spares) passes to the Public Transport Authority upon the date of completion of the Vessel Delivery Milestone, as certified by the Public Transport Authority in the relevant Milestone Determination Notice; or
         2. the Vessel (and any Materials and Spares) passes to the Public Transport Authority on their respective delivery or collection in accordance with clauses 50.4 and 50.5 (as applicable).
      4. Notwithstanding any other clause in the Contract, the Vessel and any Materials and Spares are held at the Contractor's risk as bailee while in the Contractor's care, custody or control during any Defect Liability Period.
   3. **Reinstatement**

If any loss or damage occurs to the Works (including the Vessel or any Materials or Spares) during the period of the Contractor’s risk, the Contractor must at its cost, rectify such loss or damage, except to the extent caused or contributed to by the excepted risks referred to in clause 33.4.

* 1. **Excepted risks**

The excepted risks (for which the Contractor will not be liable, or required to insure against) are:

* + 1. a breach of the Contract by the Public Transport Authority; and
    2. terrorism (except to the extent that insurance coverage for a terrorist act is available to the Contractor as a consequence of the *Terrorism Insurance Act 2003* (Cth)), war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, military or usurped power, martial law or confiscation by order of any Authority.

1. Civil Liability Act
   * 1. The parties agree that, to the extent permitted by law, the operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities under or arising out of or in connection with the Contract, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
     2. Without limiting or otherwise restricting clause 34(a), the parties agree that the rights, obligations and liabilities of the Contractor (including those relating to proportionate liability) are as specified in the Contract and not otherwise, whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
     3. The Contractor further agrees that:
        1. in each subcontract into which it enters for the carrying out of the Works it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 1F of the *Civil Liability Act 2002 (WA)* in relation to all rights, obligations or liabilities under each subcontract, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or in tort or otherwise; and
        2. it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of any part of the Works, provisions that to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 1F of the *Civil Liability Act 2002 (WA)* in relation to all rights, obligations or liabilities under such further contract, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, in tort or otherwise.

1. Security
   1. **Bank Guarantee (Unconditional Undertaking)**
      1. The Contractor shall provide security in the form of an irrevocable and unconditional undertaking in the form of a bank guarantee issued by a bank licensed under the *Banking Act 1959* (Cth).
      2. A new Unconditional Undertaking must be provided by the Contractor in the event that the Public Transport Authority exercises an Option.
      3. The Public Transport Authority will be entitled to withhold payment of moneys due to the Contractor until the Contractor complies with its obligation to lodge security under this subclause, but only where the withheld amount and the reasons for withholding payment have been indicated on a payment certificate issued by the Public Transport Authority.
      4. The Unconditional Undertaking must be:
         1. Expressed to be in favour of the Public Transport Authority;
         2. For the amount(s) specified in Schedule 2 or as specified by the Public Transport Authority in the event that it exercises an Option;
         3. Without an expiry date;
         4. On terms and in the form set out in Schedule 5.
      5. The Public Transport Authority may require the Contractor to increase the amount secured by the unconditional undertaking at any stage in the event that the costs to be incurred in relation to any Milestone under the Contract increase by more than 5% of the original value of the Unconditional Undertaking and the Contractor must provide the increased Unconditional Undertaking accordingly. All the other terms of this clause 33 shall continue in full force and effect.
      6. The Unconditional Undertaking for the required amount is to be provided as a pre-condition to the payment by the Public Transport Authority of any Milestone Payment.
      7. The Public Transport Authority is under no obligation to make any Milestone Payment unless it is in receipt of the corresponding Unconditional Undertaking pursuant to this clause. It is acknowledged and agreed that more than one event may increase the amount and consequently incremental increases may need to be implemented at different times.
   2. **Return of Unconditional Undertaking**

Subject to the Public Transport Authority exercising its rights under the Contract (including under clause 14.4), and provided the Contractor has rectified all Defects to the reasonable satisfaction of the Public Transport Authority, within ten (10) Business Days after the later of the completion of all Works under the Contract or under any Options, as the case may be, and the satisfaction by the Contractor of all of its obligations under the Contract, including the rectification of all Defects to the reasonable satisfaction of the Public Transport Authority, the Public Transport Authority will return the balance of the Unconditional Undertaking then held to the Contractor.

* 1. **Provision of Guarantee**
     1. Without limiting any other right or remedy of the Public Transport Authority, if stated as required in Item 13 of the Annexure, within three (3) Business Days of the date of the Contract, the Contractor must provide the Public Transport Authority with a Guarantee duly executed by the Guarantor in respect of the Contractor’s obligations under the Contract, in the form required by Schedule 10.
     2. If the Public Transport Authority becomes aware that the Guarantor who has given the executed Guarantee is insolvent or is financially unable to proceed with the Guarantee, or an Insolvency Event occurs in relation to the Guarantor, then the Public Transport Authority may, in its absolute discretion, request the Contractor to provide a replacement Guarantee to the Public Transport Authority from and duly executed by a person or entity approved by the Public Transport Authority (acting reasonably), and the Contractor must do so within five (5) Business Days of the Public Transport Authority’s request.
     3. A Guarantee executed and provided to the Public Transport Authority under clause 35.3 must:
        1. comply with all applicable Legislative or Other External Requirements; and
        2. remain in force until the later of the completion of all Works required under the Contract or any Option, as the case may be and the satisfaction by the Contractor of all of its obligations under the Contract, including the rectification of all Defects to the reasonable satisfaction of the Public Transport Authority.
  2. **Recourse by the Public Transport Authority**

The Public Transport Authority may have recourse to the security referred to in subclause 35.1(a) and 35.3 if:

* + 1. the Contractor, in the reasonable opinion of the Public Transport Authority formed at the relevant time, is in default under an obligation of the Contractor required under the Contract; and
    2. Five (5) Business Days have passed since the Public Transport Authority has given the Contractor written notice of its intention to have recourse.
  1. **No injunction**

The Contractor shall not and warrants that it will not take any steps to:

* + 1. enjoin or otherwise restrain the issuer of the security from paying the Public Transport Authority under the security or otherwise dealing with the security; or
    2. restrain, hinder or in any way obstruct the Public Transport Authority from calling on the security.
  1. **Release**
     1. The Public Transport Authority's entitlement to security in relation to each Vessel shall cease 14 days after the end of the Defects Liability Period in relation to such Vessel.
     2. The Public Transport Authority's entitlement to security shall cease 14 days after incorporation into the Works of the plant and materials for which the security was provided.
     3. Upon the Public Transport Authority's entitlement to security ceasing, the Public Transport Authority shall release and return forthwith the security to the Contractor.

1. Rise and Fall in Costs

Unless otherwise stated in the Contract, the Contract Price is not subject to adjustment for rise and fall in costs.

1. Variations
   1. **Directing variations**
      1. The Contractor must not vary the Works except as directed or agreed in writing by the Public Transport Authority pursuant to this clause 37.
      2. The Public Transport Authority may, before the Contractor achieves Vessel Completion, direct the Contractor to vary the Works by any one or more of the following, which the Parties agree are of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:
         1. increase, decrease or omit any part;
         2. change the character or quality;
         3. change the levels, lines, positions or dimensions;
         4. scope, timing, form, quality or quantity of Materials;
         5. carry out additional work associated with or relating to fulfilment of the Function and Performance Specification; or
         6. demolish or remove material or work no longer required by the Public Transport Authority,

and the Contractor must comply with that direction.

* + 1. No direction by the Public Transport Authority will constitute a direction under clause 37.1 unless it is in writing and expressly states that it is a direction under clause 37.1.
    2. In respect of any variation directed by the Public Transport Authority to omit work, the omitted work may be done by the Public Transport Authority or by others engaged by the Public Transport Authority (in the Public Transport Authority’s absolute discretion), including at the same time as the Contractor is carrying out the Works.
    3. The Contractor’s obligations under the Contract, and the warranties given in the Contract by the Contractor, will remain unaffected notwithstanding any variation to the Works directed by the Public Transport Authority pursuant to clause 37.
  1. **Pricing**
     1. The Officer must, as soon as possible, price each variation which the Contractor is required to carry out under clause 37.1 using the following parameters and in the following order of precedence:
        1. prior agreement (if any);
        2. rates or prices set out in Schedule 2 (to the extent applicable); and
        3. reasonable rates or prices determined by the Public Transport Authority (acting reasonably, and which will include a reasonable amount for profit and overheads),

and any deductions will include a reasonable percentage for profit, but not overheads. That price will be added to or deducted from the Contract Price.

* + 1. If the Contractor disputes the price determined by the Public Transport Authority, the Contract must perform the variation without delay and may refer the pricing dispute for resolution in accordance with clause 40.
  1. **Proposed variations**
     1. The Public Transport Authority may also, in its absolute discretion, give the Contractor written notice of a proposed variation to the Works that does not fall within clause 37.1.
     2. The Contractor must, within five (5) Business Days (or as otherwise agreed by the Public Transport Authority) after receiving notice of a proposed variation from the Public Transport Authority under clause 37.3(a), notify the Public Transport Authority whether the proposed variation can be effected and if the Contractor determines that the proposed variation:
        1. cannot be effected, or it is not reasonably practicable to so effect the variation, the Contractor must provide detailed reasons for that determination; or
        2. can be effected, the Contractor must attach to its notice its:
           1. reasonable assessment of the effect such variation will have on:

1. the Program (including relevant Milestone Target Dates);

2. the quality and performance of the Works (including operational and safety impacts on the Vessel (including the Completed Vessel)); and

3. the whole of life cost of the Vessel (including the Completed Vessel); and

* + - * 1. estimate of the reasonable price (including all warranties and time-related costs, if any) of implementing the proposed variation such price estimate to be calculated in accordance with the parameters at clause 37.2(a)

(**Variation Proposal**).

* + 1. The Public Transport Authority may direct the Contractor to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost, and the Contractor must respond to that direction in writing within five (5) Business Days (or as otherwise agreed by the Public Transport Authority) after the date the Public Transport Authority gives the direction.
    2. The Public Transport Authority is not obliged to accept any Variation Proposal or quotation provided by the Contractor under clause 37.3(c).
    3. If the Public Transport Authority disputes the Variation Proposal it may direct the Contractor to complete the proposed variation of the Works and refer the dispute for resolution in accordance with clause 40. In such circumstances the Contractor shall complete the proposed variation without delay.
  1. **Variations proposed by the Contractor**
     1. The Contractor may, at any time, submit a written request to the Public Transport Authority to vary the Works, which must, as a minimum, include:
        1. details of the variation proposed; and
        2. the information required by clause 37.3(b)(ii)

(**Contractor’s Variation Request**).

