

RFT Number

PROMSA25001

Laundry Boiler Replacement

Hakea Prison

1170 Nicholson Road, Canning Vale WA 6155

Mandatory Site Briefing: Friday, 24 January 2025 at 11:00AM

Tender Closing Date: Tuesday, 4 February 2025 at 2:00 PM

Lodgement of Tenders

Section A Clause 4 outlines how a Tenderer's submission will be lodged.

Failure to comply with this clause will render your submission invalid.

Returnable Documents:

Section A Clause 3.3 lists the documents to be submitted with a Quote.

Failure to comply with this clause may render your submission invalid.

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SECTION A - REQUEST FOR TENDER

1. INTRODUCTION

1.1. BACKGROUND

Programmed Facility Management Pty Ltd (PFM) on behalf of Department of Finance (DOF) and Department of Justice (DOJ) are seeking quotes from suitably qualified and experienced contractors to undertake laundry boiler upgrade at Hakea Prison.

1.2. SCOPE OF WORKS

The Work includes but is not limited to demolition, water reticulation works, boiler & equipment replacement, electrical works, reprogramming of washers, testing and commissioning, and more.

Tenderers shall make themselves familiar with the existing site conditions, the specifications, drawings and all Contract documentation. All measurements and details shown on drawings or other documents (if any) are to be confirmed by Tenderers prior to submission of their Quote.

All materials and installation shall be supplied and be in accordance with Australian Standards and all codes and regulations relevant to the Scope of Work contained herein.

Respondents must complete and submit via email the provided Confidentiality Deed Poll to tenders.wa@programmed.com.au to attain access to Annexure 1 – Scope, Specification & Drawings as part of the tender documentation.

1.3. CONTRACT TIMEFRAMES

The timeframes for this contract are as follows;

Contract Timeframe	Date
<u>Mandatory</u> Site Briefing	Friday, 24 January 2025 at 11:00AM
Last Date for Clarification Requests	Friday, 31 January 2025
Tender Closing	Tuesday, 4 February 2025
Anticipated Contract Award	Thursday, 20 February 2025
Anticipated Commencement	Monday, 3 March 2025
Anticipated Completion	Monday, 19 May 2025

1.4. MANDATORY SITE BRIEFING

A **mandatory** site briefing will be held at Hakea Prison. The location of the briefing will be 1170 Nicholson Road, Canning Vale WA 6155.

Please register via e-mail to Tenders.WA@programmed.com.au. Please note: The Quote number and name is to be reflected on all correspondence.

2. CONDITIONS OF QUOTING

2.1. INFORMATION SUPPLIED WITH QUOTE

The Tenderer's submission should be accompanied by full documentation and information as required by this Request for Tender. All documentation and information must be provided free of charge to PFM and will become the property of PFM.

2.2. ENQUIRIES, NOTIFICATIONS AND ADDENDA

All enquiries and notifications must be directed to:

Tenders.WA@programmed.com.au

and be clearly titled with this Request name and number.

If the Tenderer is in doubt as to the true meaning of any part of this Request for Tender or if it finds any discrepancy, error or omission in this Request for Tender, it must notify PFM via the above-mentioned email address.

Addenda to this Request for Tender may be issued prior to the Request closing date for the purpose of clarifying this Request for Tender or to effect modification to any terms or details of this Request for Tender.

Each Addendum issued will be released through the Tenders WA web portal.

The Tenderer is required to acknowledge receipt of all Addenda by completing the Confirmation of Receipt of Addenda section of Returnable Schedule A – Form of Tender.

All addenda when issued will become a part of this Request for Tender.

Neither PFM nor any of its employees will have any authority to make any representation or explanation to the Tenderer as to the meaning of any of the Request for Tender documents, or as to anything to be done or not to be done by the successful Tenderer, or as to any other matter or thing so as to bind PFM in the exercise of its powers and duties under this Request for Tender unless such information is issued by formal numbered addenda.

2.3. REGISTRATION OF TENDERER DETAILS

If the Tenderer has obtained a copy of this Request for Tender document from sources other than the Tenders WA web portal, the Tenderer must ensure its organisation details are registered with the nominated enquiry contact indicated for this Request for Tender.

2.4. TENDERER TO INFORM ITSELF

The Tenderer will be deemed to have:

- a. examined and accounted for the Request for Tender documentation and any formal addenda provided to the Tenderer;
- b. examined and accounted for all further information relevant to the risks, contingencies and other circumstances influencing its Tender; and
- c. satisfied itself as to the correctness and sufficiency of its submission including quoted rates or lump sums which will be deemed to cover the cost of complying with all obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Works as described in the Schedules.

2.5. RESPONSES TO REQUEST FOR TENDER

The Tenderer should pay attention to submitting a full and complete response to this Request for Tender including answering all questions and supplying all required documentation. PFM reserves the right to seek clarification of any parts of a submission.

2.6. ACCEPTANCE OF CONTRACT

If PFM decides to accept a Submission, notice of acceptance shall be given in the form of a purchase order issued to the successful Tenderer and this purchase order shall constitute a binding subcontract between the Programmed Facility Management and the successful Tenderer (hereinafter referred to as the “Subcontractor”).

A Tenderer submitting a response to this RFQ will be deemed to have accepted all Conditions of Contract unless submitted with the Tender an outline of Special conditions in the same format as Schedule 3 – Part A.

2.7. AGENCY ARRANGEMENTS

A Quote will not be considered where a Tenderer intends to have an agent interposed between itself and PFM. PFM will only deal directly with the Tenderer.

2.8. ALTERNATIVE TENDERS AND STATEMENTS OF DEPARTURE

If the Tenderer wishes to make proposals which it considers will result in time, cost quality or safety advantages but which include a material departure from the Request for Tender requirements it may submit Alternative Tenders embodying those proposals. Alternative Tenders may only be submitted with a complying Tender.

An Alternative Tender must:

- Fully address the assessment criteria including being fully costed; and
- Be clearly marked “ALTERNATIVE TENDER”.

If the Tenderer has minor departures or has made assumptions regarding information that is not covered by the RFT these should be submitted with the Tender under the heading ‘Statement of Departure’ or similar.

2.9. WARRANTY

By Quoting a response to this Request for Tender, the Tenderer will be deemed to have warranted to PFM that:

- the Tenderer has the necessary resources, experience, expertise and capacity to carry out the Works; and
- the statements, representations, claims and assertions made in the Tender are true and correct.

2.10. TENDER DOCUMENT MANAGEMENT

Prospective Tenderers shall keep this Request for Tender in a secure place and shall not divulge information contained within except as is necessary for the compilation of its Tender.

2.11. CODE OF TENDERING

In consideration of being permitted to Tender, the Tenderer must comply with any applicable regulations, legislation and the Australian Standard Code of Tendering AS 4120 1994.

PFM may require the Tenderer to make the attestation prescribed in AS 4120 1994 section 7.5 regarding malpractice.

2.12. WA BUILDING AND CONSTRUCTION INDUSTRY CODE OF CONDUCT 2016

In submitting a response to this RFQ the Tenderer acknowledges and agrees that it is subject to the Code and must apply with each of the obligations described in the Code, for the duration of this procurement process.

If the Tenderer is awarded a contract as a result of this procurement process, the Tenderer will additionally be subject to the Code, and obliged to comply with each of the obligations described in the Code, for the duration of the relevant contract.

Potential Tenderers should note that obligations under the Code are not confined to the project the subject of this procurement process, but also extend to Private Covered Building Work (as defined in the Code) undertaken by the Tenderer.

If the Tenderer or any of its Related Entities (as defined in paragraph 4.1 of the Code) are subject to a current finding of material Code non-compliance (as defined in paragraph 30 of the Code), irrespective of whether such status was disclosed by the Tenderer in response to the relevant evaluation criteria, and irrespective of whether such finding was current as at the date of the Tenderers' response, the Tenderer may be excluded from further consideration in this procurement process.

Potential Tenderers are therefore strongly encouraged to review the Code before submitting a response.

A full copy of the Code of Conduct can be viewed at:

[Building and Construction Industry Code of Conduct 2016](#)

2.13. PFM RESERVES THE RIGHT TO:

- modify the timetable of this Request for Tender including the Tender Close Date and/or time at its discretion;
- consider or accept, or refuse to consider or accept, non-conforming Tenderers at its discretion;
- not accept the lowest priced or any Tender;
- withdraw or add requirements from the Scope of Works or Premises;
- withdraw or cancel the Request for Tender at any time before an agreement with the Tenderer is signed;
- accept any Tendered Offer without further negotiation with Tenderers;
- require any or all Tenderers to attend PFM's premises to present their response or answer queries on the response;
- shortlist Tenderers; and
- clarify pricing or any other parts of the tender during the evaluation phase, or any other process required by PFM.

3. INFORMATION FOR THE TENDERER

3.1. GENERAL

Except where otherwise provided:

- a. All documents and all communications between the parties must be in the English language.
- b. Measurements and quantities must be in the metric units prescribed by the laws of Australia.
- c. References to currency are to Australian currency.
- d. The Contract contains the full and complete understanding of the parties and supersedes any agreement and any representation made or dated prior to the commencement of the Contract.
- e. 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.
- f. No waiver by or on behalf of a party of any breach of any provision of the Contract will take effect or be binding on that party unless it is expressed in writing under the authority of that party. Any waiver will extend only to the particular breach waived and will not limit or affect any right with respect to any other or further breach.
- g. Any consent or approval of PFM required under the Contract must be in writing and may be given conditionally or unconditionally or withheld in each case in PFM'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 PFM does not in any way affect the obligations of the Contractor in respect of the subject of the consent or approval.
- h. 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.
- i. Unless a contrary intention is specifically expressed, no provision of the Contract limits any right of PFM whether under the Contract or under any law.
- j. Figures prevail over scaled dimensions in a discrepancy.
- k. If a word is defined, another part of speech has a corresponding meaning.

3.2. PRECEDENCE OF DOCUMENTS

The order of precedence in the interpretation of the Contract will be:

- a. Letter of Acceptance (if applicable); then
- b. Schedule 3 - Special Conditions; then
- c. Schedule 4 – Contract Administration and Superintendent Terms
- d. Schedule 2 - Works Agreement; then
- e. Request for Tender Annexures; then
- f. Remainder of the Request for Tender document; then
- g. Purchase Order terms and conditions.

3.3. RETURNABLE DOCUMENTATION

The Tenderer must complete and return with the Tender:

- a. Executed Form of Tender (Returnable Schedule A);
- b. Pricing Workbook (Returnable Schedule B);
- c. Tender Questionnaire (Returnable Schedule C), together with all supporting documentation;
- d. Any other relevant information

The remainder of this Request for Tender document is not to be returned with the Submission.

3.4. PREQUALIFICATION

PFM has a strong commitment to the health and safety of its employees and Contractors. PFM's Zero Harm objective guides this commitment.

To become a PFM Supplier or Contractor it is a requirement that minimum health, safety and quality requirements are met. This includes but is not limited to provision of the following:

- Certificates of Currency as required by PFM;
- Proof of financial stability;
- Proof of appropriate Safety Management Systems Plans and Procedures.
- Signed acceptance of the PFM Subcontractor Handbook and completion of PFM online inductions; and
- Acceptable Police Clearances.

If a Tenderer is selected as the preferred Respondent and has not already completed the prequalification process, any documentation requested must be submitted to PFM within two (2) working days.

Successful prequalification is a pre-requisite to carrying out works for PFM. Failure to Prequalify will deem any contractual relationship void.

Prequalification is at the sole discretion of PFM.

3.5. DRUGS AND ALCOHOL POLICY

PFM's Drug and Alcohol Policy requires that persons should not be affected by alcohol, drugs, prescription medicine or over the counter medicine whilst at work.

The Tenderer must have procedures in place to ensure that alcohol and other drugs testing will be conducted following a serious accident/incident, on a random basis and as required by PFM.

When a person returns a positive result the disciplinary process to be followed must as a minimum be aligned to PFM's HSE Drug and Alcohol Guidelines.

3.6. BUY LOCAL POLICY

The Western Australian Buy Local Policy (WA Buy Local Policy) 2022 is designed to provide local businesses with enhanced access to the government market through the application of a range of initiatives and price preferences.

3.6.1. PRICE PREFERENCE

The Western Australian Government provides price preferences to Western Australian businesses when they are in competition with other Western Australian businesses for government contracts where the purchase or contract point of delivery is in regional Western Australia.

Price preferences are not applied when compliant bids received from businesses located in Western

Australia are being directly compared, in the final bid analysis, with compliant bids received from businesses located in other States or Territories of Australia or New Zealand.

Details regarding regional price preferences and how they are applied are documented in the WA Buy Local Policy 2022, which is available from the WA Government.

3.6.2. REGIONAL BUSINESS PREFERENCE

Eligible regional businesses that are tendering or quoting for contracts within the applicable prescribed distance can receive a regional price preference.

3.6.3. REGIONAL CONTENT PREFERENCE

A regional content preference is available to all Western Australian businesses, including businesses located in the Perth region and businesses located inside or outside the prescribed distance that use goods, materials or services in regional contracts that are purchased from businesses located within the prescribed distance and used in the delivery of the contract outcomes. The regional content preference will only be applied to the value of the portion of regional content claimed in their tender submission.

3.6.4. COMMITMENTS

The Tenderer warrants that it will meet in full the commitments given by it in the Schedule of Buy Local Commitments in relation to the Buy Local Policy.

At any time during the Contract, the Contractor may be required to provide to PFM information confirming compliance with the commitments given in the Schedule of Buy Local Commitments.

If the information given by the Contractor under this Clause indicates that full compliance with the Buy Local Policy commitments may not be achieved, the Contractor must submit to Programmed FM for approval details of how it proposes full compliance will be achieved.

Failure to achieve full compliance may, at the sole discretion of PFM, render the Contractor liable to Programmed FM for damages up to the value of, as applicable:

- a. commitments made in relation to Western Australian local content but not met;
- b. the price preference granted by PFM in evaluating the Contractor's Tender in relation to commitments made in relation to regional business and regional content but not met; and
- c. the price impost which would have been imposed in evaluating the Contractor's Tender in relation to imported goods used above the limit committed.

3.7. ABORIGINAL BUSINESS AND EMPLOYMENT QUOTING PREFERENCE (ABETP)

The Western Australian Government provides price preferences to Registered Aboriginal businesses, and businesses that employ Aboriginal people or contract with registered Aboriginal businesses. This aims to maximise opportunities for Aboriginal businesses bidding for State Government contracts.

Details regarding the Aboriginal Business and Employment Quoting price preferences and how they are applied are documented on the State Government's Website and are intended to support the Aboriginal Procurement Policy, which is available from the WA Government.

3.7.1. ELIGIBILITY

- Aboriginal Businesses (including subcontractors, subconsultants and suppliers) registered on the Aboriginal Business Directory WA or Supply Nation and may be:
 - a sole trader where the person is Aboriginal
 - a partnership or firm where at least 50% of the partners are Aboriginal
 - a corporation where Aboriginal persons own at least 50% of the legal entity submitting the Tender.
- Joint ventures with Aboriginal participation between any registered Aboriginal Business and a non-Aboriginal business where at least 50% of equity in the joint venture is owned by the registered Aboriginal Business (see definition of Aboriginal Business above)
- Aboriginal employer – a legal entity that employs Aboriginal persons (defined as a person of Aboriginal descent who lives as such and is accepted by the community they live or lived in). This includes apprentices, trainees, subcontractors and suppliers

3.8. REQUIREMENTS UNDER THE BUILDERS REGISTRATION ACT

Tenderers shall evaluate the work required under the Contract and ensure that they are able to meet the requirements of the Building Services (Registration) Act 2011 (WA).

3.9. REGISTRATION OR LICENSING OF CONTRACTORS

Where an act or ordinance of the state of Western Australia requires that a Contractor (as defined by the act or ordinance) be registered or licensed to carry out the work described in the Tender documents, the Tenderer shall state on the Returnable Schedule A – Form of Tender its registration or license number.

The Tender may not be considered if the Tenderer fails to provide such registration or license number.

3.10. EVALUATION OF TENDERS

All valid Tenders will be evaluated in accordance with PFM Policies and in general accordance with the criteria set out in this Section;

3.10.1. COMPLIANCE

In its evaluation of Tenders PFM will take into consideration the following **mandatory** factors;

- attendance at Mandatory Site Briefing (if applicable)
- Tendered price, including:
 - Regional Business and Regional Content preference adjustments (if applicable); and
 - Imported Content adjustments (if applicable) and
- compliance with the requirements of the Tender documents and completion of Tender Questionnaire

The following will also be taken into account by PFM in its evaluation:

- the Tenderer's known prior performance in relation to:
 - safety and its management of safety
 - compliance with any applicable industry code of practice or code of conduct;
 - payment of its subcontractors, suppliers and/or employees; and
 - quality, time and cost;
- current workload and technical resources; and
- compliance with relevant local, state and federal government requirements

If, in the opinion of PFM, a Tenderer fails to meet, or is otherwise deficient in respect of, any one or more of the above criteria, the Tenderer will be excluded from further consideration.

A Tender that does not fully comply with all terms and conditions of the Contract will not be disqualified for non-compliance. The level of compliance will be assessed against the requirements of the Contract. A Tenderer demonstrating a higher level of compliance will improve its chances of being successful.

PFM reserves the right to reject submission(s) with material departures to the Condition of Contract.

3.10.2. FINANCIAL

No contract will be entered into unless PFM has satisfied itself of the financial position of the preferred Tenderer. In this regard, PFM may require Tenderer(s) to provide additional financial evidence for assessment prior to selecting the successful Tenderer. Note that the outcome of this financial assessment may result in the exclusion of the Tenderer from being awarded the Works or require the preferred Tenderer to provide an additional bank guarantee once the contract is awarded.

3.10.3. EVALUATION CRITERIA

The evaluation of Tenders will be undertaken on a Value for Money basis.

The value for money principle is concerned with achieving the best possible return from expenditure on goods and services, recognising that this may not amount to purchasing at the lowest price to specification.

The primary Tender assessment criteria are:

- a. Compliance, meaning the assessment of each Tender to the mandatory evaluation criteria:
- b. Capability, meaning a comparison of the relative merits of each Tender in relation to capability will be made based on the information provided by each Tenderer in response to the Returnable Schedule C – Tender Questionnaire. The weightings for the evaluation of capability are noted in the table below:

Evaluation Criteria	Weighting
Demonstrated Experience – Company	25%
Demonstrated Experience – Key Personnel	25%
Organisational Delivery Approach	30%
Safety	20%

- c. Cost, meaning a comparison of the relative merits of each Tender in relation to cost will be made based on the information provided by each Tenderer in the Schedule of Prices.

4. LODGEMENT OF TENDERS

4.1. LODGEMENT OF TENDERS

Lodgment of Tenders will only be accepted via the Tenders WA web portal: <https://www.Tenders.wa.gov.au/>

The Submission can only be submitted through: www.Tenders.wa.gov.au Tenderer must comply with the requirements of the Tenders WA web portal in submitting their Tender.

The Tenderer must be registered with www.Tenders.wa.gov.au to submit its Tender in this manner.

4.2. CONDITIONS

The Submission must be received in full via www.Tenders.wa.gov.au web portal.

Tenders must be lodged **before 2.00pm WAST on the closing date.**

NOTE: The Tenders WA web portal will electronically close at the closing time on the closing date. Tenderers should allow adequate time to fully submit their Tender prior to closing.

All documentation must be in the English language and all Tendered rates must be in Australian dollars.

Measurements and quantities must be in units consistent with the Weights and Measures (National Standards) Act 1960-1966 or in the absence of any specification therein must be in accordance with the Australian Metric Tables and Australian Standard AS1000 - The International System of Units (SI) and its application.

All information required to be supplied must be clear and legible.

4.2.1. CONDITIONS OF TENDER SUBMISSION

The Tenderer agrees that:

- a. receipt of the submission will be determined by the date and time shown on the electronic Tender lodgment service receipt issued;
- b. if the submission contains a virus then, notwithstanding any disclaimer made by the Tenderer in respect of viruses, the Tenderer must pay PFM all costs incurred by PFM arising from, or in connection with, the virus;
- c. lodgment of electronic files may take time and the Tenderer must make its own assessment of the time required for full transmission of its submission;
- d. PFM will not be responsible in any way for any loss, damage or corruption of the electronic copy of the submission;
- e. if the electronic copy of the submission becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then PFM may request the Tenderer to provide another copy of the submission either electronically or in hard copy or both;
- f. if PFM requests the provision of another copy of the Submission, then the Tenderer must;
 - i. provide the copy in the form(s) requested within the period specified by PFM;
 - ii. provide a statutory declaration that the copy is a true copy of the Submission which was electronically submitted by the Tenderer and that no changes to the Submission have been made after the initial attempted electronic submission; and
 - iii. provide a copy of the electronic Tender lodgment service receipt for the initial attempted electronic submission.

Any Tender Submission which:

- a. is not submitted before the Closing Time;
- b. is incomplete at the Closing Time;
- c. is received via hand delivery;
- d. is received via email; or
- e. is not submitted in accordance with the provisions of this Request for Tender,

may be marked as non-compliant and excluded from consideration.

PFM reserves the right to reject any or all Tenders and the lowest Tender will not necessarily be accepted. This condition prevails over any contrary implication.

Any condition of sale, quotation, offer or proposal of any nature appearing on any documents submitted with the Tender which constitutes any variation of or omission from or addition to the General Conditions will be deemed to be excluded from the acceptance of any Tender to which such condition unless the same has been expressly referred to and accepted in writing by PFM in correspondence between PFM and the successful Tenderer.

A Tender will not be deemed to have been accepted unless and until a Contract has been entered into between PFM and the Tenderer. No contract will arise unless and until a Letter of Acceptance has been issued by PFM and the Tenderer successfully completes the PFM prequalification process (refer to prequalification section). Until then no legal relationship shall exist between the parties in respect of the above requirement and neither party shall have or make any action, suit, claim, demand, or proceedings at law or in equity against the other for any loss, injury, damage, compensation, costs or expenses or otherwise whatsoever in respect of or in consequence thereof.

4.3. OPENING OF TENDERS

The opening of Tenders is not public and neither the Tenderer nor its representatives will be permitted to attend.

4.4. VALIDITY PERIOD

The entire Tender must remain valid for a minimum period of ninety (90) calendar days from the closing date for Tenders and will remain binding and be capable of acceptance at any time before the expiration of that period.

4.5. CONFIDENTIALITY

PFM will treat Tenders as confidential and undertakes to keep confidential any information provided by the Tenderer in responding to this Request for Tender unless disclosure of any part of it is required by law.

The Tenderer must:

- a. treat this Request for Tender, its Tender submission and any additional information obtained from PFM or submitted by the Tenderer as confidential;
- b. refrain from divulging any confidential information to any person not involved with the preparation of the Tender; and
- c. ensure any person receiving Confidential Information is similarly bound.

4.6. COMPLIANCE WITH TENDERS WA WEB PORTAL REQUIREMENT

It is the responsibility of the Tenderer to ensure that their details, including the correct email address of the nominated contact person, are registered within the Tenders WA web portal.

4.7. ADVICE ON USING THE TENDERS WA WEB PORTAL

Tenderers seeking advice using the Tenders.wa.gov.au web portal may contact:

Name : Systems Support

Telephone : (08) 6551 2020

NOTE: this is for queries relating to the web portal only.

4.8. PFM IN-HOUSE OR SUBSIDIARY COMPANIES

This Clause serves to inform interested parties that this Request for Tender may be Tendered on by a PFM in-house subsidiary company, and that such submissions would be subject to probity and procedures as agreed with its Client.

SCHEDULE 1: CONTRACT DETAILS

PROGRAMMED'S DETAILS <hr/> <i>i</i> This is also our address for Notices <hr/>	Programmed Facility Management Pty. Ltd. ABN 23 001 382 010 47 Burswood Road, Burswood WA 6100 Notices Copy to: company.secretary@programmed.com.au Attention: Company Secretary (If no entity is nominated, "Programmed" means Programmed Maintenance Services Limited).
PROGRAMMED REPRESENTATIVE	PFM Program Manager or delegate
VENDOR NAME AND ADDRESS <hr/> <i>i</i> You must include the full legal name (usually ending with 'Pty Ltd' or 'Limited' - you can check this via ASIC Connect) <hr/>	As outlined in the Form of Tender
ABN OF VENDOR <hr/> <i>i</i> Please check this at ABN Lookup <hr/>	As outlined in the Form of Tender
VENDOR'S ADDRESS FOR NOTICES	As outlined in the Form of Tender
VENDOR'S REPRESENTATIVE	As outlined in the Form of Tender
START DATE <hr/> <i>i</i> This is the day on which this Works Agreement starts. <hr/>	3/03/2025 The day on which this Works Agreement starts (if no day is specified, the start date is the date this Works Agreement is signed by both parties).
COMPLETION DATE <hr/> <i>i</i> This is the day by which the Works must be finished. <hr/>	19/05/2025 The completion / delivery date is as specified above, and/or other specific delivery or milestone dates as agreed.
WORKS	The Works are described in the Annexures.
VENDOR SUPPLIED PLANT & EQUIPMENT	Not applicable.
PRICE	As accepted in the Letter of Acceptance or Purchase Order issued.
WORKS AGREEMENT REFERENCE NUMBER (To be completed by Programmed ONLY)	As per Request for Tender number

INSURANCE	
Additional insurance requirements	N/A (For the avoidance of doubt, if nothing is specified here, then the minimum insurance requirements in the Works Agreement Terms apply, and/or as specified in the Customer Requirements if further insurances are required therein and/or a higher limit is required for specific insurances).
SECURITY OF PERFORMANCE	
Bank Guarantee Amount	5% of the Contract Price in the form of the form of two (2) unconditional bank guarantees, each being the equivalent of 2.5% of the Contract Price. One bank guarantee will be returned at Practical Completion and the remaining will be retained for the defects liability period.
Other Security	Not applicable
CONTRACT MANAGEMENT	
Sites	The Site is described in Schedule 8 (and as otherwise specified).
Key Personnel	Insert (or as otherwise specified)
KPIs	Insert (or as otherwise specified)
Milestones	Insert (or as otherwise specified)
LIQUIDATED DAMAGES	
Amount Per Day	\$220.00
Maximum Amount; or	Not applicable
Maximum Number of Days	Not applicable
DEFECT LIABILITY PERIOD / ABATEMENTS	
Defect Liability Period	12 months from date of Practical Completion
Abatement Regime	Not applicable
OTHER REQUIREMENTS*	
Not applicable	

SCHEDULE 2 - WORKS AGREEMENT TERMS

INFORMATION POINTS:

We have included 'information points' in these Works Agreement Terms which look like this:

i [Example information point for Vendor]

to help you understand the purpose of a term (**Information Points***). Information Points are for guidance only and do not form part of the terms of this Contract.

***DISCLAIMER:** Information Points are guides only. They are not terms of your Contract. Information Points are not legal, commercial or financial advice to you. Do not rely on Information Points to decide whether to sign this Contract. If you are unsure about anything relating to this Contract, you should seek your own legal advice.

THE PARTIES AGREE THAT:

<p>1. Agreement Structure and Priority</p> <p>i The Works Agreement is made up of the documents set out in this Clause.</p>	<p>1.1. The Vendor agrees to perform the Works and associated services required by Programmed in accordance with the terms and conditions of this Works Agreement.</p> <p>1.2. This Works Agreement is made up of the following terms (only):</p> <ul style="list-style-type: none"> a. Contract Details (Schedule 1); b. Special Conditions & Customer Requirements (Schedule 3); c. Works Agreement Terms (Schedule 2); d. Other Schedules and Annexures (of WA) Schedule 4); e. Applicable Order (excluding the Group Terms of Supply if the Vendor has an MVA); and f. The MVA (if a MVA has been executed by the parties). <p>1.3. If the terms of this Works Agreement are inconsistent they must be applied in the order of priority set out in Clause 1.2 (unless the relevant Clause or Schedule says otherwise).</p> <p>1.4. The Works Agreement reflects the entire agreement between the parties with respect to its subject matter and supersedes (i.e., replaces) all prior proposals, undertakings or other communications whether orally, electronically or in writing.</p>
<p>2. Interpretation</p> <p>i How to interpret the Works Agreement.</p>	<p>2.1. In this Contract (unless the context otherwise requires):</p> <ul style="list-style-type: none"> a. reference to the Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time; b. a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)'; c. where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning; d. words in the singular include the plural and vice-versa and a gender includes all genders;

	<ul style="list-style-type: none"> e. a reference to any legislation or legislative provision includes amendments to, and re-enactments of, that legislation or legislative provision; f. a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; g. a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year; h. a reference to '\$', 'AUD' or 'dollar' is to Australian currency (unless specified and agreed otherwise); i. headings are for convenience only and do not affect interpretation of this Contract; and j. no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Contract or any part of it.
3. Term i How long does your engagement go for?	3.1. This Works Agreement starts on the Commencement Date and ends on the End Date (unless it is terminated before the End Date, or extended past the End Date, in accordance with these Works Agreement Terms) (the Term).
4. Performance and Standard of Works i It is important that Works are completed in accordance with these standards. i Programmed is required to agree to the same or similar standards with its Customers. i You will need to comply with relevant policies and procedures. i You must ensure that the Works are completed on time.	4.1. The Vendor must carry out the Works: <ul style="list-style-type: none"> a. on and from the Start Date; b. in accordance with the requirements of the Works and this Contract; c. for the Price; d. in accordance with Programmed's reasonable and lawful directions; e. in accordance with applicable Laws and industry standards; and f. otherwise in accordance with the terms and conditions of the Contract. 4.2. Any Works (or part of them) performed prior to the Start Date will be deemed to have been supplied pursuant to the Contract. 4.3. The Vendor must obtain, at the Vendor's expense, any necessary Licenses required to complete the Works. 4.4. The Vendor must complete the Works by the Completion Date. 4.5. The Contract does not prevent Programmed from entering into arrangements or agreements with third parties for the provision of equivalent or similar Works or services to any Works. 4.6. The Vendor must, in performing the Works: <ul style="list-style-type: none"> a. not unreasonably interfere with Programmed's activities or the activities of the Customer or any other person at the Site; b. be aware of and comply with and ensure that the Vendor's Personnel are aware of and comply with: <ul style="list-style-type: none"> i) all applicable Laws; ii) Programmed Policies and Customer Policies, standards and procedures relating to Site; and iii) all reasonable and lawful directions and orders given by Programmed's Representative;

	<ul style="list-style-type: none"> c. prevent nuisance and unreasonable noise and disturbance; d. take measures necessary to protect people and property; e. be responsible for locating and protecting all existing services, lines, pipes, cables and fixtures, whether or not such information is shown on any drawings. In the event of any damages to such services, the Vendor will immediately notify the Programmed Representative; f. immediately notify Programmed of any damage caused to property at Site and make good any damage at the Vendor's cost; g. leave the Site reasonably clean, secure and orderly having regard to the condition of the Site immediately prior to the performance of the Works; h. keep Programmed fully informed of all design issues, design progress and any other matters which affect either or both of the Vendor's Design Obligations or the Design Documents (if applicable); and i. submit the Design Documents in accordance with the Program, or as Programmed may otherwise reasonably request (if applicable)
<p>5. Warranties</p> <hr/> <p>i It is important that you warrant certain items including the standard of the work.</p> <hr/> <p>i Programmed is required to agree to the same or similar warranties with its Customers.</p> <hr/>	<p>5.1. Each party warrants to the other that:</p> <ul style="list-style-type: none"> a. it has the power and authority to enter into the Contract; b. its performance of its obligations under the Contract will not contravene its constituent documents, or any contract or undertaking by which it is bound; c. the Contract has been duly signed and delivered on its behalf; and d. obligations it undertakes under the Contract are enforceable against it in accordance with the terms. <p>5.2. The Vendor warrants to Programmed that:</p> <ul style="list-style-type: none"> a. at all times it will be suitably qualified and experienced, and will exercise due skill, care and diligence in the carrying out and completion of the Works; b. it will use work methods that reflect the highest practical standards recognised by the applicable industry and that are in current use; c. it will use workmanship expected from a highly competent Vendor experienced in work of a similar, size, character and complexity to the Works; d. it will use materials which are new, of merchantable quality and fit for their purpose; e. it has examined any preliminary design included in the Project Requirements (if applicable) and that such preliminary design is suitable, appropriate and adequate for the purpose stated in Project Requirements;

	<p>f. it will carry out and complete the Vendor's Design Obligations (if applicable) in accordance with the Contract;</p> <p>g. it will carry out and complete the Works in accordance with the Contract and the Design Documents so that the Works, when completed, will:</p> <ul style="list-style-type: none"> i) be fit for their intended purpose (as specified in or as can be reasonably inferred from the Contract); and ii) comply with the requirements of the Contract, including satisfying the minimum design load (if any); and iii) achieve the levels and standards of performance which, under the Contract, it is required to achieve; <p>h. the Works will have the minimum design life specified in the Contract and that throughout the minimum design life no undue degradation of the Works will occur;</p> <p>i. the Works will be safe, efficient and reliable and will have proven durability to withstand all hydrographical, hydrological, marine, climatic and geotechnical conditions that are likely to be experienced;</p> <p>j. it is satisfied that the Price covers the cost of performing the Works in all respects and includes sufficient contingencies to cover the cost of complying with any direction and all risks, obligations and liabilities of the Vendor under or arising from the Contract, at law or otherwise;</p> <p>k. it fully satisfied itself, obtained, verified and interpreted all information and documents provided to the Vendor by Programmed, as to the nature and extent of the Works and its other obligations arising from or under the Contract, at law or otherwise, and all risks, difficulties, contingencies and other matters and circumstances which may affect or influence the Price and the costs of and time for the proper completion of the Works in accordance with the Contract;</p> <p>l. Programmed provided it with an opportunity to inspect the Site;</p> <p>m. it carefully examined and fully understood the documents which form part of the Contract;</p> <p>n. any information given or representation, made to Programmed in connection with the Works is accurate, current and is not misleading or deceptive in any respect;</p> <p>o. it entered into the Contract relying solely on its own investigations, determinations, skills and judgment;</p> <p>p. it is satisfied as to the completeness and accuracy of any information provided to the Vendor by Programmed; and</p> <p>q. these warranties are in addition to any applicable statutory warranties.</p> <p>5.3. The Vendor warrants that all indemnities, representations and warranties given by the Vendor under the Contract:</p> <ul style="list-style-type: none"> a. will remain unaffected notwithstanding:
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	<ul style="list-style-type: none"> i) that design work (including the preliminary design) has been carried out by or on behalf of Programmed and included in the Project Requirements; ii) any Variation; iii) the Vendor's engagement of any subcontractor for any part of the Works; or iv) that Programmed has carried out any inspection or tests in connection with the Works; <p>b. survive the expiry of the Contract;</p> <p>5.4. The Vendor acknowledges that in entering into the Contract, Programmed is relying upon:</p> <ul style="list-style-type: none"> a. the Vendor's offer in respect to the tender or any proposal made by the Vendor (if applicable); b. the Vendor's advice, skill and judgment in performing the Works; and c. each of the Vendor's representations and warranties contained in the Contract. <p>5.5. The Vendor acknowledges and agrees that Programmed and its Personnel make no representation or warranty as to the accuracy or completeness of documents and information relating to the Works (including the Project Requirements).</p>
6. Plant and Equipment <hr/> <p>i You must supply labour, Plant and Equipment.</p> <p>i Where you use Programmed property, you must take responsibility.</p> <hr/>	<p>6.1. Unless this Contract provides otherwise, the Vendor must supply all labour and Plant and Equipment necessary to complete the Works, at the Vendor's expense.</p> <p>6.2. The Vendor will ensure that all Plant and Equipment brought onto the Site is safe and properly maintained before use and, if requested by Programmed, the Vendor must provide audit inspection records and documented evidence of certification and training records of its Personnel to operate the Plant and Equipment.</p> <p>6.3. If Programmed provides any Plant and Equipment to the Vendor, that Plant and Equipment remains Programmed's property, and the Vendor may only use that Plant and Equipment by qualified and experienced operators for the purposes of fulfilling the Vendor's obligations under this Contract.</p> <p>6.4. The Vendor is responsible for all damage to and loss of the Plant and Equipment.</p>
7. Access to Site <hr/> <p>i You must inspect the conditions you are working in..</p> <hr/>	<p>7.1. Subject to Clause 7.2, Programmed will give the Vendor access to the Site as necessary to enable performance of this Contract.</p> <p>7.2. Where Programmed does not have full control of a Site (e.g. where a Site is Customer-owned), Programmed will not be able to provide access greater than the access provided to Programmed by the Customer.</p>

	<p>7.3. Programmed does not make any representations or warranties to the Vendor about the Site or Plant and Equipment. The Vendor is responsible for inspecting the Site and/or Plant and Equipment and accepts the condition of the Site and Plant and Equipment.</p>
<p>8. Work Health and Safety (WHS)</p> <hr/> <p>i You must comply with WHS requirements including the Subcontractor Handbook and other policies.</p> <p>i See the Definitions section below for access to Programmed's Policies.</p> <hr/>	<p>8.1. The Vendor will be responsible for:</p> <ul style="list-style-type: none"> a. complying with Programmed Policies, Customer Policies, the Site WHS policies requirements and any Directions from Programmed relating to occupational health and safety issued at its discretion from time to time; b. the health and safety of all Vendor Personnel or other people it invites on to the Site; and c. complying with all applicable occupational health and safety requirements required by Law. <p>8.2. The Vendor must comply with the health, safety and environment requirements of the Subcontractor Handbook including preparing a job specific risk assessment and specific Safe Work Method Statements (SWMS) for all high-risk construction works (these SWMS must be reviewed and signed on to by all members of the work crew including any subcontracted employees).</p> <p>8.3. Before commencing any Works, the Vendor must:</p> <ul style="list-style-type: none"> a. prepare a Site Specific Work Method Statement which is completed to the satisfaction of Programmed (acting reasonably) in respect of those Works; b. ensure all Vendor Personnel have completed Programmed's vendor onboarding training and receive a Site specific induction, based on the Site Specific Work Method Statement. Where notified by Programmed, a nominated employee of Programmed will facilitate the induction as part of the first toolbox meeting; and c. undertake a corporate induction designed by Programmed (and/or a Customer) during which the Vendor will be issued with appropriate current documentation by Programmed. <p>8.4. The Vendor must immediately notify Programmed of any occupational health and safety incidents, near misses, or hazards the Vendor is or becomes aware of at the Site.</p> <p>8.5. The Vendor must comply with all occupational health and safety requirements (including but not limited to corrective actions) as notified by Programmed from time to time.</p> <p>8.6. The Vendor shall ensure that all Hazardous Materials brought onto the Site are used, stored and removed safely.</p> <p>8.7. Programmed (and/or a third party) may immediately access a Site to investigate a possible occupational health and safety risk and/or undertake any urgent action relating to the occupational health and safety of any person on the Site.</p>

	<p>8.8. If Programmed takes any urgent action as a result of the Vendor's act, default or omission (or that of the Vendor's Personnel), then any costs of the urgent action incurred by Programmed will be a debt due from the Vendor to Programmed.</p> <p>8.9. Programmed may investigate or appoint an independent third-party to investigate any occupational health and safety incident that has occurred and provide a report in relation to same. The Vendor must cooperate with the investigator's reasonable requests including the provision of relevant Records and access to Vendor Personnel.</p>
<p>9. Inspection and Information</p> <hr/> <p>i Programmed may inspect Works and some Records.</p> <hr/>	<p>9.1. At all reasonable times (including at relevant times during progress stages if applicable), Programmed may itself or through an agent and at its cost review, inspect, examine and witness tests of the Works, or the performance of any Works; and carry out inspections, at the Site or the Vendor's premises.</p> <p>9.2. The Vendor must advise Programmed when any part of the Works has been completed and is ready for review, inspection, examination or testing.</p> <p>9.3. The Vendor must keep and maintain all Records in accordance with generally accepted accounting standards, principles and practices in Australia and in a form acceptable to Programmed for not less than seven (7) years after the termination or Completion Date of the Contract.</p> <p>9.4. At Programmed's (or a Customer's) reasonable request, the Vendor will give Programmed (or a third party selected by Programmed) access to the Records for the purpose of enabling Programmed to assess the Vendor's compliance with its contractual obligations.</p>
<p>10. Price</p> <hr/> <p>i Programmed will pay the agreed Price.</p> <hr/>	<p>10.1. Programmed must pay the Vendor the Price specified in this Contract in accordance with Clause 10.</p> <p>10.2. Unless this Contract provides otherwise, the Price is inclusive of:</p> <ul style="list-style-type: none"> a. the cost of any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Works; b. the Vendor's compliance with its obligations under this Contract; and c. all Taxes. <p>10.3. The Price may not be varied without Programmed's prior written consent.</p>
<p>11. Invoice and Payment</p> <hr/> <p>i You must provide appropriate documentation to substantiate payment.</p> <hr/>	<p>11.1. On Completion or, where the Contract Details state that Programmed must make progress payments, as soon as reasonably practicable following the end of each calendar month (or other period specified in this Contract), the Vendor must provide to Programmed (at Programmed's direction):</p> <ul style="list-style-type: none"> a. a statutory declaration or other documentary evidence to substantiate that all the Vendor's Personnel have been paid all moneys due and payable to them in respect of their employment on the Works; b. a Vendor Reference Document which must include the information set out in Clause 11.2; and

	<p>c. a properly rendered Invoice which meets all the requirements for a Tax Invoice under the GST Law and must include the information set out in Clause 11.2.</p> <p>11.2. A Vendor Reference Document and any properly rendered Invoice must reasonably include the following details:</p> <ul style="list-style-type: none"> a. an Order number reference (if applicable); b. a description of the Works performed and completed, including the period in respect of which the Vendor Reference Document or Invoice relates; c. the Price of the relevant Works; and d. the amount of any applicable GST. <p>11.3. Subject to Clause 11.4, Programmed must pay all properly rendered Invoices within 30 days from End of Month (EOM), after receipt of a properly rendered Invoice by Programmed, except where Programmed:</p> <ul style="list-style-type: none"> a. is required by Law to pay within a shorter time frame, in which case Programmed must pay within that time frame; or b. exercises its right to withhold payment in circumstances where the Vendor fails to provide a statutory declaration or other documentary evidence in accordance with Clause 11.1(a); or c. disputes the Invoice, in which case, Programmed: <ul style="list-style-type: none"> i) must pay any portion of the Invoice not in dispute; and ii) may withhold payment of any disputed portion of the Invoice pending resolution of the dispute; and iii) if the resolution of the dispute determines that Programmed must pay an amount to the Vendor, the Company must pay that amount within seven (7) days of the resolution of that dispute. <p>11.4. Unless otherwise specified in this Contract, any money payable under this Contract is to be paid by electronic funds transfer to the Vendor's nominated bank account or by such other means as the parties agree.</p>
<p>12. Variations</p> <hr/> <p>i There is a process for varying the Contract and pricing any change. We may need some flexibility so that we can meet Customer expectations.</p> <hr/>	<p>12.1. Programmed may at any time direct in writing a Variation.</p> <p>12.2. Within five (5) Business Days of receipt of a notice in writing from Programmed notifying the Vendor of a proposed Variation under this Clause 12 the Vendor will at its own cost:</p> <ul style="list-style-type: none"> a. notify Programmed of the effect which the Vendor anticipates that the Variation will have on the Program and the date for Completion; and b. provide an estimate of the increase or decrease in the Price of the proposed Variation. <p>12.3. Within ten (10) Business Days of receipt of the Vendor's notice of proposed Variation, Programmed will direct the Vendor in writing to proceed with the Variation or not, or to provide additional information.</p>

	<p>12.4. Following receipt of the information in Clause 12.2, the parties must seek to agree on the price of the Variation and the impact on the Price, Program and date for Completion.</p> <p>12.5. If the parties cannot agree there will be no Variation. Any Variation agreed by the parties must be documented in writing and signed by the parties.</p>
<p>13. Completion</p> <hr/> <p>i Please provide 5 business days' notice of completion so that we can issue a certificate.</p> <hr/>	<p>13.1. The Vendor must give Programmed at least five (5) Business Days' written notice of the date upon which the Vendor anticipates achieving Completion.</p> <p>13.2. If Programmed is of the opinion, acting reasonably, that Completion has been achieved, Programmed will issue a Certificate of Practical Completion.</p> <p>13.3. If Programmed is of the opinion, acting reasonably, that Completion has not been achieved, it will notify the Vendor of the work needed to be carried out to achieve Completion.</p> <p>13.4. The Vendor will carry out the Works referred to in Clause 13.3 and notify Programmed in accordance with Clause 13.1 and Clauses 13.2 or 13.3 once it achieves Completion.</p>
<p>14. Suspension of Works</p> <hr/> <p>i Programmed needs the ability to reasonably suspend the delivery of the services to protect its legitimate business interests.</p> <hr/>	<p>14.1. Programmed can, acting reasonably, suspend your delivery of the Works. We will also adjust any milestones or delivery dates as reasonably necessary to take the suspension into account.</p> <p>14.2. If you receive a direction from us to suspend the Works, you must stop providing the Works until further written notice from us.</p> <p>14.3. If the suspension is not due to the Vendor's act or omission, Programmed will reimburse you reasonable and unavoidable costs directly incurred by you as a result of the suspension (provided (i) that the suspension has put you in a worse off position had the suspension not occurred, (ii) you have experienced Loss notwithstanding the resumption of the supply of Services in the future, and (iii) you give us documented evidence of those costs).</p>
<p>15. Extension of Time</p> <hr/> <p>i You must monitor your progress and may be entitled to make a claim for an extension of time if your work is delayed.</p> <hr/>	<p>15.1. The Vendor will be entitled to make a claim for an extension of time to the Completion Date if:</p> <ol style="list-style-type: none"> the Vendor is or will be delayed in reaching the Completion Date by an Event of Delay; the delay was not caused by an act or omission of the Vendor; the Vendor gives Programmed, within three (3) Business Days of when the Vendor should reasonably have become aware of the Event of Delay, a written request for an extension of time outlining the details and cause of the delay (any written request for extension must be made and agreed to by Programmed prior to the target Completion Date). <p>15.2. Upon receipt of the written request, Programmed may grant an extension of time to the Completion Date for an amount of days as determined by Programmed (in consultation with its Customer where appropriate), acting reasonably, by written notification to the Vendor. The Vendor will not be entitled to additional amounts or costs for the extension.</p>

<p>16. Latent Conditions</p> <hr/> <p>i Please tell us if you discover Latent Conditions.</p> <hr/>	<p>16.1. If a Latent Condition is discovered by the Vendor, the Vendor must within seven (7) Business Days of becoming aware of a Latent Condition provide written notice to Programmed's Representative of the general nature and consequences of the Latent Condition, including any proposed Variation.</p> <p>16.2. The Vendor is entitled to an extension of time to the Completion Date for any delay suffered by the Vendor as a result of dealing with the Latent Condition.</p> <p>16.3. If it is necessary for the Vendor to undertake additional works as a result of dealing with the Latent Condition, the additional works will be treated as if it were a Variation.</p>
<p>17. Defects</p> <hr/> <p>i You must be responsible for defective works.</p> <hr/>	<p>17.1. If, following performance of any Works under this Contract, or during the Defects Liability Period, Programmed finds any Defect in the Works then, Programmed may provide the Vendor notice in writing of the Defect and require the Vendor to make good the Defect within the time period stated in the notice.</p> <p>17.2. If the Vendor does not make good the Defect within the time period stated in a notice given pursuant to Clause 17.1, then Programmed may by written notice to the Vendor:</p> <ol style="list-style-type: none"> accept the Works with the Defect, subject to its diminution in value (which will become a debt due and payable by the Vendor to Programmed); reject the Works with the Defect (in which case the Vendor must reimburse Programmed for all related costs); require the Vendor to re-perform the Works with the Defect free of charge; make good or engage another Vendor to make good the Defect (in which case the costs of making good the Defect will be a debt due and payable by the Vendor to Programmed). <p>17.3. Where the Vendor has made good any Defect, those Works will be subject to the same Defects Liability Period as the original Works, from the date the Vendor made good the Defect.</p> <p>17.4. If Programmed decides to accept any Works with a Defect, Programmed is not bound to accept any other Works with a Defect and it does not affect any of Programmed's other rights under this Contract in respect of those Works.</p>
<p>18. Termination for Default</p> <hr/> <p>i Your Contract can be terminated if you breach it (and you don't or can't rectify that breach).</p> <hr/>	<p>18.1. Subject to Clause 18.2, if either party commits a material breach (Breaching Party) of its obligations under this Contract or any part of it then the party that has not committed the relevant breach (Non-Breaching Party) can terminate a Contract (or any relevant part of it):</p> <ol style="list-style-type: none"> after 30 days if you do not remedy the breach within that time; or immediately if the Breaching Party cannot be remedy the breach following reasonable consultation between the parties.