* + 1. If the Contractor submits a Contractor’s Variation Request to the Public Transport Authority, the Public Transport Authority may, without being obliged to do so, consider that request and accept or reject that request in its absolute discretion. If the Public Transport Authority accepts the Contractor’s Variation Request it will give a written direction to that effect under this clause 37.4(b) and that direction may impose on the Contractor such reasonable conditions as the Public Transport Authority deems fit (and the Contractor must comply with those conditions). Unless the Public Transport Authority’s written direction under this clause 37.4(b) provides otherwise, the Contractor will not be entitled to extra time nor extra money for any variation directed by the Public Transport Authority under this clause 37.4(b).
    2. The Contractor must not request the Public Transport Authority to direct a variation which adversely impacts the quality, safety, operation and/or whole of life cost of the Vessel (including the Completed Vessel).
    3. The Public Transport Authority is not required to exercise its discretion under clause 37.4(b) for the benefit of the Contractor.

1. Default and Termination
   1. If the Officer certifies to the Contractor that the Contractor has:
      1. neglected or omitted to execute any instruction of the Officer;
      2. intimated that the Contractor is unwilling or unable to complete the Works;
      3. been the subject of an Insolvency Event,
      4. failed to carry out any of its obligations under the Contract (other than a substantial breach under clause 39(b))and failed to rectify the default within three Business Days of becoming aware of the default (by notice from the Public Transport Authority or otherwise) or such further time as the Officer may allow having regard to the nature of the breach;
      5. has an execution process levied against it;
      6. failed to notify the Public Transport Authority of a conflict of interest or risk of conflict of interest as required by clause 5.4(e); or
      7. becomes a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA),

the Public Transport Authority may, at any time and without prejudice to any other rights or remedies available to it under the Contract or otherwise, by notice in writing to the Contractor terminate the Contract.

* 1. **Public Transport Authority May Rectify**
     1. If the Contractor fails to pay any money, or do or effect anything, for five Business Days (or such earlier time as the Officer directs having regard to the nature of the breach) beyond the date by which the Contractor is obliged or becomes obligated to pay, or do or effect that thing, the Public Transport Authority may pay the money, or do or effect the thing itself, at the Contractor’s cost.
     2. If a default by the Contractor is rectified it remains a default for the purpose of clause 38.1.
  2. **Public Transport Authority’s Rights on Termination**

If the Contractor is in default of its obligations under the Contract or the Public Transport Authority terminates the Contract under clause 38.1, in each case the Public Transport Authority may exercise any of the rights given to it under clauses 39.3, 39.4 and 39.5.

* 1. **Contractor’s Liability for Costs and Losses**
     1. Any cost, expense or loss reasonably incurred by the Public Transport Authority, or claimed from the Public Transport Authority, or money payable to the Public Transport Authority in each case resulting directly or indirectly from a failure by the Contractor to comply with its obligations under the Contract is a debt due and payable by the Contractor to the Public Transport Authority on demand by the Public Transport Authority.
     2. Clause (a) continues to apply after termination or expiration of the Contract.
  2. **Records**

On the termination of the Contract, the Contractor must deliver to the Public Transport Authority all records of the Contractor relating to the Works, the Materials and the Contract reasonably required by the Officer.

* 1. **Partial Termination**

If the Public Transport Authority is entitled to terminate the Contract under clause 38.1, it may exercise its termination rights as regards part of the Works only, leaving the Contractor to perform the remaining part of the Works.

* 1. **Termination for Convenience of Public Transport Authority** 
     1. The Public Transport Authority may terminate the Contract by written notice to the Contractor for any reason, including solely for the convenience of the Public Transport Authority.
     2. If the Contract is terminated under clause (a), the Public Transport Authority must pay the Contractor:
        1. for work performed prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor had made a progress claim within 14 days of the date of termination; and
        2. the cost of Materials reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if the Materials become the property of the Public Transport Authority upon payment,

but the Public Transport Authority will not be liable to the Contractor for any other costs, losses, expenses or damages.

* 1. **Continuing Obligations**
     1. Any provision of the Contract which is expressed to survive the termination or expiration of the Contract or which, although not expressed, needs to survive the termination or expiration of the Contract in order to protect the presumed intentions of the parties as evidenced by the Contract, continues until the first to occur of:
        1. full compliance with the relevant obligation; or
        2. six years from the date of termination or expiration of the Contract.

(b) Included in the provisions to which clause (a) applies are:

(i) a clause requiring a payment by the Public Transport Authority in respect of any completed Works;

(ii) any indemnity related provision;

(iii) any applicable unperformed obligation under clause 25 (Insurance);

(iv) clause 38 (Default and Termination);

(v) clause 40 (Dispute Resolution); and

(vi) any reasonable requirement of a party under clause 5.4(g) (Further Assurances).

1. Substantial Breach
   * 1. If the Contractor commits a substantial breach of the Contract, the Public Transport Authority may give the Contractor a written notice of that breach.
     2. Substantial breaches of the Contract by the Contractor include, but are not limited to:
        1. the Contractor having the occurrence of a Probity Event, or failing to:
           1. provide the Unconditional Undertaking required by clause 35.1;
           2. provide any duly executed Guarantee (or any replacement Guarantee) required by clause 35.3
           3. effect, maintain or provide evidence of the insurances required by the Contract;
           4. comply with a direction pursuant to clauses 49.2 or 49(a);
           5. comply with clause 9.3;
           6. achieve completion of a Core Milestone by its applicable Milestone Target Date (including failing to achieve Vessel Completion by the Date for Vessel Completion or completion of the Vessel Delivery Milestone by the Date of Delivery);
           7. complete a Milestone by a Milestone Target Date on more than one occasion (regardless of whether the Contractor has remedied any such breaches in accordance with the Contract);
           8. ensure access to each Shipyard or Vessel;
           9. use Materials or standards of work for the Works required by the Contract (regardless of the reason);
           10. provide the evidence required by clause 14.1;
           11. comply with its obligations in relation to Modern Slavery; or
           12. proceed with the Works with due expedition and without delay;
        2. the Vessel or any Material being removed from a Shipyard (other than for the purpose of testing or certification) without the Public Transport Authority's written consent;
        3. where any person (other than the Public Transport Authority) claims title to or an interest in the Vessel or any Material without the Public Transport Authority's written consent;
        4. a substantial departure by the Contractor from the Program without reasonable cause or the Public Transport Authority's approval;
        5. a breach of clause 26;
        6. the Liquidated Damages cap for any Vessel being exceeded;
        7. where a Change in Control occurs in relation to the Contractor without the written approval of the Public Transport Authority; or
        8. the Contractor knowingly providing documentary evidence required under the Contract containing an untrue statement.
   1. **Public Transport Authority’s notice of substantial breach**

A notice given by the Public Transport Authority under clause 39 must state the alleged substantial breach, and (unless the substantial breach is that referred to in clause 39(b)(i)(G) or 39(b)(vi)):

* + 1. that the Public Transport Authority requires the Contractor to remedy the substantial breach; and
    2. the date and time by which the Contractor must remedy the substantial breach (which must not be less than five (5) Business Days after the date the notice is given to the Contractor).
  1. **Public Transport Authority’s rights**

If the Contractor fails to remedy a substantial breach by the date and time stated in a notice given by the Public Transport Authority, or if the substantial breach is that referred to in clause 39 (b)(i)(G) or 39 (b)(vi)), the Public Transport Authority may cease payments to the Contractor under the Contract and, in addition to any liquidated damages to which the Public Transport Authority is entitled, by a further written notice to the Contractor, do any one or more of the following (in its absolute discretion):

* + 1. take out of the Contractor’s hands the whole or part of the Works remaining to be completed in accordance with clause 39.4;
    2. require the Contractor to deliver the Works (including the Vessel in its then state and any Materials and Spares) in accordance with clause 39.5; or
    3. terminate the Contract with immediate effect.
  1. **Take out**
     1. Where clause 39.3(a) applies, the Public Transport Authority may at its discretion and election take out of the Contractor’s hands the whole or part of the Works remaining to be completed and, without payment of compensation to the Contractor, may do any one or more of the following:
        1. use the Contractor’s plant and equipment, Materials and other things intended for the Works to complete the Works taken out;
        2. direct the Contractor, at the Contractor’s cost, to deliver the Vessel, the Contractor’s plant and equipment, Materials, Spares and other things on or in the vicinity of a Shipyard to a location nominated by the Public Transport Authority (and where the Contractor fails to comply, then the Public Transport Authority may do this and all costs incurred by the Public Transport Authority in doing this will be a debt due from and immediately payable by the Contractor to the Public Transport Authority);
        3. contract with such of the Contractor's consultants and subcontractors for the purpose of completing the Works taken out;
        4. require the Contractor to novate to the Public Transport Authority any contract in connection with the Works taken out; and
        5. take possession of, and use, such of the Contractor deliverables in their then state, including Design Documents or Final Design Documents, as are reasonably required by the Public Transport Authority to facilitate completion of the Works taken out.
     2. If the Public Transport Authority takes possession of Contractor’s plant and equipment, or other things, or has the Contractor’s plant and equipment, and other things delivered to a location nominated by it under clause 39.4(a)(ii), the Public Transport Authority must maintain the Contractor’s plant and equipment, and those other things and, subject to clause 39.6, on completion of the work taken out, the Public Transport Authority must return the Contractor’s plant and equipment, and any other thing not incorporated into the Works to the Contractor.
     3. The Contractor irrevocably appoints the Public Transport Authority to be the Contractor’s attorney with authority to execute such documents as are necessary to give effect to a novation under clause 39.4(a)(iv) and to bind the Contractor accordingly. The Public Transport Authority may only exercise this power of attorney if the Contractor does not promptly, following a request to do so, novate any contract as required under clause 39.4(a)(iv).
     4. The Public Transport Authority must keep records of the cost of completing the work taken out under clause 39.4.
  2. **Delivery of the Works**
     1. Where clause 39.3(b) applies, the Public Transport Authority may at its discretion and election require the Contractor to deliver the Works (including the Vessel in its then state and any Materials and Spares) to the Public Transport Authority, within seven (7) days of the date of the notice under clause 39.3(b), by any one or more of the following means:
        1. making the Vessel watertight;
        2. having the Vessel afloat on a rising tide at the location nominated by the Public Transport Authority;
        3. placing the Vessel and any Materials and Spares on suitable road transport, as specified by the Public Transport Authority, and delivering those items to the location nominated by the Public Transport Authority; or
        4. placing the Vessel and any Materials and Spares in a suitable shipping container ready for transport by sea freight (as specified by the Public Transport Authority) to the location nominated by the Public Transport Authority and providing easy access for the Public Transport Authority or its Representative to remove those items.
     2. If the Contractor does not comply with a notice under clause 39.3(b):
        1. the Contractor must allow the Public Transport Authority and its representatives access to the relevant Shipyard to remove the Vessel and any Materials and Spares from the Shipyard on a date and at a time nominated by the Public Transport Authority; and
        2. any costs and expenses incurred by the Public Transport Authority in connection with clause 39.5(b)(i) will be taken into consideration under clause 39.6.
  3. **Adjustment on completion of work taken out**
     1. When work taken out of the Contractor’s hands pursuant to clause 50.4 has been completed by the Public Transport Authority or the Public Transport Authority has exercised its rights under clause 39.5(b), the Public Transport Authority (or the Public Transport Authority's Representative) will assess the difference between:
        1. the total of all costs and expenses incurred by the Public Transport Authority in completing the relevant Works or in connection with clause 39.5(b) (including all sums which have been or are to be paid to the Contractor); and
        2. the Contract Price, and

where the total of all costs and expenses under clause 39.6(a)(i) exceeds the Contract Price, the amount of the excess will be a debt due from and immediately payable by the Contractor to the Public Transport Authority. The Public Transport Authority may retain, and will not be obliged to pay the Contractor, any difference that is less than the Contract Price.