	<p>c. A party can terminate a Contract (or any relevant part of it), following providing the other party with an opportunity to comment, and without penalty if the other party:</p> <ul style="list-style-type: none"> a. repeatedly breaches material terms of the Contract; b. breaches a warranty; c. commits a fraudulent act or omission; or d. become insolvent or bankrupt. <p>18.2. Programmed can terminate a Contract (or any part of a Contract) immediately (following providing you an opportunity to comment) and without penalty if you or any Vendor Personnel:</p> <ul style="list-style-type: none"> a. subcontract all or part of the Works without our consent; b. assign your rights or obligations under a Contract without our consent; c. repeatedly fail to achieve KPIs; d. substantially change the nature of your business such that your ability to deliver the Works in accordance with the Contract is compromised; e. breach any work health and safety obligations, privacy and data-security obligations or non-compliance with any Law. <p>18.3. If we terminate a Contract (or part of it) under this Clause 18 we are only required to pay you any outstanding portion of the Price for completed Works that is due and payable to you as at the time of termination of this Contract or relevant part of it. Any payment we make under this Clause 18.3 does not affect any other right we may have to claim costs, expenses and/or Losses that we suffer as a consequence of terminating the Contract (or part of it).</p> <p>18.4. If we terminate a Contract (or part of it) under this Clause 18, you are liable for and indemnify us against any Loss of whatever nature we incur in engaging other Vendors to complete the Works (but only to the extent which any such Loss exceeds the Price (or portion of the Price) that would have been payable to you for those Works) and any other Loss we suffer as a result of termination.</p> <p>18.5. If a purported termination for default under this Clause 18 is determined by a competent authority not to be properly a termination for default, then that termination by Programmed will be deemed to be a termination for convenience under Clause 19.</p>
<p>19. Termination for Convenience</p> <hr/> <p>i Programmed needs the ability to end a Contract with you to protect its legitimate business interests. If this occurs, you will be paid your reasonable costs of</p>	<p>19.1. You acknowledge and agree that we can terminate this Contract (or any part of this Contract) by giving you 30 days' notice in writing. You will be compensated in accordance with the Clauses set out below.</p> <p>19.2. Without limiting our rights under Clause 19.1, we may terminate this Contract or reduce the scope of the Works at any time without penalty and with immediate effect by written notice to you if, for any reason whatsoever:</p> <ul style="list-style-type: none"> a. the relevant Customer Contract expires or is terminated;

<p>disengagement in accordance with this Clause 19.</p> <hr/>	<p>b. the relevant Customer revokes its approval of you as a Vendor; or</p> <p>c. the scope of the Works under the relevant Customer Contract is changed such that the whole or a part of the Works are no longer required by Programmed.</p> <p>d. You acknowledge that Clauses 19.1 and 19.2 are necessary and reasonable requirements and part of the Commercial Model.</p> <p>19.3. If we terminate a Contract (or any part of a Contract) under Clause 19, then we will pay your reasonable and unavoidable verified direct costs of disengagement that you actually incur (excluding any redundancy payments) and any existing portion of the Price for completed Works owing to you for Works already delivered or performed by you up to the date of termination and that remain outstanding (less any amount we are entitled to set-off for any reason), or as otherwise agreed in writing.</p> <p>19.4. If we terminate or reduce the scope of a Contract under Clause 19.2, then we will pay your reasonable and unavoidable verified direct costs of disengagement that you actually incur (excluding any redundancy payments) but only to the extent that such costs are first recovered from the Customer and less any amount we are entitled to set-off for any reason. We will also pay any existing portion of the Price owing to you for Works already delivered or performed by you up to the date of termination and that remain outstanding.</p> <p>19.5. You acknowledge that you must factor into your pricing risks and costs associated with termination.</p>
<p>20. Termination Generally</p> <hr/> <p>i These terms apply to termination for any reason.</p> <hr/>	<p>20.1. If a Contract is terminated for any reason:</p> <p>20.2. termination does not affect each party's accrued rights, remedies or liabilities at the termination date;</p> <p>20.3. you must immediately repay any Service Charges or other fees that we have paid you in advance for any reason for Services or Goods that have not yet been provided as at the termination date;</p> <p>20.4. you are not entitled to any payment or compensation in relation to the termination other than as provided for in Clauses 56 to 59.</p> <p>20.5. you must, at your cost, vacate the Site immediately (or on a date the parties agree in writing) and return to us all Intellectual Property, Confidential Information, Customer Equipment and Programmed Equipment in your possession or control (or in the possession of Vendor Personnel).</p> <p>20.6. and only a part of a Contract is terminated (e.g. an Engagement), then you must continue to perform the parts of your Contract (or other Contracts) that remain on foot.</p>
<p>21. Insurance</p> <hr/> <p>i We have our own strict insurance requirements under Customer Contracts</p> <hr/>	<p>21.1. Before the Commencement Date, the Vendor must have (and provide us with certificates of currency for) the following types of insurance):</p>

<p>(which must be reflected in our agreement with you having regard to the work you are doing).</p> <p>i Given the nature of the work we do it is critical for everyone's protection that all our vendors have adequate insurance coverage).</p> <p>i You give us a warranty that you are insured with an insurer with at least an A-rating.</p>	<ul style="list-style-type: none"> a. liability insurance (including products and public liability cover) in respect of personal injury, death and property damage for not less than \$20,000,000 per occurrence. b. professional indemnity insurance (including cover for errors and omissions for not less than \$5,000,000 per claim, unless you are not carrying out Services that require professional indemnity insurance and Programmed approves that fact in writing; c. motor vehicle third party liability insurance for not less than \$10,000,000; d. insurance for physical loss and/or damage to all plant and equipment owned and/or hired and/or used by the Vendor and/or for which the Vendor is responsible for not less than \$2.5 million; e. workers compensation insurance as required by Law; f. any other insurance required under any Law, or any Engagement Document. <p>21.2. You warrant that you will obtain and maintain your insurances with a reputable insurer with a rating of at least A- as rated by Standard and Poor's (or an equivalent reporting agency). You also warrant that you will tell us if your insurance provider drops below this required rating or of any other changes to your insurance policies. You must obtain Programmed's written approval if you breach this warranty, prior to carrying out any Services or providing any Goods.</p> <p>21.3. You must obtain and maintain the insurances referred to in Clause 51.1 for the Term of this Contract (and in the case of professional indemnity insurance, until the date which is 7 years after the expiry or termination of this Contract). Where insurance is written on a claims basis, the insurance must be maintained until the end of the Term or the Defects Liability Period (whichever is longer).</p> <p>21.4. You must provide a certificate of currency for each policy at the commencement of a Contract, and on request from time to time by Programmed.</p> <p>21.5. You must tell us in writing as soon as possible about anything in connection with this Contract that may give rise to a claim under a policy of insurance required and must keep us informed of all subsequent developments concerning the claim.</p>
<p>22. Liability and Indemnity</p> <p>i We typically have indemnities applying to us under Customer Contracts which in turn need to be reflected in the agreements we have with our Vendors.</p>	<p>22.1. The Vendor indemnifies Programmed and each of its officers, employees, Vendors and Related Entities against all Losses or liability of any nature in connection with:</p> <ul style="list-style-type: none"> a. all physical loss or damage to property, including Customer property, arising out of or resulting from the performance of the Works; b. any damage to, or misuse, breach, destruction, degradation, or third-party or malicious infiltration of IT Systems and/or Programmed Data

	<p>arising out of or resulting from the acts or omissions of the Vendor or its Personnel;</p> <ul style="list-style-type: none"> c. illness, death or personal injury arising out of or resulting from the performance of the Works; d. negligent or unlawful acts or omissions, wilful misconduct or fraud of the Vendor or any Vendor Personnel; e. a breach of Privacy Law or your obligations in respect of Confidential Information; f. the Vendor's performance of the Works (including as a result of any act or omission by the Vendor or its Personnel); g. the Vendor's breach of the Contract (or by its Personnel); and/or h. a suspension under a Security of Payment Act. <p>22.2. The Vendor's liability under any indemnity in this Contract is reduced to the extent that any such Loss or liability was directly caused or contributed to by any negligent act or omission or wilful misconduct of Programmed.</p> <p>22.3. This Contract excludes (to the extent permitted by law) the operation of Proportionate Liability Legislation.</p>
<p>23. Exclusion of liability</p> <p>i For your benefit (other than in the circumstances of Clause 23.2), you are not responsible for certain liabilities (e.g., consequential loss).</p>	<p>23.1. Subject to Clause 23.2, the Vendor will not in any circumstances be liable for any indirect, consequential, incidental, special or exemplary damages, expenses, losses, or liabilities.</p> <p>23.2. Clause 23.1 does not exclude, restrict, or limit in any way the Vendor's liability to Programmed:</p> <ul style="list-style-type: none"> a. in respect of any claim by, or Loss or liabilities suffered by, a Customer in connection with a head contract between Programmed and its Customer; b. that: <ul style="list-style-type: none"> i) is wholly or partly covered by insurance proceeds that are available under insurances required by this Contract; or ii) would have been wholly or partly covered by insurance proceeds under insurances required by the Contract but for any act or omission of the Vendor, including a failure by the Vendor to obtain or maintain the insurances in accordance with the Contract or a failure by the Vendor to claim and diligently pursue a claim under the relevant insurances in accordance with the Contract (or comply with the claims procedures under the relevant insurances); a failure by the Vendor or any Vendor Personnel to comply with any provision, obligation or duty under the relevant insurance policies; c. in relation to which the Vendor recovers, or would have recovered but for an act or omission of the Vendor, wholly or partly, an amount from a third party; d. in relation to personal injury or death, or damage to or loss of real or personal property;

	<ul style="list-style-type: none"> e. in relation to wilful misconduct, wilful default, wilful neglect, recklessness, gross negligence, fraud, or criminal acts or omissions of the Vendor or its Personnel; f. in relation to breaches of the Vendor's confidentiality, privacy or data security obligations, or third-party intellectual property breaches; g. that cannot be excluded at law; h. the Vendor's abandonment of its obligations under, or repudiation of, the Contract; and/or i. in relation to Liquidated Damages and any costs, losses, expenses or damages (whether liquidated or unliquidated) which we are liable to pay (or credit) to our Customer under any Customer Contract or otherwise, in respect of any failure to meet any agreed milestone, delivery date or performance regime (including KPIs or abatements), but only to the extent caused by you.
<p>24. Liquidated Damages</p> <hr/> <p>i Liquidated Damages are a genuine pre-estimate of loss we will likely suffer if you breach this contract or fail to deliver.</p> <p>i We are often subject to strict requirements under our Customer Contracts to meet agreed milestones, KPI or performance regimes. We rely on you to comply with these regimes and expect you to take responsibility for any issues with Customers to the extent that were caused by you. You will not be responsible to the extent it was Programmed's fault</p> <hr/>	<p>24.1. If the Vendor fails to complete the Works by the Completion Date, then without limiting any other right or remedy that Programmed may have under this Contract, the Vendor must pay Programmed the liquidated damages at the rate stated in the Contract Details.</p> <p>24.2. The Vendor acknowledges that all sums payable to Programmed under this Clause 24 represent Programmed's genuine pre-estimate of the loss that is likely to be suffered by Programmed if the Works are not completed by the Completion Date and that those sums should not be constructed or treated as a penalty.</p> <p>24.3. In addition to any other liability under this Contract, the Vendor indemnifies Programmed against any costs, losses, expenses or damages (whether liquidated or unliquidated) which Programmed are liable to pay (or credit) it's Customer under any Customer Contract or otherwise, in respect of any failure to meet any agreed milestone, delivery date or performance regime (including but not limited to KPIs or abatements), but only to the extent caused by the Vendor.</p>
<p>25. Security for Performance</p> <hr/> <p>i Security is not applicable unless it is listed.</p> <hr/>	<p>25.1. The Vendor's full compliance with its obligations to lodge security under this Clause 25 is a condition precedent to the Vendor being entitled to make any claim for payment or receive payment under the Contract at any time.</p> <p>25.2. If indicated in the Contract Details, the Vendor must provide to Programmed security for the performance of its obligations in the form of an unconditional bank guarantee or retention monies, for the sum and in the form specified in the Contract Details.</p> <p>25.3. If the Vendor fails to comply with any requirement in this Contract, then without prejudice to any other rights that Programmed may have in respect of that non-compliance, Programmed is entitled to draw on the security or any</p>

	<p>part of it for Programmed's own use as compensation for any damages, loss, costs or failure or Programmed having to end the Contract or take over the Vendor's obligations.</p> <p>25.4. If Programmed makes a call on the security, Programmed may require the Vendor by notice in writing to re-establish that security to its original amount within 30 days of such notice.</p>
<p>26. Security of Payment Legislation</p> <hr/> <p>i Security of Payment Legislation provides protection for Vendors who carry out construction work through a process to recover payment.</p> <hr/>	<p>26.1. This Clause applies to the extent that a Security of Payment Act applies to the Services.</p> <p>26.2. You must provide any and all written communication relating to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), to our Representative.</p> <p>26.3. The date prescribed as the time for payment is the "reference date" under the Security of Payment Act (if applicable).</p> <p>26.4. A payment amount in a payment schedule which Programmed proposes to make to the Vendor is a 'progress payment' (as defined in the Security of Payment Act).</p> <p>26.5. If Programmed Representative fails to set out an amount which Programmed is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Vendor, this does not prejudice Programmed's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.</p> <p>26.6. Unless an earlier date is identified in this Contract, Programmed will pay the amount (if any) set out in a payment schedule in accordance with the timeframes required by the applicable Security of Payment Act.</p> <p>26.7. The authorised nominated authority to adjudicate an application under the Security of Payment Act will be the Resolution Institute, the RICS Dispute Resolution Service or Rialto Adjudications (Adjudicator).</p>
<p>27. Confidential Information</p> <hr/> <p>i Mutual confidentiality obligations apply to both us and you.</p> <hr/>	<p>27.1. Each party must not, and must ensure that its Personnel do not, without the prior written approval of the other party:</p> <ul style="list-style-type: none"> a. use Confidential Information other than as necessary for the performance of this Contract; or b. subject to Clause 27.2, disclose Confidential Information. <p>27.2. A party's obligation not to disclose Confidential Information without the other party's prior written approval does not apply to disclosures to the extent they are:</p> <ul style="list-style-type: none"> a. required by Law, including disclosure to any stock exchange or Authority; b. made to its professional advisors for Contractual advice; or c. required to enable the Vendor to perform its obligations or to make or defend any claim under this Contract.

	<p>27.3. The rights and obligations under this Clause 27 continue after the End Date.</p> <p>27.4. Notwithstanding anything in this Clause, Programmed may disclose Confidential Information to a Customer in connection with the Works or services if required.</p>
<p>28. Intellectual Property</p> <hr/> <p>i Each party continues to own its pre-existing IP.</p> <p>i Each party grants the other party a licence to use IP to the extent they need to under the Contract.</p> <p>i Ownership of project IP belongs to Programmed.</p> <hr/>	<p>28.1. Subject to the terms of this Clause, all the Vendor's pre-existing Intellectual Property Rights and Moral Rights remain vested in (i.e. the property of) the Vendor.</p> <p>28.2. The Vendor grants to Programmed a non-exclusive, transferable, royalty-free, irrevocable and perpetual licence to use its pre-existing Intellectual Property Rights and Moral Rights for the purposes of or in connection with the Works.</p> <p>28.3. The Vendor assigns to Programmed ownership of the Intellectual Property Rights of the Vendor developed or created under this Contract and/or in the course of the Works. Programmed grants to the Vendor a non-exclusive, transferable, royalty-free, irrevocable and perpetual licence to use such Intellectual Property Rights.</p> <p>28.4. The Vendor warrants that the Works and any design, materials, documents and methods of working provided by the Vendor and Programmed's reasonably foreseeable use of them, will not infringe the Intellectual Property Rights or Moral Rights of any third party.</p> <p>28.5. The Vendor indemnifies Programmed and must keep Programmed indemnified in respect of any Losses or liability incurred or sustained by Programmed resulting from any actual or alleged infringement of any Intellectual Property Rights or Moral Rights of any third party arising out of or caused by the provision of the Works and any design, materials, documents and methods of working.</p>
<p>29. Privacy and Data Protection</p> <hr/> <p>i It is important that we all understand our privacy obligations at law and in this Contract. Legal penalties in Australia have increased and this is a fast-changing landscape. If you are unsure of your obligations, we suggest you seek independent legal advice.</p> <p>i We all need to protect Personal Information and Programmed Data. Please see the Definitions section for detail on what is</p>	<p>29.1. The Vendor must comply with all Privacy Laws in respect of Personal Information (and ensure that its Personnel comply with the same).</p> <p>29.2. The Vendor and its Personnel are required to:</p> <ol style="list-style-type: none"> only access or use Personal Information relating to Programmed, Customers or other suppliers for the purposes of fulfilling its obligations under this Contract (or with Programmed's prior written consent); not otherwise access, use, process, store, modify or disclose Personal Information; comply with Programmed's Policies (and applicable Customer Policies) concerning the collection, storage, security, use and disclosure of Personal Information and Programmed Data (including but not limited to its privacy policies). Programmed can update related Programmed Policies from time to time at its reasonable discretion (including without limitation to account for a Change in Law or pursuant to a government direction or Customer requirement) and can seek a related variation of the Contract if reasonably required;

<p>'Programmed Data' and 'Personal Information'.</p> <p>i It's important for your personnel to be trained and for your IT Systems to be set up and maintained safely (e.g. by aligning to a recognised industry standard). This will help prevent and respond to penetration by bad actors. We all need to be able to quickly respond to and contain a data breach or potential data breach.</p> <p>i Please note: you don't need to be certified but your security measures must be consistent with good industry practice.</p> <p>i Remember – you need our written permission to access or transfer Programmed Data overseas. This is important (1) to protect Personal Information and (2) because some Customer Contracts do not allow overseas data access or transfer. It is very important that you talk to us before any data goes offshore.</p>	<ul style="list-style-type: none"> d. ensure that any person who is authorised to have access to any of that Personal Information and Programmed Data complies with this Clause 29; e. notify Programmed if the Vendor is not, or ceases to be, bound by the Privacy Laws; f. immediately notify Programmed at privacy@programmed.com.au (or such other address as advised from time to time) if: <ul style="list-style-type: none"> i) it knows of or suspects unauthorised access, use, copying or disclosure of Personal Information; ii) it becomes aware that a disclosure of that Personal Information may be required by Law; iii) any Law prevents or may prevent it from performing its obligations under this Clause; g. provide all assistance reasonably required by Programmed to assist Programmed to comply with its obligations under any Privacy Law in respect of Personal Information; and h. obtain Programmed's (and if applicable, the Customer's) written consent before it accesses, transfers, or discloses Programmed Data to anyone in any overseas jurisdiction. <p>29.3. The Vendor must take (and ensure its third-party IT providers take) reasonable measures consistent with industry practice and that are aligned with recognised standards such as ISO27001, SOC2 or NIST Cybersecurity Framework or similar, and comply with all reasonable Directions issued by Programmed to:</p> <ul style="list-style-type: none"> a. protect Programmed Data in the Vendor's (or its third-party IT provider's) possession or control or to which the Vendor has access in connection with this Contract against any loss, misuse, interference, unauthorised access, use, sale, modification or disclosure; b. secure Programmed Data in the Vendor's (or its third-party IT provider's) possession or control including through (where reasonably appropriate) encryption, network protection (such as firewalls, segregation or other network configuration that limits access), security logging, monitoring and response plans, access controls, multi-factor authentication, privileged user access, API and integration protections, data anonymisation, and maintaining security systems and procedures that comply with the Privacy Laws; and c. if for any reason the Vendor no longer requires access to any of the Programmed Data, the Vendor (or its third-party IT provider) holds, then the Vendor must as soon as practicable: <ul style="list-style-type: none"> i) destroy or permanently de-identify that Programmed Data and (if directed by Programmed to do so) provide Programmed with satisfactory evidence that the Vendor has done so; or
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	<p>ii) if Directed to do so by Programmed, return the Personal Information to Programmed.</p> <p>29.4. The Vendor is required to:</p> <ol style="list-style-type: none"> a. notify Programmed immediately (including by email to cyber@programmed.com.au) if the Vendor becomes aware of: <ol style="list-style-type: none"> i) any likely, suspected or actual misuse or loss of, interference with or unauthorised access to, modification of, or disclosure of, Programmed Data; or ii) a breach by the Vendor (or its Personnel) that relates to Programmed Data; or iii) an actual or suspected breach that is notifiable at Law, (each a Data Breach). b. comply with any reasonable Programmed Direction in relation to assessing, investigating, remedying and addressing a Data Breach. This includes (but is not limited to) providing information Programmed requests that relates to a breach notifiable at Law; c. not disclose anything relating to a Data Breach to any third-party without Programmed's express prior written approval; d. tell Programmed and cooperate with Programmed in the event of any breach or risk regarding the security of Programmed Data; and e. ensure that any person who the Vendor authorises to have access to Programmed Data complies with this Clause in every respect. f. ensure that any subcontractor that the Vendor engages in connection with this Contract is engaged on terms that contain obligations no less onerous than the provisions in this Clause 29. <p>29.5. The Vendor acknowledges and agrees that it is liable for any breach by its subcontractor of the provisions of this Clause and/or Privacy Laws.</p> <p>29.6. The Vendor's obligations under this Clause 25 continue indefinitely after this Contract ends.</p>
<p>30. Anti-Corruption and Modern Slavery</p> <hr/> <p>i You must comply with Anti-Corruption and Modern Slavery Laws and principles.</p>	<p>30.1. The Vendor must take (and must ensure that each of its Related Entities, Personnel and supply chains take) all reasonable steps to ensure that no slavery, forced labour, wage exploitation, involuntary servitude, debt bondage, human trafficking, child labour or other slavery like exploitation (Modern Slavery) is present or used to provide the Works.</p> <p>30.2. The Vendor warrants that neither it nor any of its Related Entities, Personnel or supply chains has engaged in any form of bribery or corruption under Anti-Corruption Laws (including in relation to this Contract), or has been convicted of, or has been the subject of any investigation, inquiry or proceedings regarding any form of bribery or corruption under Anti-Corruption Laws or any form of Modern Slavery.</p>

<p>i You must tell us if you breach these laws or principles.</p> <hr/>	<p>30.3. The Vendor must implement a system aligned with good industry practice to assess, monitor, evaluate and remediate Modern Slavery risk in its business and supply chains, and notify Programmed as soon as it becomes aware of any actual or suspected Modern Slavery or breach of Anti-Corruption Laws connected to the Contract.</p> <p>30.4. The Vendor must keep records evidencing its compliance with this Clause 26, and when requested by Programmed, provide all reasonable assistance necessary for Programmed to prepare its modern slavery statements and otherwise comply with its Modern Slavery obligations at law (including providing access to Vendor's records).</p> <p>30.5. Programmed may immediately terminate this Contract if the Vendor breaches this Clause 30.</p>
<p>31. Taxes</p> <hr/> <p>i You must pay all Taxes.</p> <hr/>	<p>31.1. The Vendor must pay all Taxes to the relevant Authority. If the Vendor pays any Taxes on behalf of Programmed, the Vendor must provide Programmed with documentary evidence of the payment of those Taxes.</p> <p>31.2. Without limiting Clause 31.1, the Vendor will be solely liable for income tax imposed on the Vendor in respect of income derived by the Vendor in the provision of the Works.</p> <p>31.3. Words defined in the GST Law have the same meaning in this Clause, unless the context makes it clear that a different meaning is intended.</p> <p>31.4. Where the Price (or other consideration payable in relation to the taxable supply) is not expressed to be GST inclusive, the recipient of a taxable supply must, subject to the issue of a valid Tax Invoice by the supplier to the recipient, pay to the supplier in addition to the Price or other consideration payable an additional amount on account of any GST payable.</p>
<p>32. Subcontracting</p> <hr/> <p>i Due to the commercial model and Customer Contracts, Programmed needs to be able to manage if (and how) its Vendors use subcontractors.</p> <p>i You must include Customer Requirements in your subcontract.</p> <p>i You must exclude (to the extent you can under Law) Proportionate Liability Legislation.</p> <hr/>	<p>32.1. The Vendor must not assign, transfer or otherwise deal with its rights or obligations under the Contract without Programmed's prior written consent (which consent must not be unreasonably withheld).</p> <p>32.2. Programmed can assign, transfer or otherwise deal with any or all of its rights or obligations under the Contract at any time without the Vendor's consent (including but not limited to a Related Entity or any government entity).</p> <p>32.3. The Vendor may only subcontract parts or all of the Work with Programmed's prior written approval. As a condition of granting approval, Programmed may request the Vendor to provide a copy of the proposed subcontract including pricing, certificates of currency of insurance as well as other documents or information reasonably requested by Programmed.</p> <p>32.4. The Vendor must ensure that any agreement with its subcontractor contains:</p> <ol style="list-style-type: none"> a Clause which makes it clear that the subcontract is aware of and will comply with the Vendor's obligations under this Contract (unless agreed with Programmed in writing that these do not apply to the subcontract); warranties that are the same as the warranties provided by the Vendor under this Contract;

	<ul style="list-style-type: none"> c. a requirement to comply with the insurance requirements stipulated in this Contract having regard to the nature of the work to be performed by the subcontract; d. a Clause which allows for the novation of the subcontract to Programmed or a nominee of Programmed; e. a Clause which allows for the termination of the subcontract where this Contract is terminated or expires or where a Customer requires the subcontract to cease supplying services; f. any Special Conditions (if applicable); and g. excludes (to the extent permitted by law) the operation of the Proportionate Liability Legislation in relation to all and any rights, obligations and liabilities under such agreement (whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise). <p>32.5. Approval to subcontract shall not relieve the Vendor from any liability or obligation under this Contract. Except where this Contract otherwise provides, the Vendor shall be liable to Programmed for the acts and omissions of subcontractors and employees and agents of the subcontractor as if they were acts or omission of the Vendor.</p>
<p>33. Dispute Resolution</p> <hr/> <p>i The parties must work together in good faith to try to resolve dispute.</p> <hr/>	<p>33.1. If a dispute arises between the parties that relates to the Contract, then the parties agree to do the following things:</p> <ul style="list-style-type: none"> a. the party claiming a dispute as arising will give prompt written notice to the other party detailing the reasons for the dispute; b. the parties will act in good faith and use their best endeavours to resolve the dispute, including by referring the matter to their respective senior executives and, failing successful resolution within a reasonable timeframe, to their respective chief executives. Programmed may invite an affected Customer to participate in dispute resolution if reasonably required. c. If the dispute is not resolved within a reasonable time period (having regard to the circumstances, reason for and urgency of the dispute) the parties will seek to mediate the dispute. <p>33.2. Neither party will commence legal proceedings (excluding seeking urgent interlocutory relief if reasonably necessary) unless the parties have made reasonable attempts to resolve the dispute in accordance with Clause 29.1.</p> <p>33.3. Pending the resolution of any dispute, Programmed and the Vendor will continue to perform their obligations under the Contract without prejudice to their respective rights and remedies (except where those obligations are the subject of the dispute).</p> <p>33.4. Each party will bear their own costs of complying with Clause 29 and will equally bear the cost of any mediator, joint independent expert or other third party engaged to mediate and/or resolve the dispute.</p>

	<p>33.5. If a dispute arises between Programmed and a Customer that relates to any aspect of the Works, the Vendor agrees to do all things required by Programmed (including providing any information, attending at meetings, mediation, arbitration or court) to assist Programmed to resolve the dispute.</p> <p>33.6. If a dispute arises between a Customer and a third party that relates to any aspect of the Works, the Vendor agrees to do all things required by the Customer (including providing any information, attending at meetings, meditation, arbitration or court) to assist the Customer to resolve the dispute.</p>
<p>34. Notices</p> <hr/> <p>i Formal notices will be in writing.</p> <hr/>	<p>34.1. Any notice, approval, consent or direction in relation to this Contract must be in writing, be issued or signed by an authorised person of the party giving the notice and delivered to the address specified in the Contract Details.</p> <p>34.2. A notice can be delivered by hand or posted to the other party's physical address, or sent by email to the email address set out for the relevant Representative specified in the Contract Details (or as updated in writing from time to time).</p> <p>34.3. A notice, approval, consent or direction is received:</p> <ul style="list-style-type: none"> a. if delivered by hand, on the date it is delivered to the addressee; or b. if mailed to an address in the city of dispatch, on the date which is three (3) Business Days after the date of dispatch; or c. if mailed to a city (other than the city of dispatch), on the date which is seven (7) Business Days after the date of dispatch; or d. if sent by email, at the time of that transmission. <p>34.4. A notice, approval, consent or direction received after 5pm in the place of receipt is taken to be received on the next Business Day in the place of receipt.</p> <p>34.5. A party may, from time to time, notify the other party in writing of any change to its details for receiving notices.</p>
35. Governing Law	<p>35.1. All Contracts are governed by the laws of the State of Victoria, Australia, unless the Goods or Services are provided exclusively in New Zealand in which case the Contract is governed by the laws of New Zealand.</p>
36. Nature of the Relationship	<p>36.1. The parties are independent Vendors and nothing in this Contract constitutes an employment relationship, joint venture, agency, partnership or other fiduciary relationship between the parties. The Vendor does not have authority to bind Programmed in any manner whatsoever without Programmed's written consent.</p>
37. Exercising Rights	<p>37.1. Unless this Contract provides otherwise:</p> <ul style="list-style-type: none"> a. a party may exercise a right, remedy or power in any way that party considers appropriate; and

	b. the rights, powers and remedies provided by this Contract are in addition to any rights, powers and remedies provided by Law.
38. Amendments and Waivers	<p>38.1. Programmed can make non-material amendments (i.e. changes that do not impact your rights under this agreement) to these Works Agreement Terms without your consent.</p> <p>38.2. Otherwise, the terms of a Contract can only be amended in writing, signed by the parties.</p> <p>38.3. This Contract may only be amended, or its provisions waived, by agreement in writing, signed by the parties.</p> <p>38.4. The non-exercise of, or a delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a party.</p>
39. Entire Agreement	39.1. This Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Contract.
40. Severability	<p>40.1. If a Clause is capable of being read in a way that fair, legal, enforceable, valid or reasonable, then it must be read in that way.</p> <p>40.2. If a Clause is illegal, unenforceable or invalid and cannot be assisted by Clause 40.1, then it is treated as removed from the Contract (but the rest of the Contract is not affected).</p>
41. Counterparts	<p>41.1. This Contract may be executed in any number of counterparts and all of those counterparts taken together constitute the same instrument.</p> <p>41.2. This Contract (or any part of it) can be executed (signed) electronically.</p> <p>41.3. This Contract (or any part of it) can be exchanged electronically by way of electronic counterparts.</p>
42. Assignment and Change of Control	<p>42.1. The Vendor must not assign any of its rights or obligations under a Contract (including by way of a change of control of the Vendor), unless the Vendor first obtains Programmed's prior written consent (which will not be unreasonably withheld).</p> <p>42.2. Programmed can assign its rights or obligations, or novate the Works Agreement without the Vendor's consent (including but not limited to an Affiliated Company or any government entity) and we will give you notification in writing.</p>
43. Survival	43.1. Clauses 4,5,6,8,9,13, 17 to 31 and 35 to 40 and the warranties and indemnities given by the Vendor under the Contract survive termination or expiry of the Contract.

DEFINITIONS IN THESE WORKS AGREEMENT TERMS

In this Contract (unless the context otherwise requires):

Annexure means an annexure to this Contract.

Anti-Corruption Laws means any anti-corruption Law that applies to Programmed, its Related Entities, the Vendor, or this Contract (including but not limited to the *Criminal Code 1995* (Cth), *Foreign Corrupt Practices Act 1997* (US) and the *Bribery Act 2010* (UK).

Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place in which the Works are undertaken (and if in more than one place, then Melbourne, Victoria).

Certificate of Practical Completion means a certificate verifying that Works are complete except for minor omissions and Defects that will not (and the rectification of which will not) prevent or impair the normal use of the Works.

Change in Law means a repeal of, a change to, the coming into effect, or implementation of Law which happens after the Start Date.

Completion means the completed performance of all the Works.

Completion Date means the relevant date for Completion specified in the Contract Details.

Confidential Information means the terms of the Contract and any information that concerns the business, operations, finances, plans or customers of a party (or Related Entities) and is disclosed to or acquired by the other party and which:

- a) is by its nature confidential;
- b) is designated as confidential; or
- c) the acquiring party knows or ought to know is confidential,

but does not include information which:

- ii) is or becomes public knowledge other than by a breach of the Contract;
- iii) is in the possession of the acquiring party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired it; or
- iv) has been independently developed or acquired by the acquiring party.

Contract or Works Agreement means this agreement and includes the Contract Details, these terms and conditions, the Special Conditions, all Schedules, attachments and Annexures and any Purchase Order.

Contract Details means the specific details of this Works Agreement as set out or referred to in the "Contract Details" Schedule 1 of this Works Agreement.

Customer Requirements means prescribed terms in a Customer Contract that Programmed passes down to the Vendor so that it can engage the Vendor to perform the Works as part of Programmed's program of Customer work, as set out in Schedule 3.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means a customer or client of Programmed.

Customer Contract means a contract between Programmed and its Customer in relation to Customer work.

Customer Policies means a Customer's policies and procedures which the Vendor is required to comply with as referenced in the Special Conditions, Schedule 6, or another Annexure to this Contract.

Defect means any aspect of the Works not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup.

Defects Liability Period means the period stated as such in the Contract Details.

Design Documents means the drawings, specifications, studies, reports and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Vendor or the Vendor's Personnel) for the construction of the Works.

Direction means a written direction relating to the performance of the Works with which the Vendor must comply and Direct has the corresponding meaning as a verb.

Event of Delay means an event or situation that causes delay in the Vendor completing the Works.

End Date means the date that this Contract ends being the earlier of the Completion Date or the termination date determined pursuant to Clause 17.

GST means the tax payable on taxable supplies under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or the *Goods and Services Tax Act 1985* (NZ) as applicable and any related Act imposing such tax, and includes any subordinated legislation in respect of those Acts.

Hazardous Materials means all hazardous substances and harmful materials (including but not limited to pollutants and contaminants defined as such according to Law, asbestos and other disease or illness causing materials).

Insolvency Event means an event where:

- a) a party is unable to pay its debts as and when they become due and payable;
- b) a party is (or a court decides, a resolution is passed, or notice is given, that a party be) dissolved, deregistered or wound up;
- c) a party fails to comply with a statutory demand or pay a debt;
- d) a party ceases to carry on all or a material part of its business;
- e) a party appoints (or takes steps to appoint) a controller, receiver, manager, trustee in bankruptcy, provisional liquidator, administrator or like person of the whole or part of that party's assets, operations, or business; or
- f) a party is (or states that it is) insolvent or under insolvency administration.

Intellectual Property Rights means all rights in or to any:

- a) patent, copyright, database right, registered design or other design right, utility model, trademark (either registered or unregistered) and related rights in trade dress, brand name, service mark, trade name, eligible layout right, chip topography right; or
- b) other rights of a proprietary nature (or results of intellectual activity in) the industrial, commercial, scientific, literary or artistic fields (whether registerable or not) wherever they exist in the world; and
- c) renewals, extensions and revivals of, and all rights to apply for, any of the rights described in paragraphs (a) or (b).

Invoice means an invoice or claim submitted by the Vendor in accordance with Clause 10.

IT System means any information management system or combination of systems nominated in writing by Programmed and/or a Customer (as applicable) from time to time, which the Vendor is required to interact with in accordance with the Contract.

Latent Conditions are physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Vendor if the Vendor had:

- a) examined all information made available in writing by Programmed or obtainable by making reasonable enquiries;
- b) visually inspected the Site and its surroundings; and
- c) taken into account the warranties given under Clause 5.

Law means any rules of common law, principles of equity, national, federal, state and local laws, statutes, legislation, rules, listing rules of an exchange on which a party's securities are listed, regulations, orders, proclamations, ordinances, by-laws or codes of Authorities applicable to the Works under this Contract (including without limitation any law relating to occupational health and safety, protection of the environment, payment of any tax, any worker's compensation laws, industrial relations, Privacy Laws, modern slavery and Anti-Corruption Laws and/or security of critical infrastructure laws).

Licences means all authorisations, licences, qualifications, registrations, permits and other statutory requirements necessary for the performance of the Works under this Contract.

Losses means all losses, liabilities, damages and all related costs and expenses (including reasonable legal fees, disbursements, costs of investigation, settlement, judgement, interest and penalties) and **Loss** has the corresponding meaning.

Master Services Agreement or **MVA** means the 'umbrella agreement' that appoints the Vendor to Programmed's supplier (i.e. vendor) panel and contains the terms under which the Vendor agrees to supply services to Programmed.

Modern Slavery has the meaning given to it in Clause 26.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law, that exists or that may come to exist, anywhere in the world.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth) or the *Privacy Act 1993* (NZ) as the context requires.

Personnel means directors, employees, agents, vendors or subcontractors but a reference to **Programmed's Personnel** excludes the Vendor.

Plant and Equipment means plant, equipment, tools, appliances or other property and items the Vendor requires to fulfil the Vendor's obligations under the Contract.

Price means the price or rates specified as such in the Contract Details.

Privacy Laws mean:

- a) the Privacy Act 1988 (Cth) or the Privacy Act 1993 (NZ) (as the context requires) and any other legislation, regulations, legally binding orders, directions or principles made under such legislation or similar legislation, relating to the collection, use, disclosure, processing, storage and/or granting of access rights to Personal Information in Australia and New Zealand; and

b) such principles, industry codes and policies relating to the collection, use, disclosure, processing, storage or granting of access rights to Personal Information by which Programmed or any Related Entity is bound (as notified in writing by Programmed from time to time).

Program means the design and construction program set out in Schedule 4 as may be amended from time to time.

Programmed or Company means the Programmed entity named in the Contract Details.

Programmed Data means data of any kind belonging to Programmed, its Customers or other suppliers, including (a) data which the Vendor accesses, stores or handles in relation to this Contract; and (b) any data which is Personal Information, Confidential Information, Records, accounts, corporate proprietary or financial information, data relating to a Customer, sensitive data, or any other information deemed to be personal, confidential or private under the *Privacy Act 1998* (Cth), *Privacy Act 2003* (NZ) and/or the European Union General Data Protection Regulation 2016/679 and its amending acts (EU GDPR) and the *United Kingdom's Data Protection Act 2018* (UK GDPR).

Programmed Policies means all Programmed policies, procedures, statements, handbooks, resources (or similar) available on:

a) the 'Vendor Essentials Page' at <https://programmed.com.au/Vendor-essentials/> (including but not limited to) the Subcontractor Handbook available at:

b) the Company's general policy page at <https://programmed.com.au/policies/> including the Code of Conduct, or other Programmed or Customer policy or procedure annexed to the Contract, MVA or Order.

Programmed's Representative is the person named as such in the Contract Details or any replacement person notified to the Vendor.

Programmed's Technical Material means any Technical Material provided by Programmed to the Vendor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

Project Requirements means Programmed's (or the Customer's) written requirements for the Works as provided in Schedule 4 which may include the stated purpose for which the Works are intended and a preliminary design.

Proportionate Liability Legislation means Part 4 of the *Civil Liability Act 2002* (NSW), Part IVAA of the *Wrongs Act 1958* (Vic), Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), Part 2 of Chapter 2 of the *Civil Liability Act 2003* (Qld), Part 1F of the *Civil Liability Act 2002* (WA), Part 9A of the *Civil Liability Act 2002* (Tas), Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT), Part 2 of the *Proportionate Liability Act 2005* (NT), Part IVA of the *Competition and Consumer Act 2010* (Cth), or Division 2A of Part 7.10 of the *Corporations Act 2001* (Cth) as applicable.

Purchase Order or Order or Work Order means a written order form that Programmed issues to the Vendor stating what goods, works and/or services are to be supplied.

Recipient Created Tax Invoice or RCTI has the meaning prescribed in the GST Law.

Records means books, accounts, records and other related information or documents relating to or connected with the Contract, including:

- a) any documents which a responsible Vendor should maintain;
- b) any documents which Programmed requires the Vendor to maintain; and
- c) any other records which the Vendor is obliged to maintain under the Contract.

Related Entity means any related body corporate as that term is defined in the Corporations Act.

Representative means Programmed's Representative or the Vendor's Representative, and a reference to **Representatives** is a reference to both of them. Each Representative is authorised to act on behalf of the party that appointed the Representative in relation to this Contract.

Schedule means a schedule to this Contract.

Security of Payment Act means the following legislation as it applies to the relevant Works:

- a) *Building and Construction Industry (Security of Payment) Act 2009 (ACT);*
- b) *Building and Construction Industry (Security of Payment) Act 1999 (NSW);*
- c) *Construction Contracts (Security of Payments) Act 2004 (NT);*
- d) *Building Industry Fairness (Security of Payment) Act 2017 (Qld);*
- e) *Building and Construction Industry Security of Payment Act 2009 (SA);*
- f) *Building and Construction Industry Security of Payment Act 2009 (TAS);*
- g) *Building and Construction Industry Security of Payment Act 2002 (VIC);*
- h) *Building and Construction Industry (Security of Payment) Act 2021 (WA); and*
- i) *Construction Contracts Act 2002 (NZ).*

Site means the place/s described as such in the Contract Details as the place/s for the performance of the Works.

Site Specific Work Method Statement means a list of health and safety risks relating to the performance of the Works, and details of how to measure and control these risks.

Special Conditions means the special conditions set out in Schedule 3.

Start Date means the date specified as such in the Contract Details.

Tax Invoice has the meaning given to it in the GST Law.

Taxes includes all taxes, fees, levies, duties and charges imposed or assessed in respect of this Contract by all government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty; but does not include GST.

Technical Material means models, software (including source code API's, plug-ins, integrations and object code versions), information, design concepts, audio, video, drawings (including "as built" drawings), programs, schedules, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, accounts, plans, formulae, calculations, designs (including structural, mechanical, electrical and instrumentation designs) in any medium (including 2 dimensional and 3 dimensional computer assisted designs), methods, techniques and processes, including all copies of and extracts from them and data stored by any means.

Variation means any change to the Works, including any addition to, reduction in, omission from or change in the character or quality of the Works.

Vendor is the Vendor entity named as such in the Contract Details.

Vendor's Design Obligations means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents and developing Programmed's preliminary design (if applicable).

Vendor's Representative is the person named as such in the Contract Details or any replacement person notified to Programmed.

Vendor's Technical Material means all Technical Material which is:

- a) prepared, or required to be prepared, by or on behalf of the Vendor under this Contract;

- b) delivered, or required to be delivered, by or on behalf of the Vendor to Programmed under this Contract; or
- c) incorporated into Technical Material described in paragraph (a) or (b).