* + 1. If the Contractor is indebted to the Public Transport Authority under clause 39.6, the Public Transport Authority may retain the Contractor’s plant and equipment used in the construction of the Vessel(s) or other things taken under clause 39.4 until the debt is satisfied.
    2. If, following the Public Transport Authority giving at least one months’ notice to the Contractor of the debt owing to the Public Transport Authority under clause 39.6(a), the Contractor fails to pay the debt, the Public Transport Authority may, without limiting or otherwise restricting clause 14.4, sell the Contractor’s plant and equipment and other things taken under clause 39..4 and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess sale proceeds will be paid to the Contractor.
  1. **Public Transport Authority’s default**
     1. If the Public Transport Authority commits a substantial breach of the Contract, the Contractor may give the Public Transport Authority (with a copy to the Officer) a written notice to show cause.
     2. A substantial breach of the Contract by the Public Transport Authority is the Public Transport Authority failing to make a payment due and payable to the Contractor pursuant to the Contract for a period in excess of 20 Business Days after it was due and payable by the Public Transport Authority, provided such payment has been demanded in writing by the Contractor and not disputed by the Public Transport Authority.
  2. **Contractor's notice to show cause**

A notice given by the Contractor under clause 39.7(a) must state:

* + 1. that it is a notice under clause 39.7(a);
    2. the alleged substantial breach;
    3. that the Public Transport Authority is required to show cause in writing why the Contractor should not exercise a right given to it in clause 39.9; and
    4. the date and time by which the Public Transport Authority must show cause (which must not be less than five (5) Business Days after the date the notice is given to the Public Transport Authority).
  1. **Contractor’s rights**
     1. If the Public Transport Authority fails to show reasonable cause (or remedy the breach) by the date and time stated in the notice given by the Contractor pursuant to clauses 39.7 and 39.8, the Contractor may, by written notice to the Public Transport Authority (with a copy to the Public Transport Authority's Representative), suspend the whole or any part of the Works. The Contractor must remove the suspension if, and as soon as, the Public Transport Authority remedies the breach the subject of the notice.
     2. Additional costs incurred by the Contractor by reason of the suspension under clause 39.9(a) will be assessed by the Officer, who, subject to clause 14.4 must certify them as moneys due and payable by the Public Transport Authority to the Contractor.
     3. The Contractor may, by written notice to the Public Transport Authority, terminate the Contract if, within 20 Business Days of the date of suspension under clause 39.9(a), the Public Transport Authority fails to remedy the breach the subject of the notice given by the Contractor pursuant to clauses 39.7 and 39.8
  2. **Rights on termination**
     1. If the Contract is terminated pursuant to clause 39.3(c) or 39.9(c), the remedies, rights and liabilities of the Public Transport Authority or the Contractor will be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.
     2. Further, if the Contract is terminated pursuant to clause 39.3(c) the Contractor must immediately cease performing the Works and the Public Transport Authority is entitled, at its election (in its absolute discretion) and without limiting any of its rights or remedies at law or in equity, to:
        1. require the Contractor to refund all sums paid by the Public Transport Authority to the Contractor under the Contract, and the Contractor must return to the Public Transport Authority any items supplied by the Public Transport Authority Supplied Items in its possession or, if those items cannot be returned, the Contractor must pay to the Public Transport Authority an amount equal to the Public Transport Authority’s cost for the items supplied by the Public Transport Authority; or
        2. enforce one or more of the following actions (at its election):
           1. take possession of and use, or require the Contractor to remove from each Shipyard, such of the Contractor’s plant and equipment, Materials and other things on or in the vicinity of the relevant Shipyard as were used by the Contractor;
           2. require the Contractor to novate to the Public Transport Authority or its nominee, any or all subcontracts between the Contractor and its subcontractors or consultants as required by the Public Transport Authority;
           3. require the Contractor to deliver to the Public Transport Authority (and if the Contractor fails to do so, the Public Transport Authority may take possession of) the Works (including the Vessel in its then state and any Materials and Spares) by any one or more of the means referred to in clause 39.5(a)); and
           4. require the Contractor to return to the Public Transport Authority all items supplied by the Public Transport Authority in its possession or, if those items cannot be returned, the Contractor must pay to the Public Transport Authority an amount equal to the Public Transport Authority’s cost for those items.

and in either case, the Public Transport Authority will not be obliged to make any further payments to the Contractor under the Contract.

* + 1. Where clause 39.10(b)(ii) applies:
       1. the Contractor irrevocably appoints the Public Transport Authority to be the Contractor’s attorney with authority to execute such documents as are necessary to give effect to a novation required under clause 39.10(b)(ii)(B) and to bind the Contractor accordingly. The Public Transport Authority may only exercise this power of attorney if the Contractor does not promptly, following a request to do so, novate any contract in connection with the Works as required under clause 39.10(b)(ii)(B); and
       2. the Contractor must immediately hand over to the Public Transport Authority any documents provided by or on behalf of the Public Transport Authority or the Officer to the Contractor, together with all documents connected with the Works prepared by, for or on behalf of the Contractor up to the date of termination (whether complete or not), including all Contractor Deliverables.

1. Notification of Claims
   * 1. It is a condition precedent to the Public Transport Authority being liable to meet any claim under the Contract that the claim together with supporting particulars is in writing and given to the Officer not later than 14 days after the date of the occurrence of the events or circumstances on which the claim is based.
     2. Clause 39(a) does not apply to routine claims under the Contract for which payment is to be made under clause 13.
2. Dispute Resolution
   1. **Notice of Dispute**

If any dispute or difference arises between the Public Transport Authority and the Contractor as to any matter arising out of or in connection with the Contract (**Dispute**), and one party requires it to be resolved, that party must serve on the other a written notice stating the nature of the Dispute.

* 1. **Negotiations**
     1. A senior executive or other designated officer of each of the parties must meet within five (5) Business Days after the date when one party serves on the other a written notice under clause 40.1 and, in good faith, attempt to resolve the Dispute.
     2. If within ten (10) Business Days of the first meeting under clause 40.2(a) the Dispute is not resolved, an Executive Director or General Manager of the Public Transport Authority (or delegate) and the Contractor must meet within five (5) Business Days of the expiry of the ten (10) Business Days and, in good faith, attempt to resolve the Dispute.
  2. **Mediation**
     1. If the Dispute is not resolved within twenty (20) Business Days of the first meeting under clause 40.2(a) and the parties have not agreed on a process for resolving the Dispute through means other than litigation, the parties must refer the Dispute to mediation by an accredited mediator agreed by the parties, or failing agreement on the mediator within a further five (5) Business Days, an accredited mediator will be appointed and upon terms and subject to the rules for the conduct of the mediation determined by the Chair of the Resolution Institute (Western Australian Chapter).
     2. The reference to mediation will commence when either party gives notice to the other requiring resolution of the Dispute under clause 40.3(a).
     3. The parties agree to participate in the mediation in good faith. Any information or document obtained through or as part of the reference to mediation is confidential and may not be used for any purpose other than the settlement of the Dispute under clause 40.3(a).
     4. The parties will share equally the mediator’s fees for any mediation.
     5. If the Dispute is not resolved within fifteen (15) Business Days of the commencement of the reference to mediation, either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.
  3. **Continuing performance**
     1. Each party must continue to perform the Contract even though a Dispute exists or proceedings have been commenced under clause 40.3(e).
     2. This clause survives termination of the Contract.

1. Force Majeure Events
   1. **Affected party not liable**

Subject to this clause 41, a party adversely affected by a Force Majeure Event (**'Affected Party'**) shall not be liable to the other party for any inability to comply with its obligations under the Contract (except for payment of money or provision of security) to the extent such inability results from the Force Majeure Event and the Affected Party is unable to prevent or overcome the impact of such Force Majeure Event by the taking of all reasonable steps and the exercise of best industry practice.

* 1. **Notice and Mitigation**
     1. If a Force Majeure Event occurs, the Affected Party shall notify the other party immediately upon becoming aware, that a Force Majeure Event has occurred. The notice shall also include:
        1. details of the circumstances giving rise to the Force Majeure Event;
        2. the anticipated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under the Contract; and
        3. the steps that the Affected Party intends to take to overcome the Force Majeure Event or to reduce its effects.
     2. Upon cessation of the Force Majeure Event, the Affected Party must recommence the performance of its obligations under the Contract.
  2. **Consequences of Force Majeure Event**
     1. The Contractor may be entitled to an extension of time for a Force Majeure Event.
     2. The Affected Party shall not be entitled to any additional payment on account of the Force Majeure Event or for any delay or disruption affecting the Works.
  3. **Right to Terminate**
     1. If the performance of all or a substantial part of an Affected Party's non-financial obligations under the Contract is or will be prevented or delayed by a Force Majeure Event for a period in excess of 30 consecutive days or 60 days in aggregate, either party may terminate this Contract by written notice to the other party (**'Termination for Force Majeure Notice'**).
     2. The Contract shall terminate at the date and time the Termination for Force Majeure Notice is given to the other party and clause 41 shall apply as if termination was effected pursuant to that clause 38.