Vendor Reference Document means a time sheet, claim form or such other source document which evidences the performance and completion of the Works.

Works means the works to be carried out and completed by the Vendor under the Contract and as specified in the Contract Details, including any part of the specified works, any ancillary goods and services, any variations provided for by the Contract and remedial work.

SCHEDULE 3 - SPECIAL CONDITIONS (PART A)

SCHEDULE 3 (PART A): SPECIAL CONDITIONS

The parties agree that the Works Agreement Terms in Schedule 2 are amended as follows:

- A. The parties agree that the Works Agreement Terms in Schedule 2 are hereby amended in accordance with the first three columns of the table below.
- B. Any other column, inclusion or addition (i) will not form part of any Contract, (ii) will not have any legal meaning or effect and (iii) does not bind the parties.

General Term being amended, or new Clause being added	New Special Condition number	Amendment / Addition
[Drafting note: Insert Clause number of Works Agreement Term being amended or use 'N/A' if entirely new Clause]	[Drafting note: add Special Condition number, e.g., Special Condition 1]	[Drafting note: Insert proposed amendment to be agreed by the parties]
[Drafting note: Insert Clause number of Works Agreement Term being amended or use 'N/A' if entirely new Clause]	[Drafting note: add Special Condition number, e.g., Special Condition 2]	[Drafting note: Insert proposed amendment to be agreed by the parties]
[Drafting note: Insert Clause number of Works Agreement Term being amended or use 'N/A' if entirely new Clause]	[Drafting note: add Special Condition number, e.g., Special Condition 3]	[Drafting note: Insert proposed amendment to be agreed by the parties]
[Drafting note: Insert Clause number of Works Agreement Term being amended or use 'N/A' if entirely new Clause]	[Drafting note: add Special Condition number, e.g., Special Condition 4]	[Drafting note: Insert proposed amendment to be agreed by the parties]

** SPECIAL CONDITIONS MUST BE SUBMITTED WITH A TENDERER'S SUBMISSION.*

SCHEDULE 3 - SPECIAL CONDITIONS (PART B)

A. ADVERTISEMENTS AND PROMOTIONS ON SITE

The Contractor may erect on site, or permit to be erected on site, only those signs:

- Required by law
- specified in the Contract documents;
- required to identify the Contractor's premises

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

B. PUBLICITY

The Contractor shall not issue any information, publication, document or article for publication in any media, which includes details of the work under the Contract without the written approval of PFM.

C. EXISTING SERVICES, FACILITIES AND STRUCTURES

Any connection, disconnection or interference with existing services, facilities and structures shall be carried out under the supervision of the Superintendent to whom seven days prior written notice shall be given.

D. SITE REQUIREMENTS

The workplace for Contractor is also the customer's workplace. It is an important requirement that bidders and Contractors are aware of and comply with rules and policies set down by PFM.

The site requirements for the Agency are attached as Annexure 2 to this Contract. The site requirements form part of this Contract and must be observed at all times.

E. INFRASTRUCTURE AND UTILITIES

The Contractor must, as part of the Works:

- identify, protect, and if necessary, relocate all the existing Infrastructure required for the purposes of the Project or otherwise in the vicinity of the Site (or ensure that the owners of the relevant Infrastructure do so);
- decommission, in consultation with the relevant Utility providers, any Infrastructure which is redundant or will be redundant upon Practical Completion or is otherwise required to be decommissioned in accordance with this Contract;
- provide, procure, install, co-ordinate, integrate and connect all infrastructure required for the Works;
- notify PFM, in an agreed form of disruption notice, at least seven (7) days before any connection, disconnection or interference with existing Infrastructure and allow PFM to supervise any such activities; and
- pay for all utilities consumed or used by the Contractor in the execution of the Works on the Site from the Commencement Date to the Date of Practical Completion.

4.8.1. THE FACILITY

The Contractor must:

- not compromise, hinder, disrupt, disturb or damage or adversely affect the functions, operations and security of the facility;

- b. minimise noise, dust, vibration and other nuisances arising in connection with undertaking the Works and comply with all Laws relevant to such Works;
- c. do all things reasonably necessary to prevent emission of any discharge likely to result in an environmental event from the Site as a result of undertaking the Works; and
- d. undertake and provide any temporary works necessary to comply with its obligations under this Clause.

The Contractor agrees that if PFM directs, the Contractor must immediately cease the performance of any Works. Any such direction will be treated as a suspension.

If PFM, suspends the right of any person to enter any property of, or under the management of PFM and the person fails to depart from that property, the person will become a trespasser.

The Contractor must immediately comply with any security requirement issued by PFM.

4.9. QUALITY ASSURANCE

The Contractor must maintain and carry out Quality Assurance activities sufficient to ensure that the Works are provided in accordance with the requirements of the Contract.

It is a requirement that the works will be managed in accordance with AS/NZS ISO9001:2008 quality management system or equivalent approved.

4.10. AUDITS BY PFM

PFM may conduct or arrange for audits during the course of the Contract. The purpose of these audits is to determine that contractual arrangements are being complied with. These arrangements include the following:

- a. Quality, including quality management and product quality compliance;
- b. Occupational Safety and Health;
- c. Environmental compliance;
- d. Buy Local commitments; and
- e. Standards and conditions of employment.

These audits may be scheduled or unscheduled as determined by PFM. This includes the Works being performed by the Contractor or any subcontractor, supplier, consultant or agent ("agents") of the Contractor.

The Contractor and its agents must make available suitable management representatives and guides to enable PFM to perform the audits.

The Contractor and its agents must grant PFM full access to required records, documentation and to the locations where the Works are being performed.

Unless PFM has suitable facilities available, the Contractor and its agents must make available suitable offices of appropriate privacy, with internet and photocopying facilities for the use of PFM for the during of the audit.

The audit methodology will generally be in accordance with AS/NZS ISO 19011:2003. PFM will report non compliances with contractual arrangements to the Contractor by issue of a written report. The Contractor is required to acknowledge the non compliance by signing the report and immediately returning a copy to PFM. The Contractor must respond in writing to PFM within five working days of the date of issue of the report, detailing the Contractor's proposed actions. The response must contain at least the following information:

- a. Proposal for disposition, namely rectification of the non compliance;
- b. identification of the root cause of the non compliance; and

- c. corrective action to be taken to eliminate or minimise the recurrence of further non compliance.

Completion dates for the proposed actions must be stated by the Contractor in its response. These completion dates must reflect a timely response having regard to the magnitude of the non compliance and the risk of further recurrence.

If the response provided is not satisfactory, PFM may require the Contractor to provide a revised response which properly addresses the non compliances.

The Contractor's proposed actions must be completed within a maximum period of 20 working days from the date of issue of PFM report. Longer periods may be agreed with PFM.

PFM's auditors may verify the Contractor's proposed actions by repeat audit, further witnessing or review of documents that the proposed actions have been satisfactorily completed.

Non compliance or non compliances determined under this Clause may be deemed by PFM (acting reasonably) to be a substantial breach of Contract.

4.11. RISE AND FALL IN COSTS

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

4.12. INVOICING REQUIREMENTS

To enable efficient processing of invoices, invoice information is to include all of the following details:

- Order Number;
- Progress Payment number;
- Premise or Project Name;
- Relevant PFM Representative;
- Description of Work;
- Any agreed Variations to be itemised as subtotals;
- Goods and Services Tax (GST) amount; and
- Total Cost

4.13. BUILDING AND CONSTRUCTION INDUSTRY ACT 2021

This Clause will apply only to the extent that the Building and Construction Industry (Security of Payment) Act 2021 ("SOP") applies to the Contract on the commencement date.

Expressions defined or used in the SOP have the same meaning for the purposes of this Clause (unless the context otherwise requires).

- d. The Contractor must:
- i. give to PFM any application or notice made under the SOP; and
 - ii. when it receives an application or notice under the SOP relating to the Works from any third party (including any subcontractor), give a copy of that application or notice to PFM
- e. For the purposes of Part 3, Division 2 of the SOP the adjudicator to determine any dispute between the parties to the contract is to be the Chartered Institute of Arbitrators (Western Australian Chapter).
- f. Nothing in the Contract must be construed to:

- i. make any act or omission of PFM in contravention of the SOP (including failure to pay an amount becoming due under the SOP) a breach of the Contract (unless PFM would have been in breach of the Contract had the SOP had no application); or
- g. If any subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the Works) or takes any other action under the SOP, despite any other provision of the Contract:
 - i. the Contractor will not be relieved of any of its obligations under the Contract and the suspension or other action by the subcontractor will not entitle the Contractor to any claim against PFM (including for any extension of time); and

the Contractor must immediately provide to PFM full details of the circumstances giving rise to the subcontractor's right or alleged right to suspend or take other action

4.14. BUILDING ACT 2011 (WA)

Prior to the commencement of the Building Act 2011 (WA), for buildings that were owned or occupied by, or under the management or control, of government agencies, the Crown was not required to obtain building licences or show evidence of compliance with the National Construction Code and standards referenced therein. The Building Act 2011 (WA) binds the Crown, and requires the Government to demonstrate that its building projects are designed and constructed in accordance with the National Construction Code, relevant standards referenced therein and any other codes or standards that are referenced by the Building Act 2011 (WA) and subsidiary legislation. The legislation also requires that new buildings and incidental structures are:

- a. demolished in accordance with demolition permits;
- b. constructed in accordance with building permits; and
- c. occupied in accordance with occupancy permits.

Under this new legislative regime, the Contractor is required to apply to a permit authority for building permits, demolition permits, occupancy permits and/or building approval certificates as the case may be in relation to specified types of building work and demolition work as defined by the Building Act 2011 (WA). The Contractor will be responsible for submitting permit applications to the permit issuing authority.

Consistent with this new legislative regime, the Contractor must:

- a. arrange at its cost any building surveys and complete all necessary applications for any permits required under the BCA relating to the Contract
- b. undertake to do all things and take all steps reasonably necessary to obtain or vary building, demolition or occupancy permits (as the case may be) for the Works under the Contract;

ensure that any building or demolition work is carried out pursuant to all requirements of the building or demolition permits (as the case may be) and any conditions that may be imposed on such permits;

ensure that any building or demolition work is undertaken in accordance with the design documentation or any variations directed under the Contract;

- a. ensure that any building or demolition work carried out complies with any building orders issued by the permit authority;
- b. ensure that where any variations affect compliance with any relevant code or standard, the Contractor assists PFM and its agents to do all things necessary to facilitate the recertification of the work under the Contract;
- c. ensure that all inspections and tests required under the building, demolition or occupancy permit, or otherwise required by the building certifier or building surveyor at any time when certifying the

Works, are carried out on Site during construction and provide documentation of results in a timely manner to the building certifier or building surveyor and PFM so as to not prejudice or delay the issuance of a construction compliance certificate;

- d. properly and duly obtain a certificate of construction compliance to permit the timely application for an occupancy permit or building approval certificate as the case may be from the permit authority to enable lawful occupancy of the building(s) or any part(s) thereof within the program timeframes required by PFM and the Contract;
- e. take into account the time periods and limits prescribed under the Building Act 2011 (WA) in its construction program;
- f. provide such further information or materials that the permit authority may reasonably require to support an application or impose conditions on the permit or certificate;
- g. otherwise comply with the following Acts and any subsidiary legislation made under them:
 - i. Building Act 2011 (WA);
 - ii. Building Services (Complaint Resolution and Administration) Act 2011 (WA);
 - iii. Building Services (Registration) Act 2011 (WA);
 - iv. Building Services Levy Act 2011 (WA); and
 - v. Building and Construction Industry Training Levy Act 2011 (WA),

without limiting the Contractor's general obligations under the Contract.

4.15. CONSTRUCTION TRAINING FUND (CTF) LEVY

The Tenderer is advised of its obligation to comply with payment to the Construction Training Fund (CTF) of the Building and Construction Industry Training Fund Levy (the CTF Levy) in accordance with the statutory requirements of the Building and Construction Industry Training Fund and Levy Collection Act 1990. The levy is required to be paid prior to the construction work commencing.

All construction works that fall within the terms as prescribed by the Construction Industry Portable Paid Long Service Leave Act 1985 and the Building Act 2011 are subject to the CTF Levy where the estimated value of those works is more than \$20,000. Where the CTF Levy is payable the Tenderer must include this in the Tender price as a line item.

For the purpose of calculating the levy, the value of construction work must include the following relevant components:

- all goods (including manufactured goods) forming part of the construction work;
- labour;
- services necessary, fees payable, overheads to be met;
- profit margin; and
- GST.

The project owner must notify the CTF of the final value of construction on completion of the construction work, when the final value varies by \$25,000 or more from the original estimated construction value. This final value will determine any necessary adjustment to the CTF Levy paid (i.e. a partial refund or additional amount to be paid).

It should be noted that non-payment of the CTF Levy before the commencement of construction is an offence. Penalties that may apply are fines of \$20,000 (for an individual) or \$50,000 (for a body corporate) plus 100% of the estimated CTF Levy due, annualised for the period that the levy is unpaid.

Revenue generated by the CTF Levy and collected by the CTF is used to support the building and construction industry to maintain an appropriately skilled workforce. More detailed information regarding CTF support programs can be located via the link (<https://ctf.wa.gov.au/funding/employer-funding>).

Further information regarding the CTF Levy and payment methods may be obtained by email at info@ctf.wa.gov.au, telephone on +61 (08) 9244 0100, facsimile on +61 (08) 9244 0199, or website <https://ctf.wa.gov.au/>.

4.16. MINIMUM STANDARDS AND CONDITIONS OF EMPLOYMENT

Any person who for the purpose of his, her or its trade or business employs a worker or employee upon or in connection with any part of the works, shall be required to observe all the conditions of the relevant award applicable to that trade or business or of a registered workplace agreement.

4.17. SCHEDULE OF WARRANTIES

The Contractor shall obtain and ensure that PFM will have the benefit of all warranties specified in the Contract of work, materials or equipment.

4.18. SITE RECORDS

The Contractor shall collect and maintain on site, on a daily basis, information on:

- work done on all activities,
- site attendance of all staff and work operatives,
- presence and use of all constructional plant.

The Contractor shall allow access to the records and assist in providing accurate information to enable the Superintendent to make independent assessment of contract progress and program.

4.19. MEETINGS

4.19.1. SITE COORDINATION MEETINGS

The Contractor shall throughout the duration of the Contract arrange for site coordination meetings (as required by the Superintendent) between himself, appropriate Subcontractors the Superintendent and consultants and shall keep minutes of such meetings and have two copies thereof forwarded to the Superintendent within two days of each meeting. The purpose of these meetings is to assist in attaining full co-operation between all concerned on the project as well as providing the opportunity for general discussion of the work under the Contract.

At the first meeting the Contractor shall submit to the Superintendent the names and telephone numbers of all responsible persons who may be contacted after working hours during the course of the Contract.

4.19.2. PROGRESS MEETING

The Contractor shall throughout the duration of the Contract arrange for progress meetings at a minimum frequency of fortnightly or as required by the Superintendent. The purpose of the Progress meeting is a formal forum between the Contractor and the Superintendent to discuss the general co-ordination of the Works that might affect the good order and running of the Premises, progress of the Works and other items as required by the Superintendent.

The required attendees are Contractor and Superintendent or Representative.

The Meeting minutes are taken and issued by Superintendent or Representative.

Should extended working hours be requested by Contractor it should be requested at this time. Please note working extended hours is by approval. Approval may be withheld.

Contractor and PFM shall also meet informally on a regular basis to review progress of the works.

4.19.3. POST OCCUPANCY TRAINING

Within 3 months of issue of a Certificate of Practical Completion the Contractor shall attend an onsite post occupancy training session and shall arrange for the attendance of relevant subcontractors. The purpose of the onsite post-occupancy training session is to ensure that the end user of the facility is appropriately trained to operate the building in accordance with the design intentions.

4.19.4. CONTRACTORS REPORTS

At each progress meeting, Contractor shall issue and present a Contract Progress and Status report, based on the current approved Construction Program, giving details of:

- work under the Contract currently in progress, highlighting critical activities,
- activities affected by or linked with delays whether the subject of time claims or not,
- work activities to commence in the next period,
- actions required by PFM or Superintendent,
- program status,
- onsite disruptions

4.20. PRIORITY START POLICY

Priority Start aims to ensure a sustainable construction trades workforce for WA by increasing the overall numbers of apprentices and trainees in the building and construction industry. To achieve this, the policy requires companies awarded State Government building construction, civil construction and maintenance contracts valued over \$5 million (including GST) to meet the industry's average target training rate for apprentices and trainees. The Priority Start Policy may apply to the Contractor.

The Department of Training and Workforce Development provides information on Priority Start. For more information, <https://www.dtwd.wa.gov.au/prioritystart>

A full copy of the policy can be viewed at:

<https://www.dtwd.wa.gov.au/sites/default/files/uploads/dtwd-ps-policy-april2019.pdf>

SCHEDULE 4 - CONTRACT ADMINISTRATION & SUPERINTENDENT TERMS

The Works Agreement may require the appointment of a Superintendent. The Superintendent plays a crucial role in the administration of the Contract. Schedule 4 sets out specific terms for the Works and the manner in which the Contract shall be administered and take precedence over the Works Agreement Terms (Schedule 2) to the extent of any inconsistency.

Information Points*

Some of the key responsibilities of the Superintendent typically include:

- I. **Administration of the Contract:** The Superintendent is responsible for administering the contract and ensuring that all parties adhere to its terms and conditions.
- II. **Issuing Instructions:** The Superintendent may issue instructions to the Vendor regarding the execution of the work. These instructions should be consistent with the contract's provisions.
- III. **Determining Variations:** The Superintendent may determine variations to the work, including changes in scope, cost, or time, and issue relevant instructions to the Vendor.
- IV. **Certifying Payments:** The Superintendent is often responsible for certifying progress payments, ensuring that they are made to the Vendor in accordance with the contract.
- V. **Inspecting Work:** The Superintendent has the authority to inspect the work to ensure it complies with the contract requirements and relevant standards.
- VI. **Resolving Disputes:** The Superintendent may be involved in dispute resolution processes and may issue decisions that can be binding unless challenged through appropriate contractual procedures.
- VII. **Keeping Records:** It is typical for the Superintendent to maintain detailed records of the project, including correspondence, site visits, and any issues that arise during the project.
- VIII. **Role as an Independent Party:** The Superintendent is expected to act as an independent and impartial party, making decisions based on the contract and relevant laws.

**DISCLAIMER: Information Points are guides only. They are not terms of your Contract. Information Points are not legal, commercial or financial advice to you. Do not rely on Information Points to decide whether to sign this Contract. If you are unsure about anything relating to this Contract, you should seek your own legal advice.*

<p>1. Definition of Superintendent</p>	<p>1.1. The Superintendent described in the Contract Details in Schedule 1 of this Works Agreement, or other person from time to time appointed in writing by Programmed to be the Superintendent and notified as such in writing to the Vendor by Programmed. For the avoidance of doubt, 'Superintendent' also includes a Superintendent's representative (in relation to functions that are able to be exercised by a Superintendent Representative).</p> <p>1.2. 'Superintendent Representative' means a person appointed in writing by the Superintendent.</p>
<p>2. Superintendent</p>	<p>2.1. Programmed may appoint a Superintendent. Programmed will use its best endeavors to ensure that the Superintendent:</p> <ol style="list-style-type: none"> i. acts honestly and fairly; ii. acts within a reasonable time; and iii. arrives at a reasonable measure of value of work quantities or time.

	<p>2.2. If a Superintendent gives a direction it is entitled to give under a provision of the Contract, the Vendor will comply with the direction (following a reasonable opportunity for consultation).</p> <p>2.3. In Clause 2 (2.2) 'direction' includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement.</p> <p>2.4. A direction may be given orally and subsequently confirmed in writing by the Superintendent (as soon as practicable), unless the Contract specifies otherwise.</p> <p>2.5. If the Vendor asks (in writing) that the Superintendent to confirm an oral direction in writing, then the Vendor is not bound to comply with the direction until the Superintendent confirms it in writing</p>
3. Superintendent Representative	<p>3.1. The Superintendent may from time-to-time appoint a Superintendent Representative to exercise any functions of the Superintendent under the Contract The appointment of a Superintendent's Representative shall not prevent the Superintendent from exercising any function.</p> <p>3.2. The Superintendent will notify the Vendor in writing of:</p> <ul style="list-style-type: none"> i. the appointment of any Superintendent's Representative and the functions delegated to the Superintendent's Representative; and ii. the termination of the appointment of a Superintendent Representative. <p>3.3. If the Vendor makes a reasonable objection to the appointment of a Superintendent Representative, the Superintendent will terminate the appointment and appoint another replacement Superintendent</p>
4. Vendor's Representative	<p>4.1. Vendor's Representative' means the person stated in Schedule 1: Contract Details of this Works Agreement.</p> <p>4.2. The Vendor must (either in person or through an appropriately qualified Vendor representative attending in person), oversee the Works at all times during which any activities relating to the execution of the Work under the Contract are taking place (including at all Site(s) and other locations at which activities relating to the Works are taking place).</p> <p>4.3. The Vendor must notify the Superintendent in writing of the name of the Vendor's representative and of any subsequent changes. Any direction given pursuant to Clause 2(b) herein shall:</p> <ul style="list-style-type: none"> i. if it relates to the execution of work on site and it's given to the representative on the site; or ii. if it relates to the execution of work at any other place and it's given to the representative at the other place, be deemed to have been given to the Vendor. <p>4.4. Matters within the knowledge of a representative of the Vendor shall be deemed to be within the knowledge of the Vendor.</p> <p>4.5. If the Superintendent makes a reasonable objection to the appointment of a representative, the Vendor shall terminate the appointment and appoint another representative.</p>
5. Control of Vendor's Employees and Subcontractors	<p>5.1. The Superintendent may, acting reasonably, direct the Vendor to remove a person connected with the Works from a Site or from any activity connected with the Work under the Contract who in the opinion of the Superintendent, is guilty of misconduct or negligence. The relevant person must be removed by the Vendor within the timeframe directed by the Superintendent and that person may not resume work or activities on</p>

	Site or otherwise connected with the Works under the Contract without prior written approval from the Superintendent.
6. Access to Site	<p>6.1. In addition to Clause 7 of the Works Agreement Terms (Schedule 2):</p> <ul style="list-style-type: none"> a) if a Vendor is given access to a Site, such access is limited to that which is necessary to enable the Vendor to undertake the Works. b) the Vendor must not deliver materials or perform work on the Site (or part of a Site) until the Vendor's access to the relevant Site (or part of Site) has been approved in writing by the Superintendent or Programmed. c) Programmed and Programmed's employees and agents may at any time after reasonable notice to the Vendor have access to any part of the Site for any purpose. d) The Vendor must allow other persons engaged by Programmed to access the Site (or any parts of the Site) and the Vendor will act cooperatively and coordinate the Vendor's work with their work. If requested by the Vendor, Programmed will provide the Vendor the names of the persons so engaged. e) The Vendor must (at all reasonable times) give Programmed, the Superintendent and any other persons authorised in writing by Programmed or the Superintendent, access to the Works wherever the Works are being carried out or Works related materials are being prepared or stored. Programmed will use its best endeavours not to impede the Vendor's activities while attending the Works.
7. Defective Materials or Works	<p>7.1. In addition to Clauses 5 and 17 of Works Agreement Terms (Schedule 2), if the Superintendent discovers material or work provided by the Vendor which is not in accordance with the Contract, the Superintendent may direct the Vendor to:</p> <ul style="list-style-type: none"> i. remove the material from the site; ii. demolish the work; iii. reconstruct, replace or correct the material or work; or iv. not to deliver the material or work to the site. <p>The Superintendent may direct the times within which the Vendor must commence and complete the removal, demolition, replacement or correction.</p> <p>7.2. If the Vendor fails to comply with a direction issued by the Superintendent within the time specified by the Superintendent in the direction then (no earlier than 7 days after the date by which the Vendor was directed to comply and/or such other time agreed by the parties in writing) Programmed may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by Programmed in having the work so carried out shall be a debt due from the Vendor to Programmed.</p>
8. Examination and Testing	<p>8.1. At any time prior to the issuance of the Final Certificate (as defined in Clause 18), the Superintendent may direct (after providing reasonable notice to the Vendor) that any material or work under the Contract be tested. The Vendor will provide such assistance, samples and make accessible such parts of the work under the Contract as may be required by the Superintendent to undertake the test. If any failures or work and/or materials are identified, the Vendor will make good that failure so that it fully complies with the Contract.</p>

	<p>8.2. The Work (or any part of the Work) may not be covered up or made inaccessible without the Superintendents prior approval.</p> <p>8.3. Testing will be conducted in accordance with the Contract and/or as directed by the Superintendent or a person (which may include the Vendor) nominated by the Superintendent.</p> <p>8.4. Before conducting a test under the Contract, the party conducting the tests give reasonable notice in writing to the other of the time, date and place of the tests. Following the provision of notice in accordance with this Clause, testing may proceed even if the other party does not attend.</p> <p>8.5. Without prejudice to any other rights under this Contract, if the Vendor or the Superintendent delays in conducting a test, the other party may conduct the tests after giving reasonable notice in writing of its intention to do so.</p> <p>8.6. Results of testing must be promptly made available by each party to the other and to the Superintendent.</p> <p>8.7. Costs of and incidental to testing shall be borne by the Vendor, where:</p> <ol style="list-style-type: none"> the Contract provides that the Vendor shall bear the costs, or the test is one which the Vendor was required to conduct; the test shows that the material or work is not in accordance with the Contract; the test is in respect of work under the contract covered up or made inaccessible without the Superintendents prior approval where such was required; the test is consequent upon a failure of the Vendor to comply with the requirement of the Contract. <p>8.8. Without limiting any other rights under the Contract, if during the Defects Liability Period, Programmed or the Superintendent asserts that material or work is not in accordance with the Contract and the Vendor requests permission to test the material or work, Programmed will not unreasonably refuse the Vendor access to test the material or work.</p>
9. Progress and Programming of the Works	<p>9.1. The Vendor will proceed with the work under the Contract with due expedition and without delay.</p> <p>9.2. The Vendor must not suspend the progress of the whole or any of the part of the work under the Contract except where a suspension is directed or approved by the Superintendent.</p> <p>9.3. The Vendor must give the Superintendent reasonable advance notice of when the Vendor requires any information, materials, documents, or instructions from the Superintendent or from Programmed.</p> <p>9.4. Programmed and the Superintendent will not be obliged to provide any information, materials, documents or instructions earlier than Programmed or the Superintendent, as the case may be, should reasonably have anticipated at the date of acceptance of tender.</p> <p>9.5. The Superintendent may direct in what order and in what time the various stages or parts of the work under the contract shall be performed. If the Vendor can reasonably comply with the direction, the Vendor shall do so.</p> <p>9.6. If the Vendor cannot reasonably comply, the Vendor shall notify the Superintendent in writing giving reasons.</p> <p>9.7. If compliance with the Superintendent's direction causes the Vendor to incur more or less costs than otherwise would have been incurred had the Vendor not been given the direction, the difference shall be valued under Clause 17 herein.</p> <p>9.8. Construction Program: For the purposes of Clause 9, a 'Construction Program' is a statement in writing showing the dates by which or the</p>

	<p>times within which, the various stages or parts of the Works under the Contract are to be executed or completed.</p> <p>9.9. A construction program shall not affect rights or obligations in Clause 9 (9.1) to (9.8).</p> <p>9.10. The Vendor may voluntarily provide the Superintendent with a Construction Program. However, this does not limit the Superintendent's right to direct the Vendor to provide the Superintendent with a Construction Program within the time and in the form reasonably directed by the Superintendent.</p> <p>9.11. The Vendor will not (without reasonable cause communicated to Programmed and the Superintendent in writing) depart from:</p> <ol style="list-style-type: none"> a Construction Program included in the Contract; or a Construction Program provided to the Superintendent. <p>9.12. Providing a Construction Program does not relieve the Vendor of any obligations under the Contract including the obligation to not without reasonable cause depart from an earlier Construction Program. Any Construction Program and/or variation to an existing Construction Program must be agreed to in writing by both parties.</p>
10. Suspension of the Works	<p>10.1. Suspension by Superintendent: In addition to Clause 14 of the Works Agreement Terms (Schedule 2), if the Superintendent (acting reasonably) considers that the suspension of the whole or part of the Works under the contract is necessary because of an act or omission of:</p> <ol style="list-style-type: none"> Programmed, the Superintendent or any other Programmed Personnel; or the Vendor, the Vendor's subcontractor or an employee or agent of either; or for the protection or safety of any person or property or to comply with an order of a court, <p>the Superintendent may direct the Vendor to suspend the progress of the whole or part of the Works under the contract for such time as the Superintendent (acting reasonably and following consultation with the Vendor if timing permits) considers appropriate in the circumstances.</p> <p>10.2. Suspension by Vendor: if the Vendor wishes to suspend the whole or part of the work under the contract, the Vendor must obtain the prior written approval of the Superintendent. The Superintendent may approve of the suspension of the Works by the Vendor and may require specific conditions of approval.</p> <p>10.3. Recommencement of Works: once the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Vendor to recommence work on the whole or on the relevant part of the Works under the Contract. If the work is suspended pursuant to this Clause 10 (10.1), the Vendor may recommence work at any time after reasonable advance notice to the Superintendent.</p> <p>10.4. Costs of Suspension: any costs incurred by the Vendor by reason of a suspension under this Clause 10 (10.1) or Clause 10 (10.2) shall be borne by the Vendor but if the suspension is due to an act or omission of Programmed, the Superintendent or an employee, consultant or agent of Programmed and the suspension causes the Vendor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 17.</p>

	<p>10.5. Effect of suspension: suspension shall not affect the date for Practical Completion, but the cause of suspension may be a ground for extension of time under Clause 13.</p>
<p>11. Latent Conditions</p>	<p>In addition to Clause 16 of the Works Agreement Terms (Schedule 2):</p> <p>a) Latent Conditions are: Physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions which differ materially from the physical conditions which should reasonably have been anticipated by the Vendor at the time of the tender if the Vendor had:</p> <ul style="list-style-type: none"> i. examined all information made available in writing by Programmed to the Vendor for the purpose of tendering; and ii. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and iii. inspected the site and its surroundings; and <p>any other conditions which the contract specifies to be latent conditions.</p> <p>b) Notification: if during the execution of the Works the Vendor becomes aware of a Latent Condition the Vendor must (a where possible before the Latent Condition is disturbed) give written notice of the Latent Condition to the Superintendent. If required by the Superintendent, the Vendor must provide to the Superintendent a statement in writing specifying:</p> <ul style="list-style-type: none"> i. the Latent Condition encountered and in what respect it differs in a material way from the Contractual requirements; ii. the additional work and additional resources which the Vendor estimates to be necessary to deal with the Latent Condition; iii. the time the Vendor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion; iv. the Vendor's estimate of the cost of the measures necessary to deal with the Latent Condition: and v. other details reasonably required by the Superintendent. <p>c) Extension of Time and Cost: delay caused by a Latent Condition may justify an extension of time under Clause 13. If a Latent Condition causes the Vendor to:</p> <ul style="list-style-type: none"> i. carry out additional work; ii. use additional plant; or iii. incur extra costs which the Vendor could not reasonably have anticipated at the time of tendering, <p>A valuation shall be made under Clause 17.</p>
<p>12. Time for Commencement and Practical Completion</p>	<p>In addition to Clause 13 of the Works Agreement Terms (Schedule 2):</p> <p>a) Time for Commencement of Work on Site: The Vendor must give the Superintendent seven (7) days' notice of the date on which the Vendor proposes to commence work on Site. The Superintendent may reduce the period of notice required at their discretion. The Vendor must commence work on Site within 14 days after Programmed has given the Vendor possession the Site suitable to enable the Vendor to commence work. The Superintendent may</p>

	<p>extend the time for commencement of work on the Site in their discretion.</p> <p>b) Time for Practical Completion: The Vendor will execute the work under the Contract to Practical Completion by the Completion Date as stated in Schedule 1: Contract Details. Upon achieving the Completion Date, and the issuance of the Certificate of Practical Completion, the Vendor must give possession of the Site and Works to Programmed.</p> <p>c) Use of Partly Completed Works: if a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of separable portions, the Superintendent may determine that the respective parts shall be separable portions. In using the separable portion that has reached Practical Completion, Programmed will not hinder the Vendor in it's the performance of the balance of Work under the Contract.</p>
13. Extension of Time for Practical Completion by Completion Date	<p>In addition to Clause 15 of the Works Agreement Terms (Schedule 2):</p> <p>a) with any claim for an extension of time for reaching Practical Completion by the Completion Date, the Vendor must give the Superintendent written notice of the number of days extension claimed.</p> <p>b) If the Vendor is entitled to an extension of time for Practical Completion, the Superintendent will (within 28 days after receipt of the notice described in Clause 13(b) of this schedule), grant an extension of time which the Superintendent considers reasonable having regard to the circumstances.</p> <p>c) If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent will before the expiration of the 28 days give the Vendor notice in writing of the reason.</p> <p>d) In determining a reasonable extension of time for an event causing delay, the Superintendent will have regard to whether the Vendor has taken all reasonable steps to prevent the delay and minimise the consequences of delay.</p> <p>e) Notwithstanding that the Vendor is not entitled to an extension of time the Superintendent (acting reasonably) may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Vendor extend the time for Practical Completion for any reason.</p> <p>f) For the avoidance of doubt, any delay by Programmed or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 28 days will not affect the date for Practical completion (noting that nothing in this paragraph is intended to prejudice any rights of the Vendor to damages)</p>
14. Liquidated Damages for Delay in Reaching Practical Completion by the Completion Date	<p>In addition to Clause 24 of the Works Agreement Terms (Schedule 2):</p> <p>a) if the Vendor fails to reach Practical Completion by the Completion Date the Vendor be indebted to Programmed for liquidated damages at the rate stated in the Contract Details for every day after the Completion Date and including the Completion Date.</p> <p>b) If after the Vendor has paid or Programmed has deducted liquidated damages, the Completion Date is extended by agreement between the parties, Programmed will repay to the Vendor any liquidated</p>

	damages or deducted in respect of the period up to and including the new Completion Date.
15. Defects Liability Period	<p>In addition to Clause 17 of the Works Agreement (Schedule 2):</p> <ul style="list-style-type: none"> a) the Defects Liability Period as stated in Schedule 1 will commence on the date of Practical Completion and a Certificate of Practical Completion is issued. b) As soon as possible after the date of Practical Completion, the Vendor must rectify any defects or omissions in the Work under the Contract existing at Practical Completion. c) At any time prior to the 14th day after the expiration of the Defects Liability Period, the Superintendent may direct the Vendor to rectify any omissions or defects in the Work under the Contract existing at the date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction will identify the omission or defect and state a date by which the Vendor shall complete the work of rectification and may state a date by which the work of rectification will commence. The Superintendent will consult with the Vendor in relation to these dates. d) The direction may provide that in respect of the work of rectification there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in Schedule 1: Contract Details. The separate Defects Liability Period shall commence on the date that the Vendor completes the work of rectification. This Clause 15 will apply in respect of the work of rectification and the Defects Liability Period for that work of rectification. e) For the avoidance of doubt and without limiting Programmed's rights under the Works Agreement Terms, if the rectification work has not commenced or been completed by the requisite dates, Programmed may pursue the rectification work itself in accordance with Clause 17 of the Works Agreement. f) If it is necessary for the Vendor to carry out work of rectification, the Vendor shall do so at times and in a manner which cause as little inconvenience to the occupants or uses of the Works as is reasonably possible.
16. Variations	<p>In addition to Clause 12 of the Works Agreement Terms (Schedule 2):</p> <p>16.1. Variations to the Work:</p> <ul style="list-style-type: none"> a) The Superintendent may direct the Vendor to: <ul style="list-style-type: none"> i. increase, decrease or omit any part of the Work under the Contract; ii. change the character or quality of any material or work; iii. change the levels, lines, positions or dimensions of any part of the work under the Contract; iv. execute additional work; and/or v. demolish or remove material or work no longer required by Programmed. b) The Vendor will not vary the work under the Contract except as directed by the Superintendent or as approved in writing by the Superintendent under this Clause 16. c) The Vendor is bound only to execute a variation which is within the general scope of the Contract.

	<p>d) The Vendor shall not be bound to execute a variation directed after practical completion unless the variation is in respect of rectification work referred to in Clause 15.</p> <p>16.2. Proposed Variations:</p> <p>a) Upon receipt of a notice in writing from the Superintendent advising the Vendor of a proposed variation under this Clause 16, the Vendor must advise the Superintendent whether the proposed variation can be implemented. If the variation can be implemented the Vendor must:</p> <ol style="list-style-type: none"> advise the Superintendent of the effect which the Vendor anticipates that the variation will have on the Construction Program and time for Practical Completion; and provide an estimate of the cost (including delay costs, if any) of the proposed variation. <p>b) Programmed will reimburse the Vendor for its reasonable costs of complying with the requirements of this Clause 16.</p> <p>16.3. Pricing the Variation:</p> <p>a) Unless the Superintendent and the Vendor agree upon the price for a variation, the variation directed or approved by the Superintendent under this Clause 16 will be valued based on the methodology in Clause 17.</p> <p>b) The Superintendent may direct the Vendor to provide a detailed quotation for the work of a variation, supported by measurements or other evidence of cost, for their consideration.</p> <p>16.4. Variations for the Convenience of the Vendor:</p> <p>a) If the Vendor requests the Superintendent to approve a variation for the convenience of the Vendor, the Superintendent may do so in writing in their discretion (following consultation with the Vendor). The approval may be conditional.</p> <p>b) Unless the Superintendent otherwise directs in the notice approving the variation, the Vendor shall not be entitled to:</p> <ol style="list-style-type: none"> an extension of time for Practical Completion; or extra payment, <p>in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.</p> <p>c) For the avoidance of doubt, the Superintendent is not obligated to approve a variation for the convenience of the Vendor.</p>
<p>17. Valuation</p>	<p>Where the Contract provides that a valuation shall be made under Clause 17, Programmed will pay (or allow) the Vendor, or the Vendor will pay (or allow) Programmed (as the case may require), an amount that is determined by the Superintendent in accordance with the following:</p> <ol style="list-style-type: none"> if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices will be used; if Clause 17(a) does not apply, the rates or prices in a priced bill of quantities or schedule of rates will be used to the extent that it is reasonable to use them; to the extent that neither Clause 17(a) and 17(b) apply, the determination of reasonable rates or prices to be used in any valuation will be made by the Superintendent (acting reasonably and after consulting the Vendor);

	<p>d) in determining the deduction to be made for work, which is taken out of the Contract, the deduction shall include a reasonable amount for profit and overheads;</p> <p>e) if the valuation relates to extra costs incurred by the Vendor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit.</p>
18. Certificates and Payments	<p>The following terms in this Clause 18 apply unless a Security of Payment Act applies to the Works - in which case the Security of Payment terms in Clause 24 of the Works Agreement Terms will continue to apply to the Works, and the below terms will not apply to the extent of any inconsistency with Clause 24 of the Works Agreement Terms and any obligation applying to Programmed under applicable law (including an applicable Security of Payment Act).</p> <p>a) Payment claims certificates calculation and time for payment: at the times for:</p> <ol style="list-style-type: none"> i. payment claims provided for in the Contract; ii. upon issue of a Certificate of Practical Completion; and ii. within the time prescribed by Clause 18(k) of this Schedule 4, the Vendor must provide the Superintendent with claims for payment together with supporting evidence for the amount due to the Vendor (and other information reasonably required by the Superintendent). <p>b) Within 14 days after receipt of a claim for payment the Superintendent will issue to Programmed and to the Vendor:</p> <ol style="list-style-type: none"> i. a payment certificate stating the amount of the payment which in the opinion of the Superintendent is to be made by Programmed to the Vendor or by the Vendor to Programmed; and ii. the Superintendent will set out the calculations for the relevant amount in the certificate and, if the amount is more or less than the amount claimed by the Vendor, the reasons for the difference. <p>d) If the Vendor fails to make a claim for payment under Clause 18, the Superintendent may nevertheless issue a payment certificate.</p> <p>e) Within 28 days after receipt by the Superintendent of a claim for payment or within 14 days of issue by the Superintendent of the Superintendents payment certificate (whichever is the earlier) Programmed will pay to the Vendor (or the Vendor shall pay to Programmed as the case may be) an amount not less than the amount shown in the certificate as due to the Vendor or to Programmed as the case may be.</p> <p>f) Payment of monies shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only except as provided by this Clause 18.</p> <p>g) Correction of Payment Certificates: at any time and from time to time the Superintendent may by a further certificate correct any error which has been discovered in any previous certificate other than a Certificate of Practical Completion or Final Certificate.</p> <p>h) Certificate of Practical Completion: the Vendor shall give the Superintendent at least 14 days' notice of the date upon which the Vendor anticipates that Practical Completion will be reached. When the Vendor is of the opinion that Practical Completion has been</p>

	<p>reached the Vendor will in writing request the Superintendent to issue a Certificate of Practical Completion. Within 14 days of the receipt of the request, the Superintendent shall give to the Vendor and to Programmed a Certificate of Practical Completion certifying the Date of Practical Completion or give the Vendor in writing the reasons for not issuing the certificate. When the Superintendent (acting reasonably) is of the opinion that Practical Completion has been reached the Superintendent may issue a Certificate of Practical Completion whether or not the Vendor has made a request for its issue.</p> <p>i) Effect of Certificates: the issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter, nor shall it prejudice any claim by Programmed or the Vendor.</p> <p>j) Final Payment Claim: within 28 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire, the Vendor must lodge with the Superintendent a final payment claim and endorse it 'Final Payment Claim'. The Vendor must include in that claim all monies which the Vendor considers to be due from Programmed under or arising out of the Contract.</p> <p>k) Final Certificate: within 14 days after receipt of the Vendor's Final Payment Claim or where the Vendor fails to lodge such claim, the expiration of that period specified in Clause 18(k) for the lodgment of the Final Payment Claim by the Vendor, the Superintendent will issue to the Vendor and to Programmed a final payment certificate endorsed 'Final Certificate'. In the certificate the Superintendent will certify the amount which in the Superintendent's opinion is finally due from Programmed to the Vendor or from the Vendor to Programmed under or arising out of the contract.</p> <p>l) Within 14 days after the issue of a Final Certificate which certifies a balance owing by Programmed to the Vendor, Programmed shall release to the Vendor any retention monies or security then held by Programmed.</p> <p>m) Unless either party, either before the Final Certificate has been issued or not later than 15 days after the issue thereof, serves a notice of dispute under Schedule 2 of the Work Agreement, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract sum except in the case of:</p> <ol style="list-style-type: none"> i. fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate; ii. any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
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	<p>iii. any accidental or erroneous inclusion or exclusion of any work plan materials or figures in any computation or any arithmetical error in any computation.</p>
19. Urgent Protection	<p>a) If urgent action is necessary to protect the work under the contract, other property or persons and the Vendor fails to take the necessary action, Programmed may take the necessary action. If the action was action which the Vendor should have taken at the Vendor's cost, the cost incurred by Programmed will be a debt due from the Vendor.</p> <p>b) Unless Programmed is required to take necessary action on an urgent basis, the Superintendent will use its best endeavours to give the Vendor prior written notice of Programmed's intention to take action under this Clause 19.</p>
20. Contract Documents	<p>a) Discrepancies: The Contract documents are mutually explanatory of one another. If either party discovers any ambiguity, confusion or inconsistency in the documents meant for the work, the parties must inform the Superintendent in writing. If an issue is identified and brought to the attention of the Superintendent, the Superintendent will direct the Vendor on how to interpret and carry out the works. If this direction leads to higher or lower costs than expected during the tendering process, the difference will be assessed under Clause 17.</p> <p>b) Dimensions: Where a discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.</p> <p>c) Supply of Documents by Programmed: Programmed's documents provided to the Vendor are owned by Programmed or Programmed's customer and must be returned by the Vendor to Programmed upon written request. The Vendor is not permitted to use, copy, or reproduce the documents for any purpose other than executing the Work under the Contract without prior written approval from Programmed.</p> <p>d) Supply of Documents by Vendor: If the Contract requires the Vendor to provide documents, the Vendor must supply the specified number of copies or, if unspecified, provide 5 copies. If the Vendor submits documents to the Superintendent:</p> <ol style="list-style-type: none"> The Superintendent is not obligated to check the documents for errors, omissions, or compliance with the Contract requirements. The Superintendent's approval, despite Clause 2, does not release the Vendor from responsibility for errors, omissions, or compliance with the Contract. If the Contract mandates the Superintendent's direction on document suitability, within the specified time (or 14 days if unspecified), the Superintendent will notify the Vendor if the documents are suitable or not. If the Superintendent deems the documents unsuitable, they will provide reasons, and the Vendor must submit new or revised documents for the Superintendent's direction. The Superintendent cannot reject documents complying with the Contract requirements. Copies of Vendor-supplied documents are owned by Programmed but can only be used or copied for the use, maintenance, or alteration of the Works.