1. General
   * 1. An obligation contained in the Contract is an obligation of the Contractor unless expressed to be an obligation of the Public Transport Authority or the Officer.
     2. The Contractor remains fully responsible for the performance of its obligations irrespective of any approval, inspection or acceptance by or on behalf of the Public Transport Authority.
     3. Any notice or document to be given to or served on the Contractor under the Contract must be in writing and must be either handed to the Contractor, or left at, or sent by prepaid post to, the address stated in the Contract and will be regarded as given or served at the time it is handed to the Contractor, or on the date it is left at the address (provided that if that date is not a Business Day, it will be regarded as served on the next Business Day) or two Business Days after the date of posting.
     4. The Contract is governed by the laws of the State and, with respect to any proceeding, claim, action or demand under or arising out of the Contract, the parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in that state.
     5. Nothing in the Contract constitutes the relationship of partnership or employer and employee between the parties.
     6. The Contractor acknowledges that no warranty has been made by or on behalf of the Public Transport Authority in respect of any matter affecting the Works except any express warranty contained in the Contract.
2. Investigation Powers
   * 1. Without limiting any other obligation of the Contractor under this Contract to make records available, the Contractor must, upon receiving five (5) Business Days’ notice from the Public Transport Authority, make available, for audit or inspection by any person nominated by the Public Transport Authority, any records which the Contractor from time to time, holds or maintains in connection with the provision of the Works under the Contract.
     2. The Contractor must, within the period of time specified in a notice given by the Public Transport Authority under this clause (which period may not be less than five (5) Business Days), make available, for inquiry or interview by the Public Transport Authority, its employees, subcontractors or subcontractors’ employees, in relation to complaints of, or suspected alleged misconduct.
     3. The Public Transport Authority must give the Contractor five (5) Business Days’ prior notice of any meeting between the Public Transport Authority in relation to an inquiry or interview pursuant to this clause.
     4. The Contractor has the right to be present, or have a representative present, at any meeting between the Public Transport Authority and the Contractor’s employees, subcontractors or subcontractors’ employees in relation to an inquiry or interview pursuant to this clause.
     5. The Contractor must take all reasonable steps to ensure that any employee of the Contractor, or the Contractor’s subcontractors and subcontractors’ employees cooperate with and provide to the Public Transport Authority, all information that the Public Transport Authority may require in respect to the inquiry or interview.
     6. At the conclusion of an investigation the Public Transport Authority will provide to the Contractor written notice of the outcome of such an investigation, including any recommendations made by the Public Transport Authority.
3. Contract Documents
   1. **Confidentiality**
      1. Subject to clause 44.1(b), the Contractor must:
         1. keep confidential the terms of this Contract and any information relating to the Contract and the Works including the discussions and negotiations leading to this Contract; and
         2. ensure that each of its officers, employees, subcontractors and consultants complies with the terms of clause 44.1(a)(i).
      2. The Contractor is not obliged to keep confidential any information:
         1. which is otherwise in the public domain through no default of the Contractor; or
         2. the disclosure of which is

(A) required by law;

(B) given with the prior written consent of the Public Transport Authority; or

(C) given to a court in the course of proceedings to which the Contractor is a party.

* + 1. this subclause does not prohibit disclosure of any part of this Contract or information in respect of this Contract to any party’s financier, legal or professional adviser if that adviser agrees to keep this Contractand all information in respect of this Contract confidential.
    2. this subclause remains in force after all other obligations under this Contract have expired.
  1. **Media and Advertising**
     1. the Contractor must not disclose any information concerning the Contract for distribution through any communications media without the Officer’s prior approval. The Contractor must refer to the Officer any inquiries from any media concerning the Contract.
     2. the Contractor must not allow any advertisement to be exhibited at the Shipyard without the Officer’s prior approval.
  2. **Assistance by Contractor** 
     1. the Contractor must provide all reasonable assistance to the Public Transport Authority and its agents in seeking to meet its legal and public obligations as related to the Contract.
     2. the Contractor must provide all reasonable advice and documentation to enable the Public Transport Authority to respond to any inquiry by an Authority in any way related to the Contract.
     3. the Contractor must, where required attend hearings or meetings to enable matters arising under the Contract or in connection with the Contract to be heard and settled.
  3. **Disclosure of Offer** 
     1. the Contractor agrees and acknowledges that its offer to the Public Transport Authority which led to the formation of the Contract is subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Public Transport Authority or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
     2. by submitting an offer, the Contractor releases the Public Transport Authority and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its offer under this clause by the Public Transport Authority or the State.
     3. the Contractor agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act* 2006 and the *Auditor General’s Act* 2006 are not affected in any way by the Request.
     4. subject to this clause and to the provisions of the *Financial Management Act* 2006 and the *Auditor General’s Act* 2006, the Public Transport Authority will not make public any part of the offer that the Contractor expressly and reasonably nominates in its offer as confidential. However, the Public Transport Authority may require the Contractor to withdraw any claim to confidentiality in respect of any part of the offer as a condition of Award of the Contract.

1. Modern Slavery
   * 1. The Contractor represents, warrants and undertakes that, as at the date of commencement of the Contract, neither the Contractor, nor any entity that it owns or controls or, to the best of its knowledge, any of its personnel, has been convicted of a Modern Slavery offence under the Modern Slavery Legislative or Other External Requirements.
     2. The Contractor must:
        1. comply with Modern Slavery laws; and
        2. not do anything that would constitute Modern Slavery or put the Public Transport Authority in breach of the Modern Slavery laws (applicable to State government agencies).
     3. Before any subcontractor or supplier is engaged by the Contractor in the operations and supply chains used in the performance of the Works, the Contractor must carry out reasonable due diligence on the subcontractor’s historical compliance, and ability to comply, with the Modern Slavery laws.
     4. The Contractor must implement and maintain at all times while carrying out any Works under this Contract or any Option appropriate procedures and processes to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the performance of the Works.
     5. The Contractor must notify the Public Transport Authority in writing as soon as possible after it becomes aware of any actual or potential breach of this clause. The notice must set out full details of the actual or potential breach.
     6. The Contractor must provide the Public Transport Authority with all information and assistance reasonably requested by the Public Transport Authority in connection with:

(i) the Contractor’s compliance with clauses (b), (c), (d) and (e); and

(ii) any reporting obligations of the Public Transport Authority under the Modern Slavery laws (or associated regulatory requirements of the Commonwealth of Australia or the State) in relation to the performance of the Works.

1. Public Transport Authority Data and Cyber Security
   1. The Contractor must:
      1. comply with all Public Transport Authority data security requirements in respect of access to, storage of and use of Public Transport Authority Data and the Public Transport Authority’s IT Environment as specified in the Contract or as directed by the Public Transport Authority, in addition to any statutory obligation relevant to data security;
      2. prohibit and prevent any Contractor’s personnel who:
         1. do not have the appropriate level of security clearance; or
         2. do not strictly require access to perform the Contract,

from gaining access to Public Transport Authority Data and the Public Transport Authority’s IT Environment;

* + 1. without limiting clause 46.1(b), undertake all reasonable steps that a reasonable and prudent entity (of the size and nature of the Contractor) would undertake to prevent any unauthorised person from gaining access to Public Transport Authority Data or the Public Transport Authority’s IT Environment;
    2. ensure that the Public Transport Authority Data is not misused, damaged or destroyed by any person;
    3. notify the Public Transport Authority immediately, and comply with all directions of the Public Transport Authority, if the Contractor becomes aware of any contravention of the Public Transport Authority’s data security requirements;
    4. implement Cyber Security measures that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, Public Transport Authority Data, and provide all information requested by the Public Transport Authority about them. At a minimum, the Contractor must implement anti-virus and anti-malware software and have backup and restoration of data processes (ensuring all Public Transport Authority Data is stored in a portable manner that allows backups, data export, service migration and service decommissioning without any loss of data);
    5. ensure that the Contractor’s personnel are appropriately trained in cyber security risks and risk management to a standard that is no less rigorous than accepted industry standards for the type of goods and/or services that are to be provided under this Contract;
    6. have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a cyber security incident or Security Breach;
    7. unless approved by the Public Transport Authority in writing, ensure all Public Transport Authority Data is hosted, stored and processed onshore, within Australia;
    8. must securely delete or destroy the Public Transport Authority Data stored or held by the Contractor in connection with the Contract, on termination or expiry of the Contract or immediately upon the written instruction of the Public Transport Authority (in respect of any Public Transport Authority Data specified by the Public Transport Authority in the written instruction), and immediately on the destruction or deletion of the Public Transport Authority Data provide the Public Transport Authority with evidence of the destruction or deletion to the satisfaction of the Public Transport Authority; and
    9. ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor’s obligations under the Contract imposes on the subcontractor the same obligations regarding privacy, security and Security Breaches that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