	<p>e) Availability of Documents:</p> <ul style="list-style-type: none"> i. While the Works are ongoing, the Vendor must keep a complete set of drawings, specifications, and written information supplied by Programmed, Superintendent, and the Vendor. This set shall be stored at the site, or another location approved in writing by Programmed, accessible at all times for reference by Programmed, Superintendent, and nominated individuals. ii. During the manufacturing or assembly of any significant part of the Works away from the construction site, the Vendor must maintain a set of drawings and relevant information at the manufacturing or assembly location. This set should be available for reference by Programmed, Superintendent, and nominated individuals upon written approval by either of them.
<p>21. Payment of Workers and Third-Party Subcontractors</p>	<ul style="list-style-type: none"> a) Before the Programmed issues payment to the Vendor, the Superintendent may, at least 5 days before a payment certificate is due, request the following in writing: <ul style="list-style-type: none"> i. A statutory declaration confirming that all workers employed by the Vendor on the Works have been paid in full for their work; and ii. Documentary evidence demonstrating that all workers and third-party subcontractors employed by the Vendor have been paid in full. b) Not earlier than 14 days after the Vendor claims payment under Clause 18, and before the Programmed releases payment, the Vendor must provide a statutory declaration, confirming that all workers and third-party subcontractors have been paid in full. c) If the Vendor fails to: <ul style="list-style-type: none"> i. Provide the required statutory declaration or documentary evidence within 5 days of the Superintendent's request; or ii. Comply with Clause 21(b). <p>Programmed may withhold payment until the necessary statutory declaration or evidence is provided, notwithstanding Clause 18.</p> d) Upon the Vendor's request and using funds that's payable to the Vendor, Programmed may make direct payments to Vendor's workers or third-party subcontractors. e) If a worker or third-party subcontractor obtains a court order related to payments under Clause 18 and provides the court order and a statutory declaration confirming non-payment, Programmed may pay the ordered amount, including costs. This amount shall be a debt due from the Vendor to Programmed. f) After a sequestration or winding-up order for the Vendor, Programmed cannot make payments to workers or third-party subcontractors without the approval of the Appointed Administrators or Liquidators.
<p>22. Default or Insolvency</p>	<ul style="list-style-type: none"> a) Preservation of Rights: If a party breaches or repudiates the contract, Clause 22 does not affect the other party's right to recover damages or exercise any other rights.

	<p>b) Vendor's Default: If the Vendor substantially breaches the contract, and Programmed believes that damages may not be sufficient, Programmed can issue a written notice to show cause. Substantial breaches include, but are not limited to:</p> <ul style="list-style-type: none"> i. suspending work in violation of Clause 9. ii. failing to proceed promptly under Clause 9. iii. failing to provide required security under the contract. iv. using materials or workmanship not in line with the contract. v. disregarding the Superintendent's direction under Clause 7, as per Clause 2. vi. failing to present required insurance evidence under the contract. vii. knowingly providing false statements in a statutory declaration or documentary evidence under Clause 21. <p>c) Requirements for Programmed's Show Cause Notice: A notice under Clause 22(b) must:</p> <ul style="list-style-type: none"> i. clearly state that it is a notice under Clause 22 and specify the alleged substantial breach. ii. demand the Vendor to provide a written explanation as to why Programmed should not exercise a right as per Clause 22(d). iii. clearly indicate the deadline for the Vendor to respond, which shall be no less than 7 clear days from the notice issuance. iv. specify the location for submitting the response. <p>d) Programmed's Rights: If, by the specified time in a notice under Clause 22(b), the Vendor fails to provide a reasonable cause for Programmed not to exercise a right mentioned in Clause 22(d), Programmed may, through written notice to the Vendor:</p> <ul style="list-style-type: none"> i. take over the whole or part of the remaining work to be completed; or ii. terminate the Contract. <p>Upon issuing a notice under Clause 22(b), Programmed can suspend payments to the contractor until the earlier of:</p> <ul style="list-style-type: none"> - the date the Vendor provides a reasonable cause; - the date Programmed takes action under Clause 22(d) (i) or (ii); or - seven days after the last day for showing cause in the notice under Clause 22(b). <p>If Programmed exercises the right under Clause 22(d) (i), the Vendor is not entitled to further payment for the work taken over unless a payment becomes due under Clause 22(f).</p> <p>e) Procedure for Programmed Taking Over Work: If Programmed takes over work under Clause 22(d) (i), they shall complete the work. Programmed may, without compensation, take possession of the Vendor's constructional plant and other necessary items on or near the site to facilitate the completion of the work.</p> <p>If Programmed takes possession of the constructional plant or other items, they are responsible for maintaining the constructional plant. Upon completion of the work and subject to Clause 22(f), Programmed must return to the contractor any surplus constructional plant and items taken under this Clause.</p>
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	<p>f) Adjustment on completion of the Works taken out of the hands of the Vendor: Upon completion of Work taken from the Vendor under Clause 22(d) (i), the Superintendent will determine the cost incurred by Programmed for the completion and issue a certificate to both Programmed and the Vendor, specifying this cost. If Programmed's cost exceeds what would have been paid to the Vendor, the difference becomes a debt owed by the Vendor. If Programmed's cost is less, the difference is a debt owed to the Vendor. Programmed shall maintain records of these costs. If the Vendor owes Programmed, Programmed can retain Constructional Plant or other items taken under Clause 22(e) until the debt is settled. If the Vendor fails to pay after reasonable notice, Programmed can sell these items, using the proceeds to cover the debt and sales costs, with any excess returned to the Vendor.</p> <p>g) Programmed's Default: If Programmed commits a substantial breach of contract and the Vendor believes that damages may not be sufficient, the Vendor can issue a written notice to show cause. Substantial breaches include, but are not limited to:</p> <ul style="list-style-type: none"> i. failure to make a payment under Clause 18 ii. failure by Superintendent's to issue a Certificate of Practical Completion or provide written reasons within 14 days of the contractor's request, as per Clause 18(h). iii. failure to grant the contractor sufficient site possession under the Contract <p>i) Requirements of a Notice by the Vendor to Show Cause: A notice under Clause 22(g) must:</p> <p>i) Requirements of a Notice by the Vendor to Show Cause: A notice under Clause 22(g) must:</p> <ul style="list-style-type: none"> i. clearly state it is a notice under Clause 22. ii. specify the alleged substantial breach. iii. require Programmed to provide a written explanation as to why the Vendor should not exercise a right under Clause 22(j). iv. specify the deadline for Programmed to respond, which must be at least 7 clear days from the notice issuance. v. specify the location for submitting the response. <p>j) Rights of the Vendor: If, by the specified time in a notice under Clause 22(g), Programmed fails to show reasonable cause against the Vendor's right under Clause 22(j), the Vendor can, through written notice to Programmed, suspend all or part of the work under the contract. The Vendor must lift the suspension if Programmed rectifies the breach. However, if within 14 days of the suspension, Programmed fails to remedy the breach (or make satisfactory arrangements), the Vendor can, through written notice, terminate the contract. The Vendor is entitled to recover any damages incurred due to the suspension.</p> <p>k) Rights of the Parties on Termination: If the contract is terminated under Clause 22(d) (ii) or Clause 22(j), the parties' rights and liabilities will be as if the defaulting party had repudiated the contract at common law, and the other party chose to end the contract and seek damages.</p> <p>l) Insolvency: In case of insolvency, if a party:</p> <ul style="list-style-type: none"> i. informs the other party in writing or creditors about its insolvency;
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	<ul style="list-style-type: none"> ii. commits an act of bankruptcy; iii. faces a bankruptcy petition; iv. is made bankrupt; v. calls a meeting of creditors for a scheme of arrangement; vi. places the party under official management; vii. enters a scheme or composition with creditors; viii. receives a resolution for official management at a creditors' meeting; ix. is placed under official management with a receiver appointed; x. faces an application for winding up not stayed within 14 days; xi. receives a winding-up order; and/or xii. execution is levied against a party by creditors, debenture holders, trustees, or under a floating charge: <ul style="list-style-type: none"> - Where the other party is Programmed, Programmed may, without issuing a notice to show cause, exercise the right under Clause 22(d) (i); - If the other party is the Vendor, the Vendor may, without issuing a notice to show cause, exercise the right under Clause 22(j). <p>These rights under Clause 22(l) are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.</p>
23. Dispute Resolution	<ul style="list-style-type: none"> a) Dispute Resolution: In case of a dispute related to the contract, including issues with a Superintendent's direction, either party must hand-deliver or send a written notice of dispute to the other party and the Superintendent, clearly identifying and detailing the dispute. Despite the dispute, both Programmed and the Vendor must continue contract performance. The Vendor should proceed with the Work, and both parties should adhere to Clause 22, while also complying with Clause 18. Additionally, claims in tort, under statute, for restitution based on unjust enrichment, or for rectification or frustration may be included in an arbitration proceeding. b) Further Required Steps Before Proceeding: Within 14 days of receiving a notice of dispute, the parties must meet at least once. If both parties agree, the meeting can involve the Superintendent. The goal is to resolve the dispute. If resolution fails, the parties will discuss alternative methods for resolving the dispute. Each party must have a representative with the authority to agree to a resolution at these meetings. If the dispute persists, or if one party believes the other is not making reasonable efforts to resolve it, either party can deliver a written notice by hand or certified mail to refer the dispute to arbitration or litigation. c) Alternatively: Upon receiving a notice of dispute, the served party has 14 days to provide a written response to the other party and the Superintendent. Within 28 days of the Superintendent receiving the notice or within 14 days of receiving the Superintendent's written response, whichever comes first, the Superintendent will issue a decision on the dispute, along with reasons.

	<ul style="list-style-type: none"> i. If either party is unhappy with the Superintendent's decision, or if the Superintendent fails to provide a written decision on time, both parties must meet within 14 days to attempt resolution. If resolution fails, they explore alternative dispute resolution methods. Each party must have a representative with authority at these meetings. ii. If the dispute persists, or if one party believes the other isn't making reasonable efforts, either party can send a written notice by hand or certified mail to refer the dispute to arbitration or litigation. <p>d) Arbitration:</p> <ul style="list-style-type: none"> i. Arbitration will be conducted by a single arbitrator nominated by the current Chairperson of the Institute of Arbitrators Australia chapter in the specified State or Territory. The arbitration proceedings will take place in the State or Territory mentioned in the Contract. ii. Unless there is a written agreement by the parties, the person chosen by the parties to settle the dispute under Clause 23(b) cannot be appointed as an arbitrator, and neither party can call that person as a witness in the proceedings. In cases where one party has overpaid the other, whether based on a Superintendent's certificate or not, and whether due to a mistake of law or fact, the arbitrator may order repayment along with interest.
24. Media Releases	<p>The Vendor and Vendor's workers cannot release any information, publication, document, or article about the Works in any media without the prior approval of Programmed. Approval will not be unreasonably denied. The Vendor must redirect all media inquiries relating to the Works to Programmed.</p>

SCHEDULE 5 - HSE REQUIREMENTS

5. HSE REQUIREMENTS

Further guidance material related to the management of specific hazards and the requirements to safely perform services and work can be obtained from the Programmed Contractor Essentials page: <https://www.programmed.com.au/contractor-essentials>

The Vendor declares that it has read and understands the content of the Subcontractor Handbook and has communicated it to all Personnel including Third Party Subcontractors; and that these Personnel and Third Party Subcontractors have read and understood the content of this document. Additionally, the Vendor, its Personnel and Third Party Subcontractors agree that they will adhere to and provide Services to PFM in accordance with the requirements set out in the Subcontractor Handbook.

5.1. WORKPLACE SAFETY AND HEALTH COMPLIANCE

The Vendor must comply with all relevant statutory requirements including the Work Health and Safety Act 2020 (the Act) and the Work Health and Safety (General) Regulations 2022 (the Regulations), Codes of Practice, Australian Standards, Programmed internal standards, the Vendor's HSE management system and directions by Programmed Facility Management (PFM) in relation to HSE matters.

The Act, Regulations, Codes of Practice and other safety information can be accessed from the Worksafe WA website at <https://www.commerce.wa.gov.au/worksafe>.

The Vendor is deemed to have control of the Site for the purposes of executing the work under the Contract. Accordingly, the Vendor is responsible for ensuring that, wherever practicable, its employees, agents and Third Party Subcontractors and all other persons entering and moving about the Site, for whatever purpose, are not exposed to hazards.

5.2. RESPONSIBILITY FOR HEALTH SAFETY AND ENVIRONMENTAL REQUIREMENTS

The Contractor is deemed to be in control of all matters related to the execution of the work under the Contract and accordingly is responsible for all such matters under the Act and Regulations.

The Vendor is deemed to be in control of the workplace and all matters related to the execution of the work under the Contract and accordingly is responsible for the management of Health and Safety in accordance with the Work Health and Safety Act 2020 and Regulations.

The Vendor shall comply with its obligations under Section 19 of the Act and actively demonstrate commitment to the coordination, cooperation and consultation in accordance with section 46 of the Act.

The Vendor shall indemnify PFM from and against any loss, damage or injury suffered or incurred by PFM or any claim made against PFM by reason directly or indirectly of the Vendor failing to comply with its obligations under this Clause and the Vendor shall reimburse PFM any fines, penalties costs and expenses which PFM may incur as a result (directly or indirectly) of any non-compliance on the part of the Vendor with any of the provisions of the Act or with any of its obligations under this Clause. The Vendor shall pay all fees payable under the Act which are payable in connection with the execution of the Works. Risk Management

5.3. RISK MANAGEMENT

5.3.1. SAFETY MANAGEMENT PLAN

Prior to the commencement of the work on Site the Vendor shall prepare and implement a Safety Management Plan (SMP) relevant to the Works under the Contract. The SMP shall be maintained, and where necessary updated, throughout the Contract. The SMP shall be appropriate to the risks associated with the work under the Contract and in accordance with PFM Specific Requirements. This shall include provision for, but not be limited to, the following elements:

- A description of the project including an overview of the scope of works and identification of key risks. This should include a site specific risk assessment relevant to the works with risk ratings and controls (this can be a standalone Project Risk Register, incorporated into HSE Plan or similar).
- the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project;
- the arrangements in place, between any persons conducting a business or undertaking at the workplace where the construction project is being undertaken, for consultation, cooperation and the coordination of activities in relation to compliance with their duties under the Act and these regulations;
- Description of how subcontractors will be selected, monitored and reviewed for the duration of the works.
- any site specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace and in accordance with section 1.3.2 of this document;
- There is a process to review HSE Plan as necessary (for example, when there are substantial changes to operations or significant changes to risks or risk control measures (including legal or regulatory requirements or HSE alerts).
- Description of how the contents of the HSE Plan, and the processes and procedures set out within, is made aware to each person who is going to carry out work i.e. Induction, consultation.
- The plan identifies supervision requirements, outlining that onsite supervision will be in place for all High Risk Activities in accordance with 1.3.3.1 of this document
- Provision of details outlining the qualifications and competency of personnel relevant to the work being performed. i.e. Site specific induction, trade qualifications, high risk work licenses etc.
- Emergency Preparedness and Response provisions are outlined, specific to the work scope in accordance with Section 1.6 of this document.
- the arrangements in place for managing any work health and safety incidents that occur in accordance with section 1.5 of this document;
- any other matters that the PFM may direct from time to time.

Each element of the SMP shall specifically address:

- the person on the Site who shall take responsibility for the successful implementation of each element;
- the hierarchical structure by which the responsibility is performed; and
- the specific manner by which the element is performed

The Vendor is to ensure that evidence of the activities performed in accordance with the SMP are held of site for the duration of the Works.

The Vendor shall prepare the SMP in conjunction with a competent person suitably experienced and qualified in safety matters. No works shall commence onsite until a SMP is approved by PFM.

Prior to the commencement of the Works, the Vendor shall certify to PFM that its SMP has been prepared and

- is available on Site;
- has been communicated to workers on site; and
- has been implemented on Site

5.3.2. JOB PLANNING AND RISK ASSESSMENT

Prior to commencing work on any Site, the Contractor, specifically the Worker performing the task, shall assess the risks that could arise from Contractor operations, and prepare a documented risk assessment, taking into consideration the potential impact from any work that may be performed at the same time by other Contractors, and the work environment.

This risk assessment must be completed by the Worker performing the task, completed prior to the commencement of the task and made available to PFM or Customer representative upon request. The Contractor shall ensure that their workers are trained to complete the risk assessment applicable to their operation.

The method of assessment will be determined by the level of risk of the task. As a minimum, PFM require a 'Take 5' to be completed for all tasks as an initial assessment of the risk, a Safe Work Method Statement (SWMS) developed for high risk activities and a Job Safety Environmental Analysis (JSEA) completed for non-routine or complex tasks that are not considered high risk.

5.3.3. HIGH RISK CONSTRUCTION WORKS

Where work on the Site is high risk construction work, this must be carried out in accordance with Work Health and Safety (General) Regulations 2022. The Vendor shall ensure that the person having day-to-day, on site control of the high-risk work at the Site gives the Vendor a written Safe Work Method Statement before any high risk construction work commences.

The SWMS is to be provided to PFM prior to the work commencing. The Vendor shall ensure any changes required by PFM to the SWMS are completed prior to the commencement of work.

The Vendor shall ensure that the SWMS is kept up to date.

For the purposes of this clause, high risk construction work includes:

- a) involves a risk of a person falling more than 2 metres; or
- b) is carried out on a telecommunication tower; or
- c) involves demolition of an element of a structure that is load bearing or otherwise related to the physical integrity of the structure; or
- d) involves, or is likely to involve, the disturbance of asbestos; or
- e) involves structural alterations or repairs that require temporary support to prevent collapse; or
- f) is carried out in or near a confined space; or
- g) is carried out in or near —
- h) a shaft or trench with an excavated depth greater than 1.5 metres; or
- i) a tunnel; or
- j) involves the use of explosives; or
- k) is carried out on or near pressurised gas distribution mains or piping; or
- l) is carried out on or near chemical, fuel or refrigerant lines; or
- m) is carried out on or near energised electrical installations or services; or
- n) is carried out in an area that may have a contaminated or flammable atmosphere; or

- o) involves tilt up or precast concrete; or
 - p) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or
 - q) is carried out in an area at a workplace in which there is any movement of powered mobile plant; or
 - r) is carried out in an area in which there are artificial extremes of temperature; or
- is carried out in or near water or other liquid that involves a risk of drowning; or
- involves diving work

The Vendor shall ensure that any high risk construction work is carried out at the site in accordance with the SWMS. Where work is carried out other than in accordance with the SWMS, the Vendor shall ensure that the work ceases (when it is safe to do so) and does not resume until the SWMS is complied with.

The Vendor shall ensure that the SWMS are kept up to date and include:

- each high-risk construction work activity that is or includes a hazard including all hazards to which a person at the construction site is likely to be exposed, including details of;
- the risk of injury or harm to a person resulting from any such hazards;
- the safety measures to be implemented to reduce the risk, including the control measures to be applied to the activity or hazards; and
- a description of the equipment used in the work activity; and
- the qualifications, training and competencies required for persons doing the work to do it safely.

5.3.3.1. Supervision Requirements for High Risk Construction Works

Where any of the abovementioned high risk construction works are being carried out at the Site, the Vendor is to ensure that a non-working, site supervisor is present to monitor the works. The purpose of this process is to oversee the works and ensure they are carried out in accordance with the SWMS.

5.4. COMPLIANCE WITH SITE STANDARDS AND PREDEFINED PROCEDURES

The Vendor must ensure that all work complies with the Work Health and Safety Act 2020 and the Work Health and Safety (General) Regulations 2022 as amended. The Vendor must furnish the Customer with evidence that there is compliance in respect of all provisions of this legislation prior to commencing work or on request.

On a monthly basis, or more regularly as may be requested by the PFM, the Vendor shall audit its systems and procedures as defined by the Safety Management Plan and risk assessments to ensure that specific activities are being applied as intended.

Audits shall be carried out by a competent person appointed by the Vendor who is not directly involved in the work under the Contract and is suitably experienced and qualified to carry out such audits. Worksafe WA and the Master Builders Association of WA can assist by identifying suitably qualified persons.

Audits shall identify non-conformances with the SMP and risk assessments. The Vendor shall take immediate action to implement actions to correct non-conformances identified by an Audit.

Audit results, non-conformances and corrective actions are to be standing agenda items for Site meetings.

The findings of the Audit and any Audit results shall be made readily available to PFM on request..

5.5. INCIDENT NOTIFICATION, REPORTING AND INVESTIGATION

The Vendor shall ensure that all incidents are reported immediately to PFM. This includes but is not limited to:

- Injury or illnesses

- Near miss
- Environmental harm
- Vehicle/property damage/equipment damage
- Security incidents

Upon the occurrence of a notifiable incident as defined by the Act, the Vendor is to verbally inform PFM immediately, providing the following information:

- description of the event and the circumstances which led to the occurrence of the event; and
- details of any injuries to personnel and damage to property or the environment;

Within 3 days of any actual or potential incident involving the risk of serious injury to any person (actual or potential injury requiring medical treatment), or minor structural damage to any structure, or environmental harm, the Vendor shall provide a written report addressing

- description of the event, circumstances that led to the occurrence and any injuries to personnel, damage to property or the environment;
- the potential for the event to re-occur in executing the Works;
- copy of preliminary investigation conducted by the Vendor including the identification of any deficiencies in the Vendor's HSE management system which led to the event and the recommended corrective actions for the rectification of the deficiency;
- copy of any notice required to be made by the Vendor to a statutory authority; and
- in the event of any environmental damage or pollution, details of the clean-up operations necessary to restore the environment to its previous state;

5.6. EMERGENCY MANAGEMENT

The Vendor shall establish emergency preparedness and response protocols specific to the foreseeable emergency situations that may arise within their operations. These processes are to be communicated to all parties associated with the Contractors work.

Emergency Response equipment for high risk activities as well as first aid equipment and fire-fighting equipment must be stated in the Emergency Response Plan and be as per the requirements of statutory legislation, codes of practice or relevant Australian Standards. Trained and competent persons shall assess the suitability, location and accessibility of emergency equipment.

Persons appointed with the responsibilities to operate site emergency equipment must be trained and deemed competent in accordance with legislative requirements. Such training may include but not limited to Chief Fire Warden, Fire Warden and Apply First Aid.

Refer to the Worksafe WA Code of Practice: First Aid, Workplace Amenities and PPE for practical guidance for the provision of first aid (1 to 8 ratio suggested), workplace amenities and access to these amenities

The plan is communicated by being prominently displayed in site offices and common areas and training on the plan contents is provided. An emergency evacuation drill must be conducted to test the plan at intervals no greater than 6 months.

5.7. PFM SPECIFIC HSE REQUIREMENTS

5.7.1. WORK AT HEIGHTS

The Vendor shall ensure that where there is a potential to fall from one level to another, that this risk is effectively planned and suitable controls are implemented to manage the risk.

Where there is a risk of a fall greater than two metres, or works are required within two metres of an unprotected edge, fall protection must be implemented. The Vendor shall, ensure that any worker operating any elevated work platform is appropriately trained and is wearing a harness and safety helmet whilst operating such equipment. The Vendor is to provide a spotter during the operation of any boom elevated work platform. The spotter must have the same level of training as the operator and be capable of carrying out the Height Rescue Plan, if required.

Vendors must comply with the requirements set out in Programmed's Safe Work Essentials as documented in the Sub-contractor handbook.

5.7.2. ASBESTOS

PFM recognises that asbestos containing material (ACM) is likely to be present in across PFM sites. To assist with the correct identification and management of risks associated with ACM, the Vendor shall ensure that all personnel undertaking works on behalf of PFM complete Asbestos Awareness Training prior to commencing works.

The Site is part of an occupied premise or facility. The Vendor is to liaise with the occupier regarding Safety and Health requirements and obtain the Asbestos Register prior to commencing works. This shall be referenced to understand the potential presence of ACM and assist with determining the appropriate risk management strategies.