1. Security Breach
   * 1. If the Contractor becomes aware of any Security Breach, the Contractor must immediately on becoming aware of the Security Breach, notify the Public Transport Authority of the Security Breach by telephone or email and then immediately (and in any case within 12 hours of becoming aware of the Security Breach) notify the Public Transport Authority in writing (providing full details, including date and time of the Security Breach, how it was discovered, the nature and impact of the Security Breach, the steps taken to mitigate the impact and any other information requested by the Public Transport Authority), and must:
        1. immediately take all steps required to limit any further access to or compromise of the Public Transport Authority’s IT Environment or Public Transport Authority Data or any further distribution of Public Transport Authority Data;
        2. do all things within its power to remedy the Security Breach and its consequences, including (for clarity) the restoration of lost or corrupted data;
        3. exercise reasonable endeavours to ensure that any potential breach does not become an actual breach;
        4. cooperate with the Public Transport Authority and its nominated third parties and any Authority in investigating the Security Breach, its causes, effects and surrounding circumstances and assist in identifying compromised Public Transport Authority Data;
        5. give the Public Transport Authority all access requested by the Public Transport Authority to any premises, Contractor’s personnel, processes and systems of the Contractor (and procure the Contractor’s personnel to give the Public Transport Authority such access) for the purpose of carrying out an investigation into the Security Breach; and
        6. provide all other assistance reasonably required by, and take any action as reasonably directed by, the Public Transport Authority arising out of the Security Breach or the circumstances surrounding the Security Breach.
     2. To the extent that the Security Breach has been caused or contributed to by the Contractor, or would have been avoided or mitigated by the Contractor’s compliance with the Contract, the Contractor must perform its obligations in respect of the Security Breach at its own cost and must reimburse the Public Transport Authority any costs and expenses that the Public Transport Authority incurs in dealing with the Security Breach.
     3. To the extent that (b) does not apply, the Contractor will be reimbursed for the work it carries out in performing its obligations under this clause at rates that are consistent with those set out in the Contract.
     4. To the extent lawful, the Contractor must not disclose to any third party, or make any public statement concerning, the existence of, or circumstances surrounding, any Security Breach without the Public Transport Authority’s prior written approval.
2. Critical Infrastructure Security
   * 1. The Contractor acknowledges that the Public Transport Authority is a responsible entity for a critical infrastructure asset (as that term is defined in the *SOCI Act*) and the Contractor may be storing or processing business critical data for a critical infrastructure asset on a commercial basis.
     2. The Contractor must, in performing the Contract, not breach, and not cause the Public Transport Authority to breach, the *SOCI Act*.
     3. Without limiting clause (b), the Contractor must:
        1. promptly provide any information and assistance requested by the Public Transport Authority regarding the performance of the Contract in order for the Public Transport Authority to comply with any requirements under the *SOCI Act*; and
        2. comply with any reasonable direction given by the Public Transport Authority regarding the performance of the Contract in order for the Public Transport Authority to comply with any requirements under the *SOCI Act.*
     4. The Contractor must promptly and without delay, notify the Public Transport Authority in writing of:
        1. any actual or potential circumstance that may cause the Public Transport Authority to be in breach of the *SOCI Act* or any breach of this clause.
        2. any request, claim, or requirement of an Authority in relation to any SOCI Requirements.
3. Defect Liability Period
   1. (a) At any time during the Defect Liability Period, the Public Transport Authority may:
      * 1. give the Contractor a direction to rectify a Defect which:
           1. must identify the Defect and the date for the completion of its rectification of the Defect; and
           2. may state a date for commencement of the rectification work and whether there is to be a separate Defect Liability Period for that Defect (which will not exceed 12 months, and which will commence on the date the rectification is completed and will be governed by clause 49); and
        2. require the Contractor to provide:
           1. any information in respect of a Defect, including in the form of a report outlining the cause of the Defect and the Contractor’s methodology for rectifying the Defect; and
           2. a separate warranty (on terms acceptable to the Public Transport Authority acting reasonably) in respect of the Works the subject of the Defect(s).
      1. Notwithstanding clause 12, the Contractor must, at its cost, wholly rectify any Defect (to the reasonable satisfaction of the Public Transport Authority) notified to the Contractor by the Public Transport Authority during the Defect Liability Period (including repairing or replacing defective Materials or other things incorporated into the Vessel at the Contractor’s cost).
      2. The Contractor must carry out rectification work of a Defect during the Defect Liability Period at:
         1. a location nominated by the Public Transport Authority (acting reasonably); and
         2. times and in a manner to be agreed with the Public Transport Authority (acting reasonably) and any Vessel Operator, so as to cause as little inconvenience to the Public Transport Authority, the Vessel Operator or any other affected third party, as is reasonably possible.
      3. The Contractor must pay to the Public Transport Authority liquidated damages (at the same rate as set out under clause 11) for each day (or part day) that the Vessel is unable to be operated by the Public Transport Authority due to a Defect.
      4. If any rectification of a Defect the subject of a direction by the Public Transport Authority under clause 49(a) is not commenced or completed to the reasonable satisfaction of the Public Transport Authority within the time required by the Public Transport Authority, the Public Transport Authority may, without prejudice to its other rights or remedies, have the rectification work carried out by others. Any costs or expenses incurred by the Public Transport Authority in doing so will be a debt due from and immediately payable by the Contractor to the Public Transport Authority.
   2. **Defective work**
      1. If, at any time prior to the commencement of the Defect Liability Period, the Public Transport Authority becomes aware that any Works (including Materials) carried out or provided by the Contractor are Defective, the Public Transport Authority may give the Contractor written details of the Defect(s), together with a direction to the Contractor to do any one or more of the following (including times for commencement and completion):
         1. remove any Materials from the Works or Shipyard (as applicable);
         2. rectify the relevant Works (and the Public Transport Authority may stipulate a time for that rectification (acting reasonably));
         3. provide a separate warranty (on terms acceptable to the Public Transport Authority acting reasonably) in respect of the Works the subject of the Defect(s); or
         4. provide any information in respect of the Defect(s), including in the form of a report outlining the cause of the Defect(s) and the Contractor’s methodology for rectifying the Defect(s).
      2. If the Contractor fails to comply with a direction under clause 50.2 within the time stated in the direction or, if no time is stated, within 20 days after the Public Transport Authority issues the direction, without prejudice to its other rights or remedies, the Public Transport Authority may arrange for the Works to be rectified by others and any costs incurred by the Public Transport Authority in doing so will be a debt due from and immediately payable by the Contractor to the Public Transport Authority.
   3. **Acceptance of Defective work**

Instead of giving a direction pursuant to clause 50.2, the Public Transport Authority may (in its absolute discretion), in writing, direct the Contractor that the Public Transport Authority elects to accept the relevant Defective Works, and there will be a deemed variation of the Contract Price as determined by the Public Transport Authority (acting reasonably) having regard to the resulting decrease in value to the Public Transport Authority of the Works and any other loss suffered by the Public Transport Authority.

* 1. **Common law rights preserved**

Nothing in clause 50 or in any other provision of the Contract limits or excludes the Public Transport Authority's common law rights against the Contractor arising out of or in connection with the failure of the Contractor to carry out the Works (including providing Materials and Spares) in accordance with the requirements of the Contract.

1. Aboriginal participation
   1. **Definitions**

The following definitions apply in this Contract:

* + 1. **Aboriginal Business** means a business registered on Supply Nation’s Indigenous Business Direct (<https://supplynation.org.au/>) or the Aboriginal Business Directory of WA (https://www.abdwa.com.au/);
    2. **Aboriginal Participation Requirements** means the Contractor’s obligations under clause 51.2.
    3. **Aboriginal Person** means a person who is of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which he or she lives or has lived.
    4. **Employment** means full-time, part-time, casual employees, apprentices and trainees, workers engaged by the Contractor and its direct (Tier 1) subcontractors through labour hire arrangements and other employer supported employment initiatives such as cadetships and internships, that engage in at least one hour of paid work per week. **‘Employed’** has a corresponding meaning.

* 1. **Aboriginal Participation Requirements**
     1. As nominated by the Contractor in its offer and set out in Schedule 1, the Contractor agrees to meet following Aboriginal Participation Requirements:

**[Option 1 - Aboriginal Business Subcontracting]**

* + - 1. at least [**Insert**] per cent of the total contract value (at contract award) awarded to Aboriginal Business subcontractors;

OR

**[Option 2 - Employment of Aboriginal Persons]**

* + - 1. at least [**Insert**] per cent of the total number of persons Employed on the Contract will be Aboriginal Persons.
    1. Only contracts awarded to subcontractors that are Aboriginal Businesses and who are contracted directly by the Contractor count towards clause 51.2(a)(i).
    2. Only Employment by the Contractor and its direct (Tier 1) subcontractors counts towards clause 51.2(a)(ii).
    3. The Contractor must report on Aboriginal Business subcontracting outcomes or Employment of Aboriginal Persons, as nominated by the Contractor in its offer, to the Public Transport Authority in accordance with clause 51.4.
    4. The Contractor acknowledges and agrees that the Aboriginal Participation Requirements apply during the term of the Contract, and until all of its reporting obligations as set out in clause 51.4 are fulfilled.
  1. **Variation or revision of Aboriginal Participation Requirements**

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

* 1. **Aboriginal Participation Reports**
     1. Subject to clause 51.4(b), the Contractor must submit to the Public Transport Authority a report which addresses all the relevant data fields set out in Schedule 1:

**[Option 1 - Aboriginal Business Subcontracting]**

* + - 1. no later than 30 calendar days after the date for practical completion;

OR

**[Option 2 - Employment of Aboriginal Persons]**

* + - 1. no later than 30 calendar days after each anniversary of the date of acceptance of offer;
    1. For either Aboriginal Participation Requirement, where the date for practical completion is 12 months or less after the date of acceptance of offer, only one report from the Contractor is required to be submitted no later than 30 calendar days after the date for practical completion.
    2. For the Aboriginal Business Subcontracting requirement:
       1. Subcontracts valued at $50,000 and above must be reported towards this requirement;
       2. The Contractor may report subcontracts valued less than $50,000, but contracts valued less than $5,000 will not be acknowledged towards achieving this requirement.
  1. **Verification of Contractor's compliance with Aboriginal Participation Requirements**
     1. The Contractor must:
        1. permit the Public Transport Authority or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Public Transport Authority's expense of all records maintained by the Contractor relating to compliance with Aboriginal Participation Requirements for the purposes of this Contract;
        2. permit the Public Transport Authority, or its duly authorised representative, from time to time to undertake a review of the Contractor's performance of the Aboriginal Participation Requirements; and
        3. ensure that Contractor's Personnel give all reasonable assistance to any person authorised by the Public Transport Authority to undertake such audit or inspection.
     2. If the Public Transport Authority requests from the Contractor information or access to documentation in connection with the Aboriginal Participation Requirements, or information or documentation in connection with any report referred to in clause 51.4, the Contractor must promptly comply with such requests, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
     3. The Contractor authorises the Public Transport Authority, and any duly authorised representative of the Public Transport Authority, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Aboriginal Participation Requirements.
     4. The obligations set out in this clause 51.5 are in addition to and do not derogate from any other obligation under this Contract.
  2. **Verification of Aboriginal Participation Reports**
     1. Each report required under clause 51.4 must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
     2. The Contractor must ensure that each report referred to in clause 51.4 is endorsed and verified by the Contractor's Chief Executive Officer, Managing Director or equivalent.
  3. **Use of Information**

Both the Public Transport Authority and the Public Transport Authority may use or disclose any report provided under clause 51.4, or any information or documentation referred to in clause 51.6 for the legitimate purposes of or relating to government or the business of government.

* 1. **Compliance with Aboriginal Participation Requirements**

The Contractor acknowledges that if the Contractor does not comply with the Aboriginal Participation Requirements, this may result in the Public Transport Authority or the State not awarding a contract to the Contractor in the future.

1. Privacy
   * 1. When the Privacy and Responsible Information Sharing Act 2024 (WA) (**PRIS Act**) comes into effect:
        1. the Parties agree that this Contract is a ‘State services contract’ and the Contractor is a ‘contracted service provider’ for the purposes of the PRIS Act;
        2. the Parties agree that Part 2 of the PRIS Act, the information privacy principles in the PRIS Act and any applicable approved privacy code of practice under the PRIS Act, apply to the handling of information by the Contractor for the purposes of this Contract (pursuant to section 129 of the PRIS Act); and
        3. the Contractor agrees to comply with Part 2 of the PRIS Act, the information privacy principles in the PRIS Act and any applicable approved privacy code of practice under the PRIS Act, in the handling of information for the purposes of this Contract.
     2. When performing the Contract, the Contractor must comply with:
        1. until the PRIS Act comes into effect, the Australian Privacy Principles set out in the *Privacy Act 1988,* whether or not the Contractor is an organisation which is bound by the *Privacy Act 1988* (Cth) or other privacy laws, as if it were required to comply with that legislation;
        2. its obligations (if any) imposed on private sector organisations not exempt from regulation by the *Privacy Act 1988* (Cth);
        3. such other Commonwealth, State or Territory legislation related to privacy;
        4. any directions made by a Privacy Commissioner;
        5. any privacy procedures; and
        6. any other reasonable direction relating to privacy which is given by the Authority,

to the extent relevant to the Contract.

* + 1. The Contractor must, in relation to any Personal Information which it collects or has access to in the course of performing its obligations under, or otherwise in connection with, the Contract:
       1. take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and
       2. where any breach of privacy occurs due to the Contractor’s failure to comply with any obligation under this clause 52, do all things necessary to mitigate the consequences of that breach;
       3. not modify the Personal Information except with the Authority’s prior written approval;
       4. ensure that the Personal Information is returned to the Authority (or is permanently destroyed if the Authority so elects) when it is no longer required for the performance of the Contractor’s obligations under the Contract;
       5. co-operate fully with the Authority to resolve any complaint alleging a breach by any Party of their respective privacy obligations.
    2. The Contractor must immediately notify the Authority (providing full details) if it:
       1. receives, or otherwise becomes aware of, any complaints concerning its or the Authority’s compliance with privacy obligations, including full details of how the Contractor intends to resolve the complaint;
       2. becomes aware that a disclosure of Personal Information may be required by Law; or
       3. is approached with respect to privacy by any Governmental Agency or by any individual to whom any Personal Information relates.
    3. The Contractor must co-operate fully with the Authority to resolve:
       1. any request, inquiry or notice from a Governmental Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or
       2. any complaint alleging a breach by any Party of their respective privacy obligations in connection with,

the Contract.

* + 1. ‘Personal Information’ has the meaning given in the *Privacy Act 1988 (Cth)* or the *PRIS Act,* as the context requires.

1. Probity Events
   1. **Probity Event clause**
      1. The Contractor must give notice to the Public Transport Authority immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
      2. The notice must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
      3. Without limiting clause 53, promptly and in any case no later than 7 days after the Public Transport Authority:
         1. receives a notice under clause 53.1(a); or
         2. otherwise becomes aware of a Probity Event or likely Probity Event,

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

* + 1. The Contractor must comply with any agreement made in accordance with clause 53.1(c) in the agreed timeframe.
    2. If the Public Transport Authority and the Contractor fail to agree to a course of action in accordance with clause 53.1(c) (including where the Contractor fails to meet with the Public Transport Authority in accordance with clause 53.1(c)), the Contractor must, at its cost, take any action required by the Public Transport Authority to remedy the Probity Event in accordance with any timeframe determined by the Public Transport Authority.
  1. **Probity Investigation**
     1. The Contractor agrees that the Public Transport Authority may, or may require the Contractor at any time to, conduct a Probity Investigation in respect of any relevant person or any person who is proposed to become a relevant person.
     2. Where the Public Transport Authority requires the Contractor to conduct a Probity Investigation in accordance with clause 53.2(a), the Contractor must promptly:
        1. conduct the Probity Investigation; and
        2. communicate the findings of that Probity Investigation to the Public Transport Authority in the form required by the Public Transport Authority.
     3. The Contractor must procure all consents necessary to enable the Contractor or the Public Transport Authority (or any person nominated by the Public Transport Authority) to conduct any Probity Investigation.
  2. **Subcontractor's Probity Investigation**

If, following a Probity Investigation in respect of a proposed subcontractor, the Public Transport Authority:

* + 1. determines that a Probity Event has occurred in respect of a subcontractor or any officers, employees, agents or contractors engaged by that subcontractor; and
    2. is of the opinion that it is consequently not desirable for that officer, employee, agent or contractor to take part in the management or performance of the subcontract, or for the subcontractor to be engaged in connection with the Works,

the Public Transport Authority may (as the case may be):

* + - 1. direct the Contractor that the subcontractor must not be engaged in connection with the Works, in which case the Contractor must comply with the direction; or
      2. approve the subcontract:
         1. on condition that the officer, employee, agent or contractor not take part in the management or performance of the subcontract;
         2. on such other conditions as the Public Transport Authority considers necessary to quarantine that officer, employee, agent or contractor from the Works; or
         3. on condition that the officer, employee, agent or contractor not be given confidential information,

on condition that the subcontractor provides its written undertaking to the Public Transport Authority to comply with such conditions.

* 1. **Public Transport Authority costs of Probity Events and Probity Investigation**
     1. Subject to clause 53.4(b), the Contractor must bear all costs incurred by the Public Transport Authority in connection with a Probity Event or Probity Investigation that identifies a Probity Event.
     2. The Contractor will not be liable for the Public Transport Authority's costs of any further Probity Investigation required by the Public Transport Authority in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken unless that further Probity Investigation identifies a new or subsisting Probity Event.

ANNEXURE TO PUBLIC TRANSPORT AUTHORITY SUPPLY OF GOODS GENERAL CONDITIONS OF CONTRACT

|  |
| --- |
| Note to User: This Annexure must be issued as part of the Request documents and is to be attached to the General Conditions of Contract and must be read as part of the Contract. |

This Annexure comprises the following attached Schedules:

[Schedule 1 PARTICULARS OF ITEMS REFERRED TO IN THE GENERAL CONDITIONS 76](#_Toc195277609)

[Schedule 2 SCHEDULE OF PRICES 78](#_Toc195277610)

[Schedule 3 PARTICULARS OF REQUIRED INSURANCES 88](#_Toc195277611)

[Schedule 4 PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) 90](#_Toc195277612)

[Schedule 5 APPROVED FORM OF UNCONDITIONAL UNDERTAKING 91](#_Toc195277613)

[Schedule 6 FUNCTION AND PERFORMANCE SPECIFICATION 92](#_Toc195277614)

[Schedule 7 SCHEDULE OF DELIVERY 93](#_Toc195277615)

[Schedule 8 SEA TRIALS 94](#_Toc195277616)

SCHEDULE 10 GUARANTEE 95

|  |
| --- |
| Note to User: Include any other schedules required to adequately describe the supply of Goods (e.g. Schedule of Delivery or Inspection and Test Plan. |

1. PARTICULARS OF ITEMS REFERRED TO IN THE GENERAL CONDITIONS

|  |  |  |
| --- | --- | --- |
|  | Number of Initial Vessels | Five |
|  | Dates of Delivery for Initial Vessels from date of Contract | Vessel 1  Vessel 2  Vessel 3  Vessel 4  Vessel 5 |
|  | Dates of Delivery for any Additional Vessels from date of Option being exercised as per Schedule 9 | Vessel 1  Vessel 2  Vessel 3  Vessel 4  Vessel 5 |
|  | Additional Vessel Price | $  As set out in Schedule 2 |
|  |  |  |
|  | The Officer for the Contract: |  |
|  | Contractor’s Representative: |  |
|  | Marine Surveyor: |  |
|  | Shipyard location: |  |
|  | Storage facility location(s): |  |
|  | Address for serving of notices and claims | Name  Address  PUBLIC TRANSPORT AUTHORITY Ref: PTA250023  Contractor: |
|  | Materials, labour, plant and equipment **not** to be provided by the Contractor (Clause 17) | Insert or Not used |
|  | Quality Assurance Standard (Clause 21) | The minimum quality requirement for this Contract is:  A management system certified as complying with the requirements of AS/NZS ISO 9001:2016 – Quality Management Systems – Requirements. |
|  | Parent Company Guarantee: | Used / Not Used |
|  | Delivery Location: |  |
|  | Manner of Delivery: |  |
|  | Liquidated Damages Rate per day and Cap (Clause 11): | $5000 per day per Vessel, capped at 10% of the total Contract Price |
|  | Defects Liability Period: |  |
|  |  |  |

1. SCHEDULE OF PRICES

*The Schedule of Prices as finally agreed will be transferred to this Schedule from the Offer and any subsequent negotiations.*

1. CONTRACT PRICE – LUMP SUM

The basis of payment of the Contract Price for the Supply of Goods is in accordance with the following table in Australian Dollars (AUD):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ITEM DESCRIPTION | QTY | ITEM PRICE Exclusive of GST | GST | TOTAL ITEM PRICE  Inclusive of GST |
| **SUPPLY OF VESSELS**  Design, build and delivery of new Vessels for the Public Transport Authority in accordance with the Function and Performance Specification and the Contract | 5 | $ | $ | $ |
| **SUPPLY OF VESSELS**  Design, build and delivery of new Vessels for the Public Transport Authority in accordance with the Function and Performance Specification and the Contract including operational ballast tanks | 5 | $ | $ | $ |
| **VESSEL OPTIONS** |  |  |  |  |
| **SUPPLY OF ADDITIONAL VESSEL**  Design, build and delivery of new Vessels for the Public Transport Authority in accordance with the specifications | 1 | $ | $ | $ |
| **SUPPLY OF ADDITIONAL VESSEL**  Design, build and delivery of new Vessels for the Public Transport Authority in accordance with the specifications including operational ballast tanks | 1 | $ | $ | $ |
| **Contract Lump Sum Price (Inclusive of GST)** | | | | **$** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **UNCONDITIONAL UNDERTAKING** | **QTY** |  |  |  |
| Contractor to provide cost associated with providing an Unconditional Undertaking in favour of the Public Transport Authority for the value of 10% of the Contract for the Initial Vessels for Milestone Payment 1 | 1 | $ | $ | $ |
| Contractor to provide cost associated with providing an Unconditional Undertaking in favour of the Public Transport Authority TA for the value of 10% of the Contract for the Initial Vessels for Milestone Payment 2 | 1 | $ | $ | $ |
| Respondent to provide cost associated with providing an Unconditional Undertaking in favour of the Public Transport Authority for the value of 25% of the Contract for the Initial Vessels for Milestone Payment 3 | 1 | $ | $ | $ |
| Contractor to provide cost associated with providing an Unconditional Undertaking in favour of the Public Transport Authority for the value of 30% of the Contract for the Initial Vessels for Milestone Payment 4 | 1 | $ | $ | $ |

**Note:** All costs must be fully declared in the offer. Any costs that are not clearly identified in the offer will not be accepted when approving payments under the Contract.

1. CONDITIONS OF PAYMENT

Payment of the Contract Price will be made in accordance with the following payment milestones schedule.

| **Milestone Description** | **Milestone Payment % of Contract Lump Sum Price** | **Milestone Payment ($)** | **Estimated timeframe for payment** |
| --- | --- | --- | --- |
| **Milestone Payment 1**  Required Deliverables   1. Execution of Contract 2. Provision of Unconditional Undertaking | 10% |  |  |
| **Milestone Payment 2**   1. Upon completion and approval of drawings by both AMSA and the Public Transport Authority. 2. Provision of increased Unconditional Undertaking | 10% |  |  |
| **Milestone Payment 3**   1. Upon completion of hull deck and superstructure plating 2. Provision of increased Unconditional Undertaking | 25% |  |  |
| **Milestone Payment 4**   1. Upon completion of engine and underwater equipment, mechanical fittings, electrical wiring and sundry electrical and navigational items. 2. All items to be either on board the vessel or stored for the Public Transport Authority within the Contractor’s premises. 3. Provision of increased Unconditional Undertaking | 30% |  |  |
| **Milestone Payment 5**   1. After the completion of Sea Trials to the satisfaction of the Public Transport Authority 2. After the completion of all commissioning activities 3. After the Delivery of the Vessels to the Public Transport Authority Delivery location 4. Including all relevant licences, warranties, as built documentation and maintenance schedules | 20% |  |  |
| **Milestone Payment 6**   1. Completion of Defects Liability Period, including the completion of any rectification work to the Public Transport Authority’s reasonable satisfaction. | 5% |  |  |
| **Total**  **(Contract Lump Sum Price)** | **100%** |  |  |

1. CONTRACT PRICE BASIS

Fixed price for all Initial Vessels.

1. SCHEDULE OF RATES FOR RECOMMENDED SPARE PARTS OR SPECIALISED TOOLS

Contractor’s recommended spare parts or specialised tools in the following table in Australian Dollars (AUD):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ITEM DESCRIPTION | QTY | ITEM PRICE Exclusive of GST | GST | TOTAL ITEM PRICE  Inclusive of GST |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |
|  |  | $ | $ | $ |

1. SETTLEMENT DISCOUNT

............% for payment made within ........ days of rendering of the account. Date of rendering is the date upon which the correct account, accompanied by all necessary documents proving delivery, is received by the Officer.

Payment will be deemed to have been made on the date the electronic fund transfer is processed by the Public Transport Authority.

**IMPORTED CONTENT QUESTIONNAIRE**REQUEST NO: PTA250023

Contractor’s declared value (as set out in its offer) of the value of any portion of that offer which comprises goods and services which have been imported from another country excluding New Zealand and FTA countries.

Details of any goods and services included in the offer that are or will be imported into Australia (attach an additional list if required)

Goods/Service Description Country of Origin Value $

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |
| --- | --- |
| Total Value of Imported Content: | $ |

If any elements of the imported content are subject to foreign exchange rate variation, the Contractor’s list of items and the variation formulas, including if price variations are linked to exchange rate variations:

1. PARTICULARS OF REQUIRED INSURANCES

Note to Respondents: Any departure from this Schedule must be included in the Respondent’s Statement of Departure.

* 1. PUBLIC LIABILITY INSURANCE
     1. Contractor's Obligation to Maintain

The Contractor must maintain or effect and maintain a public liability insurance policy that provides cover in relation to liability arising out of any claim by any person (including the Public Transport Authority) in respect of:

* + - 1. personal injury, death, disease or illness (including mental illness); and
      2. loss of, or damage to, or loss of use of property,

arising out of or in relation to the Contractor’s obligations under the Contract.

* + 1. Terms of the Policy

The public liability insurance policy must:

* + - 1. cover the Contractor, all subcontractors and their respective representatives, agents and employees for their respective rights, interests and liabilities;
      2. Include each of the Public Transport Authority and the Officer as additional insured parties in respect of any liability arising out of any act or omission of the Contractor, or any subcontractor or of their respective representatives, agents or employees;
      3. include cover for unregistered vehicles, plant and machinery;
      4. have a limit of cover in respect of any one occurrence of at least **$20,000,000** and have no limit of cover in relation to the aggregate of the amount of all claims made during the period of cover of the policy; and
      5. include cover against liability for sudden and accidental pollution.
    1. Period of Cover

The Contractor must, from the date of the Contract, maintain continuous cover under the public liability insurance policy or a replacement policy in the same material terms until the time expiration of the Defects Liability Period referred to in Schedule 1 to the Annexure.

* 1. PRODUCT LIABILITY INSURANCE
     1. Contractor's Obligation to Maintain

The Contractor must maintain or effect and maintain a product liability insurance policy that provides cover in relation to liability arising out of any claim by any person (including Public Transport Authority) in respect of:

* + - 1. personal injury, death, disease or illness (including mental illness); or
      2. loss of, or damage to, or loss of use of, property,

arising out of or in relation to the use, manufacture, supply or installation of any item or thing by the Contractor in the course of performing its obligations under the Contract.

* + 1. Terms of the Policy

The product liability insurance policy must:

* + - 1. cover the Contractor, all subcontractors and their respective representatives, agents and employees for their respective rights, interests and liabilities;
      2. include each of the Public Transport Authority and the Officer as additional insured parties in respect of any liability arising out of any act or omission of the Contractor, or any subcontractor or of their respective representatives, agents or employees; and
      3. have a limit of cover in respect of any one occurrence of at least equal to **$100,000,000**.
    1. Period of Cover

The Contractor must, from the date of the Contract, maintain continuous cover under the product liability insurance policy or a replacement policy in the same material terms until the expiration of the Defects Liability Period referred to in Schedule 1 of the Annexure.

* + 1. Other Provisions

The Contractor must ensure that the product liability policy provides that the policy operates as if there were a separate contract of insurance covering each insured.

* 1. MARINE LIABILITY INSURANCE
     1. Contractor's Obligation to Maintain

The Contractor must maintain or effect and maintain a marine liability insurance policy that provides cover in relation to liability arising out of any claim by any person (including Public Transport Authority or the Contractor) in respect of:

* + - 1. personal injury, death, disease or illness (including mental illness); or
      2. loss of, or damage to, or loss of use of, property,

arising out of or in relation to the use, manufacture, supply or installation of any item or thing by the Contractor in the course of performing its obligations under the Contract.

* + 1. Terms of the Policy

The marine liability insurance policy must:

* + - 1. cover the Contractor, all subcontractors and their respective representatives, agents and employees for their respective rights, interests and liabilities;
      2. include each of the Public Transport Authority and the Officer as additional insured parties in respect of any liability arising out of any act or omission of the Contractor, or any subcontractor or of their respective representatives, agents or employees; and
      3. have a limit of cover in respect of any one occurrence of at least equal to **$20,000,000**.
    1. Period of Cover

The Contractor must, from the date of the Contract, maintain continuous cover under the marine liability insurance policy or a replacement policy in the same material terms until the expiration of the later of the Term and any Defects Liability Period referred to in Schedule 1 of the Annexure.

* + 1. Other Provisions

The Contractor must ensure that the marine liability policy provides that the policy operates as if there were a separate contract of insurance covering each insured.

* 1. PROFESSIONAL INDEMNITY INSURANCE
     1. Consultant's Obligation to Maintain

The Contractor must maintain or effect and maintain, and ensure that each of its sub-consultants and agents maintains or effects and maintains, a professional indemnity insurance policy that provides insurance against a breach of duty owed in a professional capacity in respect of the Works.

* + 1. Terms of the Policy
       1. The professional indemnity policy must have limits of indemnity for an amount no less than:
          1. **$10,000,000** for any one claim; and
          2. **$20,000,000** for all claims in the PTS aggregate during a single 12 month period of insurance.
       2. The policy must include extensions for:
          1. breach of Chapters 2 and 3 of the Australian Consumer Law and the Australian Consumer Law (WA);
          2. fraud and dishonesty;
          3. loss of or damage to documents and data;
          4. defamation;
          5. infringement of intellectual property rights; and
          6. the Consultant's liability arising out of the professional activities of any of the Consultant's employees in respect of the Works and the Contract.
    2. Period of Cover

The Contractor and its sub-consultants and agents must:

* + - 1. effect and maintain the professional indemnity insurance policy from the first date works in relation to the Contract are carried out by the Consultant, its Sub-consultants and agents; and
      2. continue to maintain the professional indemnity insurance policy or a replacement policy in similar terms until at least six years have expired after the completion of the Vessel Delivery Milestone in relation to each Vessel delivered by the Contractor under the Contract; or
      3. continue to maintain the professional indemnity insurance policy or a replacement policy in similar terms until the completion of the Vessel Delivery Milestone in relation to each Vessel delivered by the Contractor under the Contract, and thereafter effect and maintain a run off professional indemnity insurance policy that provides similar cover for a period of at least six further years.
  1. MOTOR VEHICLE INSURANCE
     1. Contractor's Obligation to Maintain

The Contractor must maintain or effect and maintain, and ensure that each of its subcontractors maintains or effects and maintains, insurance cover in relation to motor vehicles in respect of liability to third parties for personal injury, death, disease or illness (including mental illness) or liability to third parties for loss of or damage to property.

* + 1. Period of Cover

The Contractor must from the date of the Contract maintain continuous insurance cover in relation to motor vehicles in the terms referred to in Clause 5.1 until the later of the completion of the Vessel Delivery Milestone in relation to each Vessel delivered by the Contractor under Term and any Defects Liability Period referred to in Schedule 1 to the Annexure.

* + 1. Amount of Cover

The motor vehicle policy must have a limit of liability of **$30,000,000** for any one claim.

* 1. BUILDER’S RISKS

The Contractor must from the date of the Contract maintain continuous insurance cover all Materials and each Vessel being constructed under this Contract against all risks of loss of or damage at all times that the Contractor is responsible for their risk, including from the commencement of construction, during any necessary movement on land, during sea trials and until the date and time that the parties sign a Protocol of Acceptance and Delivery under the Contract,

The policy must extend to cover all Materials purchased by the Contractor for the Works and all property of the Public Transport Authority which the Public Transport Authority has made available to the Contractor for use with or incorporation into the Works.

The builders risk insurance procured pursuant to this clause:

* + 1. renewed annually for an amount not less than the Contract Price;

(b) (where possible) be in the joint names of the parties (and where not possible, the Public Transport Authority must be named as an interested party) and cover the parties, consultants and subcontractors whenever engaged in the Works for their respective rights, interests and liabilities.

* 1. OTHER RIGHTS AND OBLIGATIONS
     1. Evidence of Policies

The Contractor must, in respect of each policy of insurance it is required to effect or maintain, give Public Transport Authority:

* + - 1. proof to the Public Transport Authority’s reasonable satisfaction of currency and coverage of each policy of insurance before commencing the supply of Goods under the Contract;
      2. on request, certified copies of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips within a reasonable time after the Contractor receives them; and
      3. on request, other evidence of the insurances that Public Transport Authority reasonably requires.
    1. Premiums

Without limitation to other obligations set out in the Contract, the Contractor must punctually pay all premiums in respect of all insurance policies the Contractor is required to effect and maintain.

* + 1. Maximum Excess

Unless the Contractor obtains the Public Transport Authority’s approval in writing, any policy required under this Contract must not have an excess exceeding $5,000.

* + 1. Notice of Cancellation etc.

The Contractor must notify the Public Transport Authority (in writing) whenever the insurer gives the Contractor a notice of cancellation or any other notice in respect of any policy required under the Contract to be maintained or effected and maintained by the Contractor.

* + 1. Application of Insurance Proceeds

Unless the Public Transport Authority otherwise directs, if any property of the Public Transport Authority is damaged or destroyed:

* + - 1. all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the property of the Public Transport Authority; and
      2. if the Public Transport Authority has repaired or reinstated its the property, all insurance proceeds in respect of that damage or destruction must be paid to Public Transport Authority.
    1. No Waiver by Public Transport Authority

The Public Transport Authority is not to be taken to have waived any rights or any breaches by the Contractor merely because it has not exercised or sought to enforce any of its rights under Clauses 7.1 to 7.5 (inclusive).

* + 1. Contractor Comprising Two or More Persons

Where the Contractor comprises two or more persons:

* + - 1. insurances effected pursuant to the Contractor's obligations under the Contract (with the exception of insurances effected pursuant to Clause 3) must be effected jointly by those persons, unless Public Transport Authority otherwise agrees in writing; and
      2. each such insurance must name each person comprising the Contractor as an insured.
    1. Territorial Limit and Jurisdiction

All insurances policies required under this Contract must as a minimum provide cover for Australian territorial limits and be subject to Western Australian jurisdiction.

1. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)
   1. Definitions

In this Schedule:

"**Collateral**" means the Vessels and all Materials and Spares in the ownership, custody or control of the Contractor; and

"**PPS Act**" means the *Personal Property Securities Act 2009 (Cth).*

If a term used in this Schedule has a particular meaning in the PPS Act, it has the same meaning in this Schedule.

* 1. Registration of a security interests

The Contractor acknowledges that the Public Transport Authority may register a financing statement in relation to any security interest in the Collateral arising under the PPSA. The Contractor waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

* 1. Confidentiality
     + 1. the Contractor and the Public Transport Authority agree not to disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7)(b) to (e) of the PPS Act. The Contractor agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Public Transport Authority approves. Nothing in this clause will prevent any disclosure by the Public Transport Authority that it believes is necessary to comply with its other obligations under the PPS Act.
       2. to the extent that it is not inconsistent with clause 3(a) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, the Contractor agrees that the Public Transport Authority may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that the Public Transport Authority is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.
  2. Enforcement under the PPS Act

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Public Transport Authority of any security interest in the Collateral, the Contractor and the Public Transport Authority agree that the following provisions of the PPS Act do not apply, to the extent the PPS Act allows them to be excluded:

* + - 1. **Enforcement Methods** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
      2. **Notices** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account) and 136(5) (Retaining collateral free of interests); and
      3. **Rights to Remedy** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).
  1. Further assurances

The Contractor must promptly do anything the Public Transport Authority requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.

1. APPROVED FORM OF UNCONDITIONAL UNDERTAKING

**Approved form of Unconditional Undertaking**

(clause 35 - security)

At the request of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Contractor”) and in consideration of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Public Transport Authority”) accepting this undertaking in respect of the Contract for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the financial institution”) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Public Transport Authority to a maximum aggregate sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The undertaking is to continue until notification has been received from the Public Transport Authority that the sum is no longer required by the Public Transport Authority or until this undertaking is returned to the financial institution or until payment to the Public Transport Authority l by the financial institution of the whole of the sum or such part as the Public Transport Authority may require. Should the financial institution be notified in writing, purporting to be signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for and on behalf of the Public Transport Authority that the Public Transport Authority desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the financial institution will make the payment or payments to the Public Transport Authority forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the financial institution may at any time without being required so to do pay to the Public Transport Authority the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Public Transport Authority and thereupon the liability of the financial institution hereunder shall immediately cease.

Dated at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20 \_\_\_\_\_

1. FUNCTION AND PERFORMANCE SPECIFICATION

*The Function and Performance Specification as finally agreed will be transferred to this Schedule from the offer and any subsequent negotiations*

1. SCHEDULE OF DELIVERY

*The Schedule of Delivery as finally agreed will be transferred to this Schedule from the offer and any subsequent negotiations*

1. SEA TRIALS

Sea trials must be conducted in calm sea conditions which are consistent with the conditions likely to be experienced by each Vessel when in service, but in all cases in less than 10 knots of wind.

1. OPTION TERMS
2. The Public Transport Authority shall have the option to purchase Additional Vessels of the same type and specifications as the Initial Vessels for six years from the date of the Contract.
3. The Public Transport Authority may exercise the Option in respect of the number of Additional Vessels it wishes to purchase in its sole discretion limited to the number specified in Schedule 1.
4. The Option may be exercised on a vessel by vessel basis by the giving of a written notice to the Contractor in relation to the number of Additional Vessels that the Public Transport Authority wishes to purchase on each occasion.
5. The price for each Additional Vessel shall be the Additional Vessel price nominated in Schedule 1 adjusted for any price movements in the Consumer Price Index (No. 6401.0) - All Groups Perth from 1 May 2025) between the date of the Contract and the date(s) on which the notice of exercise of the Option is/are exercised.
6. Payment terms and all other terms of the Contract shall apply to the supply of the Additional Vessels.
7. Any notice issued pursuant to clause 3 shall state the Date of Delivery of the Additional Vessel which shall be no more than 12 months from the date of the notice.
8. For the avoidance of doubt: The Public Transport Authority may exercise the Option:
   * + 1. At any time starting from the date on which the Contract is signed, and ending six years from the date of the Contract;
       2. The Option may be exercised on one or more than one occasion, in respect of one or more Additional Vessels on each occasion, up to the total number stated in Schedule 1.

SCHEDULE 10 GUARANTEE

This deed poll (**Guarantee**) made the day of 20\_\_

**Given by:** [#insert Guarantor details] (**Guarantor**)

**In favour of:** **PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA** ABN 61 850 109 576 a body corporate constituted pursuant to the provisions of the Public Transport Authority Act 2003, Western Australia.

**RECITALS**

* + 1. By a contract dated [#insert] between the Contractor, the Public Transport Authority, the Contractor has agreed to carry out and complete the Works.
    2. The Guarantor is a [#relationship to Contractor to be confirmed] of the Contractor.
    3. Under the provisions of the Contract, the Contractor is required to provide this Guarantee to the Public Transport Authority.

**DEFINITIONS**

In this Guarantee:

**Contractor** means [#insert name, ABN and address].

**Works** has the meaning given to it in the Contract.

**OPERATIVE PART**

* + 1. The Guarantor acknowledges that it has been given a copy of the Contract and has had full opportunity to consider its provisions, and obtain independent legal advice, before entering into this Guarantee.
    2. The Guarantor guarantees to the Public Transport Authority prompt performance of all of the obligations of the Contractor contained or implied in the Contract. If the obligation is to pay money, the Public Transport Authority may immediately recover the money from the Guarantor as a liquidated debt without first commencing proceedings or enforcing any other right against the Contractor or any other person.
    3. If the Contractor is not bound by some or all of its obligations under the Contract, the Guarantor agrees, by way of indemnity and principal obligation, to pay to the Public Transport Authority the amount which would have been payable by the Guarantor to the Public Transport Authority under the Guarantee in clause .2 had the Contractor been bound.
    4. This Guarantee is a continuing security and is not discharged or prejudicially affected by any settlement of accounts, but remains in full force until the the date of the expiry of the last Defect Liability Period to expire under the Contract and the satisfaction by the Contractor of all of its obligations under the Contract, including the rectification of all Defects (as that term is defined in the Contract) to the reasonable satisfaction of the Public Transport Authority.
    5. The Guarantor’s liability under clauses 2 and 3 is not affected by:
  1. the granting of time, forbearance or other concession by the Public Transport Authority to the Contractor or the Guarantor;
  2. any delay or failure by the Public Transport Authority to take action against the Contractor or the Guarantor;
  3. an absolute or partial release of the Contractor or the Guarantor or a compromise with the Contractor or the Guarantor;
  4. a variation, novation, renewal or assignment of the Contract by the Public Transport Authority, whether or not this increases the liability of the Contractor under the Contract or the liability of the Guarantor under this Guarantee;
  5. the termination of the Contract;
  6. the fact that the Contract is wholly or partially void, voidable or unenforceable; or
  7. the exercise or purported exercise by the Public Transport Authority of its rights under the Contract.
     1. The Guarantor’s liability is not discharged by a payment to the Public Transport Authority which is later avoided by law. If that happens the Public Transport Authority, the Contractor and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.
     2. If a liquidator or trustee in bankruptcy disclaims the Contract, the Guarantor indemnifies the Public Transport Authority against any resulting loss.
     3. Until the Public Transport Authority has received all money payable to it by the Contractor:
  8. the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors of the Contractor; and
  9. the Guarantor must hold any claim it has and any dividend it receives on trust for the Public Transport Authority.
     1. Until the Guarantor’s liability under this Guarantee is discharged the Guarantor may not, without the consent of the Public Transport Authority:
  10. claim the benefit or seek the transfer (in whole or in part) of any other guarantee, indemnity or security held or taken by the Public Transport Authority;
  11. make a claim or enforce a right against the Contractor or any other Guarantor or against the estate or any of the property of any of them (except for the benefit of the Public Transport Authority); and/or
  12. raise a set-off or counterclaim available to it or the Contractor against the Public Transport Authority in reduction of its liability under this Guarantee.
      1. The Guarantor agrees to pay or reimburse the Public Transport Authority on demand for:
  13. its costs, charges and expenses of making, enforcing and doing anything in connection with this Guarantee, including all costs actually payable by the Public Transport Authority to its legal representatives (whether under a costs agreement or otherwise); and
  14. all taxes (except income tax) which are payable in connection with this Guarantee or any payment receipt or other transaction contemplated by it.
      1. Money paid to the Public Transport Authority by the Guarantor must be applied first against payment of costs charges and expenses under Clause 10 and then against other obligations under this Guarantee.
      2. If the Public Transport Authority assigns its rights under the Contract, the benefit of this Guarantee extends to the assignee and continues concurrently for the benefit of the Public Transport Authority regardless of the assignment unless the Public Transport Authority releases the Guarantor in writing.
      3. This Guarantee will be governed by and construed in accordance with the laws for the time being of the State of Western Australia.

**Executed by the Guarantor as a deed poll**

**[#Insert Guarantor execution clause]**