There are limitations with the ACM register in that it only identifies visible ACM. ACM could be concealed, hidden or obscured by other items or cover finishes i.e. paint, over boarding, or hidden as part of the structure to a building and not visible unless the structure is dismantled. Vendor is to investigate further the possibility of ACM, prior to all destructive or invasive works.

Where asbestos removal is required, this process shall be carried out in accordance with the Work Health and Safety (General) Regulations 2022 and any associated Codes of Practice.

Where required the Vendor shall provide a copy of the Asbestos Removal Control Plan to PFM prior to the work commencement.

PFM will arrange a safety co-ordination meeting between the occupiers and the Vendor. The occupiers will provide to the Vendor their occupation requirements on and/or adjacent to the Site to assist the Vendor in the development of a Site specific Safety Management Plan addressing the Vendor's and occupiers' operational interface requirements. The Site specific Safety Management Plan shall incorporate the Vendor's own operations and the interface with the occupiers' operations.

The Vendor shall be responsible for coordinating the implementation of the Safety and Health standards on the occupied Site for the duration of the Contract and shall co-ordinate and integrate the Works in order that the occupier is able to safely continue normal activities for the duration of the Contract.

Vendors must comply with the requirements set out in Programmed's Safe Work Essentials as documented in the Sub-contractor handbook.

5.7.3. EVACUATION PLANS

The Vendor shall obtain a copy of the Evacuation Plan for the occupied Site, and ensure that all persons admitted onto the Site are familiarised with the Evacuation Plan and comply with its requirements.

5.7.4. DEMOLITION

All Demolition work shall be carried out in accordance with the Work Health and Safety (General) Regulations 2022 and any associated Codes of Practice. Where the demolition Works are Class 1 or Class 2 as described in the regulations they shall be carried out by a person licensed under the regulations to do that class of demolition work..

5.7.5. PERSONAL PROTECTIVE EQUIPMENT (PPE)

The Vendor shall, ensure that all workers including their Third Party Subcontractors wear long sleeved shirts, long trousers, protective footwear, protective eye wear and carry task appropriate gloves whilst on site. Where a risk assessment has determined further PPE is required, this is to be maintained

5.7.6. HAZARDOUS CHEMICALS

The Vendor shall ensure that a copy of all manufacturer/supplier Safety Data Sheets are available on a register on site for each hazardous chemical used in connection with the work under the Contract. Safety Data Sheets shall be consistent with the format of the Code of Practice for Preparation of Safety Data Sheets for Hazardous Chemicals.

5.8. TRAINING**5.8.1. TRAINING AND COMPETENCY**

The Vendor must:

- be able to demonstrate that Vendor Personnel are conversant with and adhere to the relevant Safety Legislation and environmental legislation, codes of practice, manufacturer's and supplier's specifications, including any internal standards issued by PFM;
- be able to demonstrate that Vendor Personnel are involved with the preparation of the HSE management system for the Works, including the risk assessment process and the preparation and compliance of safe work practices and procedures;
- If the performance of the Works involves work that requires specific training, licences or approvals under the OSH Law, including but not limited to removal of asbestos and demolition work, then the Vendor must ensure that all necessary training has been provided and is current, and that all necessary licences and approvals have been obtained.
- be able to demonstrate that Vendor Personnel are adequately trained and instructed in the safe and correct usage, handling and operation of materials relevant to the tasks to which they are assigned.

5.8.2. HEALTH AND SAFETY INDUCTION

The Vendor shall not permit its employees, Third Party Subcontractors, the employees of other parties or other persons to commence work on the Site until they have been inducted. Such induction shall include but not necessarily be limited to:

- completion of a Construction Induction Training (white card) course;

Upon commencement of work on the Site, the Vendor shall further induct each employee, the employees of other parties or other persons working on the Site with regard to all significant hazards associated with their particular activity and area of employment on the Site and where relevant shall include the use of powered plant, tools and equipment.

5.8.3. PFM INDUCTION

The Vendor shall not permit its employees, Third Party Contractors, the employees of other parties or other persons to commence work on the Site until they have completed PFM's online induction and are in possession of Programmed Identification Cards.

5.8.4. SITE INDUCTION

The Vendor shall not permit its employees, Contractors, the employees of other parties or other persons to commence work on the Site until they have completed any site specific inductions that may be required.

- familiarisation with the Safety Management Plan;
- reporting of accidents and incidents which shall include the type of events to be reported, how an event is reported and to whom the event is reported;
- emergency procedures which shall cover the procedure for a medical emergency and for any likely event based on site activities, including evacuation of the Site in the event of a life threatening situation arising;
- location of firefighting and other emergency equipment;
- personal protective equipment (PPE) – the standard requirements for the Site including the minimum PPE requirements of long trousers, long sleeve shirt, protective footwear and eyewear and the carrying of gloves;
- lifting and manual handling skills;
- specific site hazards;
- amenities on site;
- how to conduct a risk assessment and the requirement to prepare a daily Job Safety Analysis;
- sun protection;
- avoidance of noise induced hearing loss;
- location of an access to First Aid on the Site and the nominated First Aiders;
- legislative framework – an employees rights and responsibilities under the WHS Act and Regulations;
- participate in consultative arrangements conducted by PFM;
- procedure for the resolution of safety issues at the workplace (in accordance with Sections 81 to 89A of the Act); and
- site security

The Vendor shall induct its employees, the employees of other parties or other persons working on the Site and shall keep records that show what the attendee has been inducted in and sheets signed by each attendee verifying that such induction has occurred.

5.9. COMMUNICATION AND CONSULTATION

The Vendor shall establish effective means of communication and consultation to inform employees, the employees of other parties and other persons on relevant HSE matters that may impact them. Where works have been subcontracted to a third party, all PFM HSE requirements are to be communicated to those involved.

Consultation may occur via the following means:

- Induction
- Toolbox Talks
- Pre-Start Meetings
- HSE Committee Meetings
- The Vendor shall, where required appoint a Safety and Health Representative or Representatives to in accordance with Section 48 (2) of the Act

The agreed means of consultation and the manner in which the arrangements were established (including details such as timeframes for meetings) must be documented and communicated to all workers. As a minimum Toolbox Talks are to be conducted monthly. Where high risk construction works are being undertaken, a daily Pre-Start Meeting shall be implemented prior to the work activity commencing.

5.10. SITE SECURITY AND STORAGE

Notwithstanding the Vendor's obligations to site and public security as stated elsewhere in this Contract, the Vendor shall monitor and control, wherever practicable, the access of all persons to the Site.

The Vendor shall ensure that no persons, unrelated to the Contract, enter the Site without the express permission of the Vendor.

PPE standards shall apply at all times and a person shall only enter the Site after that person has received a safety briefing regarding hazards relevant to the Site.

The Customer's Representative may, where practicable, provide to the Vendor a lockable area for the storage of materials and equipment to be used in the performance of the Customer Contract. To the fullest extent permitted at law, the Customer will accept no responsibility for the loss of any material or equipment stored therein by the Vendor.

Where a lockable area is not available, the Vendor must remove all hazardous products from the Premise on a daily basis.

The Vendor must store all cleaning materials in accordance with the relevant acts and regulations for the storage of Dangerous Goods and poisons.

The Vendor must provide a list of products intended for use in the performance of this Customer Contract and provide Safety Data Sheets in the allocated cleaner's room on the Site, where applicable and the Safety Data Sheets must be available for inspection at all times.

Where products vary from those originally listed, the Vendor must provide an updated list and Safety Data Sheets covering the new products to the Customer's Representative and in the cleaner's room immediately the variation occurs.

5.11. ENVIRONMENTAL REQUIREMENTS

5.11.1. NOISE CONTROL

The Vendor must, at all times, take adequate measures to control noise on the site and comply with the requirements of the Environmental Protection (Noise) Regulations 1997 (WA) as amended insofar as they relate to construction work, and comply with any local government requirements relating to noise from construction sites.

The Vendor is required to meet all costs of complying with this clause

PFM may, at any time, direct the Vendor to take reasonable steps to control noise including (but not limited to):

- The substitution of noisy equipment or processes with less noisy alternatives;
- The modification of equipment (where this is practical and can be done safely and following consultation with the manufacturer);
- Siting noisy equipment away from noise sensitive areas;
- Undertaking noisy work in areas or at times specified by the PFM;
- Installing screens to limit the impact of noise on noise-sensitive areas; and
- Any other measure the PFM considers reasonable.

Where the construction work is carried out between 7am and 7pm on days other than a Sunday or Public Holiday, the Vendor must:

- Carry out the work in accordance with AS 2436-2010; and
- Ensure the equipment used is the quietest reasonably available

Where the Vendor has prepared a noise management plan, work must be carried out in accordance with that plan.

Where the construction work is carried out between 7pm and 7am, or on Sundays or Public Holidays, the Vendor must:

- Carry out the work in accordance with AS 2436-2010;
- Ensure the equipment used is the quietest reasonably available;
- Advise the occupants of all nearby properties of the work to be done at least 24 hours before it commences; and
- Be able to establish that it was reasonably necessary for the work to be carried out at that time;

A local government may require the Vendor to submit a noise management plan and application fee. Where required, the Vendor must submit the noise management plan to the local government as well as any application fee due in relation to the noise management plan 7 calendar days prior to commencing the work. Where the Vendor has prepared a noise management plan, work must be carried out in accordance with that plan.

PFM may direct the Vendor to provide to PFM:

- a written statement confirming it has complied with its requirements under this clause; and
- a certificate of acoustic performance issued by a laboratory registered with the N.A.T.A. for any equipment before permitting its use, or continued use, on the building site.

For the purpose of this clause, equipment has the same meaning as stated in S.3 of the Environmental Protection Act 1986 (WA).

5.11.2. SITE CONTROL

The Vendor shall at all times comply with the regulations and restrictions imposed by PFM relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other regulations in force on the site.

The Vendor shall comply with all statutes, regulations and by-laws relating to the protection of the environment.

The Vendor shall ensure that green waste, earth, fill, brick, mortar, concrete, and metal are recycled either for use on-site or by delivery to a recycling facility. The Vendor shall provide PFM with offsite disposal documentation detailing the recycling facility destinations that received the materials.

The Vendor shall ensure waste water from paint, concrete, mortar equipment cleaning and work activities and/or other liquid waste is suitably controlled / bunded to prevent environmental damage during the Works.

The Vendor shall obtain written approval from PFM for the formation of any temporary roads, the erection of temporary structures or any site clearing not specifically documented.

The Vendor must not remove, damage or destroy, or cause to be removed, damaged or destroyed any trees or shrubs at the site without the written approval of PFM. No fire shall be lit without the written approval of PFM.

Flammable or explosive products shall be stored in accordance with the relevant statutes and to the approval of PFM.

5.11.3. LAND ENVIRONMENTAL IMPACTS

The Vendor shall assess the project specific risks and take all proper precautions to prevent soil erosion, contamination, disturbance of acid sulphate soils or from any other environmental impacts on land used or occupied by the Subcontractor in the execution of the work under the Contract

5.11.4. DUST, DIRT, WATER AND FUMES

The Vendor shall assess the project specific risks and take all proper precautions to prevent environmental impacts and any nuisance occurring through the discharge of dust dirt, water, fumes, vibration and the like on to persons or property.

5.11.5. VEHICLES

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

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

5.11.6. REFUSE DISPOSAL

Site refuse (including foodstuffs) shall be handled and disposed of in accordance with the requirements of the waste materials recycling provisions detailed in the Site Control clause, relevant statutes and to the approval of PFM.

Site refuse containing Asbestos shall be handled, transported and disposed of in accordance with the Environmental Protection (Controlled Waste) Regulations 2004. Copies of disposable certificates shall be provided to PFM.

5.11.7. SMOKING ON CONSTRUCTION SITES

The Vendor shall at all times ensure that all personnel and visitors on the construction site comply with the following policy on smoking.

- Smoking and vaping is prohibited on site under all circumstances.

SCHEDULE 6- ASSET COLLECTION DATABASE

6. ASSET COLLECTION

As a condition of Practical Completion (PC) of a Project, the Contractor is required to undertake and provide the following asset-related information:

1. Provide softcopy of the Asset Register – complete all relevant attributes and information as prescribed in the Annexure 3 - PFM Asset Data Capture Spreadsheet tabs.
2. The Annexure 3 - PFM Asset Data Capture Spreadsheet is designed to allow PFM to fulfil its Asset Management obligations. PFM requires accurate and timely asset information which will include information on new assets, existing assets or assets that are modified or disposed (please see instructions tab of the spreadsheet for further information).
3. All softcopies of Asset Register must be provided in the Excel spreadsheet format as per the Annexure 3 - PFM Asset Data Capture Spreadsheet without any password protection to allow PFM to transfer data to the master register.
4. All completed Asset Registers must be sent to AssetsWA@programmed.com.au and copied to the Superintendent.
5. Barcoding of assets must be undertaken in accordance with the Hierarchy & Barcoding Guide tab. Barcodes will be provided by PFM Project Manager upon request.

6.1. ASSET MANAGEMENT

In order to operate safely, deliver services to customers at an acceptable level and optimise the value of assets derived from investing in these assets, it is important that assets are maintained and managed at the required levels of service. To do this, one of the critical functions of asset management is to ensure that asset data is captured at the acceptable level of quality, completeness and timeliness. Asset data collected by Subcontractors is a key input to the life-cycle management of assets, and in the decision-making process for the renewal and replacement of assets.

6.2. ASSET DATA COLLECTION

It is a requirement that the Subcontractor collects and updates data on the assets contracted to them. These activities will include routine, preventative, breakdown, low value maintenance and project works. The asset data collected must be submitted, in the format stipulated by PFM, within ten (10) workings days of completion of the tasks.

The on-going asset data collection and work order management shall be carried out by using PFM's field mobility solution (ProMAP). If, in situations where PFM's field mobility solution is not applicable, asset data information must be submitted via the PFM Asset Data Capture Spreadsheet template.

From time to time, PFM may revise or update the field mobility solution or the PFM Asset Data Capture Spreadsheet template and these changes will be communicated through PFM's subcontractor management team.

6.3. SAFETY

While, every effort must be made to gather data from any available sources, e.g., site plans, contractor information, anecdotal reports from site users or maintenance records, safety of personnel and clients is paramount – all PFM safety procedures must be adhered to all times in the collection of asset data. There may

be practical considerations which may prevent some data capture e.g. unsafe access to working at heights, restricted access and similar issues. In these instances, the technician must record reasons as to why data is unable to be provided. Without the data capture or valid reasons behind failing to capture the data, the future works may be withdrawn from the Subcontractor.

6.4. CRITERIA

Data for assets meeting any of the following criteria must be collected;

- 2.1.1 Assets with potential to require planned maintenance.
- 2.1.2 Assets with potential to require reactive maintenance.
- 2.1.3 Assets with compliance requirements.
- 2.1.4 Assets with a value of \$1000 or greater.

6.5. PFM ASSET DATA CAPTURE SPREADSHEET TEMPLATE

The PFM Asset Data Capture Spreadsheet template provides the guidelines and requirements in the capture of asset data and asset-related information in the following areas:

- 2.1.5 Instructions
- 2.1.6 Hierarchy and Barcoding Guide
- 2.1.7 Asset Data - NEW
- 2.1.8 Asset Data - Existing
- 2.1.9 Asset Data - Modify
- 2.1.10 Asset Data - Disposal
- 2.1.11 Critical Spares List
- 2.1.12 Certificate List
- 2.1.13 Warranty Details List
- 2.1.14 Special Instructions
- 2.1.15 Manuals List

6.6. ASSET ATTRIBUTES

All attributes necessary for the life-cycle management of assets are indicated in the PFM Asset Data Capture Spreadsheet template across the tabs in 4.4.3 (Asset Data-New), 4.4.4 (Asset Data – Existing), 4.4.5 (Asset Data – Modify and 4.4.6 (Asset Data – Disposal). Note that different information may be required for different activities undertaken on the assets and these are indicated in the tabs. However, for all work order maintenance undertaken, the following attributes must be captured and/or reviewed and updated:

- 2.1.16 Asset Description
- 2.1.17 PFM asset barcode number – where applicable
- 2.1.18 Asset location – Site/Building/Level/Room
- 2.1.19 Serial number
- 2.1.20 Model
- 2.1.21 Warranty start and end dates – where applicable
- 2.1.22 Condition rating
- 2.1.23 Manufacturer Name

Note that, there may be requirements to collect additional asset data or cease collecting specific data, depending on the life-cycle phases of assets. Subcontractors will be communicated with these changes promptly when this is the case.

6.7. NEW ASSETS

When installing new assets, additional information, where applicable, must be provided by the Subcontractor:

- 2.1.24 Maintenance schedule

- 2.1.25** Cleaning instructions and intervals
- 2.1.26** Specify if asset being replaced is locked out / tagged out, spaded, still in-situ, made-safe or has been completely removed
- 2.1.27** Operating, Maintenance, Cleaning manuals
- 2.1.28** Product specifications and settings

6.8. FIELD ASSET DATA CAPTURE

Field asset capture, processing of work orders issued and maintenance of assets will require the scanning of PFM barcodes using hand-held devices and field mobility software. Currently, PFM requires Subcontractor to use PFM field mobility software, ProMAP, for the scanning, asset data capture and updating of attributes in the field. The software will prompt the user when a barcode is required to be attached to a particular asset if there is no existing barcode on the asset. Barcodes will be issued to each Subcontractor by PFM for use in accordance with Attachment 1 - Asset Barcoding Guide. The following points need to be taken into consideration:

- 2.1.29** Asset barcodes must be scanned, asset data verified and updated on every RM visit.
- 2.1.30** Initial visit will require the attachment of a barcode to the asset.
- 2.1.31** Attachment of a barcode will be required when an unregistered asset is discovered.
- 2.1.32** If a barcode on an asset is missing, the Subcontractor must apply a new barcode and capture the relevant information in PFM's field mobility solution.

6.9. CONDITION RATING

Condition rating is used to provide a standardised method of reporting asset condition. The Programmed standard condition grading matrix is between 1 to 5, with 1 being best condition and 5 being the worst. The condition rating description is as follows:

Condition Rating	Description
1	Asset is new or in excellent condition. Remaining life of asset is approximately 100% of expected life of asset.
2	Asset is in good condition. Remaining life of asset is approximately 80% of expected life of asset.
3	Asset is in average condition. Remaining life of asset is approximately 60% of expected life of asset.
4	Asset is in poor condition. Remaining life of asset is approximately 40% of expected life of asset.
5	Asset is near the end of its life or has already failed.

6.10. MONTHLY ASSET VARIANCE REPORT

To facilitate the timely and accurate update of the asset information, a monthly asset variance report will be required from the Sub-contractor. The sample format (with examples) below shall be completed monthly and sent to PFM via the AssetsWA@programmed.com.au email.

NOTE: Where there are changes to asset status/information, the PFM Asset Data Capture Spreadsheet template must be completed and attached. If there are no changes, a null report must also be submitted.

MONTHLY ASSET VARIANCE REPORT

Monthly Asset Variance Report Month of: December 2018

Previous Month - Quantity of Assets Serviced: 5288 (Example)

Current Month - Quantity of Assets Serviced: 5296 (Example)

VARIANCE: 8

Detail of Variance (include nil entry):

Type:	Quantity (Example)
New asset installed by Sub-contractor as required	1
Old asset replaced with new asset by Sub-contractor	2
New asset installed by 3 rd party and informed by Programmed	4
New asset discovered but not informed by Programmed	0
Asset disposed and not replaced	1
TOTAL:	8

Additional Comments:

SCHEDULE 7- OPERATION AND MAINTENANCE MANUALS

7. OPERATION AND MAINTENANCE MANUALS

Improved strategic asset management is a policy objective of Government.

To this end, PFM requires its contractors' support in achieving this objective by adhering to its Asset Management requirements (Refer Asset Collection elsewhere within this document) and in supplying relevant operational and as constructed documentation as required by the Superintendent.

Whilst there are likely to be additional types of Project where this information is required, and on occasion hard copies of documentation, at the very least, Projects that involve the replacement or installation of mechanical equipment will require a copy of the equipment manuals as a project deliverable at Practical Completion.

Projects that affect the building's floor plan layout or layout of mechanical, electrical or hydraulic services must include an electronic copy of the as-constructed drawings in "dwg" format on CD-Rom or DVD. A copy of these drawings must be provided to the Superintendent in :dwg" and PDF format as a project deliverable at Practical Completion.

With Projects that include a Certificate of Warranty, a copy of warranty must be provided to the Superintendent at Practical Completion.

The CADD Standards for Deliverables Manual and related information and templates can be downloaded at <https://www.wa.gov.au/government/publications/cadd-protocols-contract-deliverables>

RETURNABLE SCHEDULE A - FORM OF TENDER

The Tenderers attention is drawn to the PDF document that accompanies this RFQ.

The Tenderer must complete, sign and submit the Form of Tender with its Submission.

Failure to comply will deem your Submission non-conforming.

RETURNABLE SCHEDULE B - SCHEDULE OF PRICES

The Tenderers attention is drawn to the Excel document that accompanies this RFQ.

The Tenderer must complete and submit the Schedule of Prices in its native Excel format with its Tender.

Failure to comply may deem your Tender non-conforming.

Pricing shall be in Australian dollars to carry out the Services and/or Works as described and must state any excess or additional charges to be applied to the price being Tendered.

The Schedule of Prices once agreed will form a part of any Contract.

Unless otherwise indicated, the Tenderer must provide the price(s) exclusive of GST.

RETURNABLE SCHEDULE C - TENDER QUESTIONNAIRE

The Tenderers attention is drawn to the Word document that accompanies this RFQ.

The Tenderer must complete and return the Tender Questionnaire in native Word format with its Tender. Additional and supporting information may be included separately.

Failure to comply may deem your Tender non-conforming.

ANNEXURE 1 – SCOPE, SPECIFICATION & DRAWINGS

8. GENERAL

The Premises will remain fully operational whilst the Works are undertaken and the Contractor must ensure minimal inconvenience and disturbance is caused to the other users of the facility for the duration of the Contract.

The Contractor is deemed to have:

- Examined all contract documents, the site and its surroundings and any other information made available to the Contractor.
- Examined the Contract Preliminaries which form a part of this document.
- Examined all information relevant to the risks, contingencies, and other circumstances having an effect on his contract and which is obtainable by the making of enquiries.
- Satisfied itself as to the correctness and sufficiency of his contract and that its price covers the cost of complying with all the obligations of the contract documents and of all matters and things necessary for the due and proper performance and completion of the work described in the contract documents.
- All equipment described in this document is to be supplied, installed, tested and commissioned by the Contractor. The contractor shall supply all materials and services necessary for or incidental to the installation and commissioning of the system as specified herein.

8.1. PREVALENCE OF DOCUMENTS

The General Requirement Clauses of the specification shall be read as supplementary to the General Conditions of Contract and in the event of any conflict or inconsistency between any of these General Requirement Clauses of the specification and the General Conditions of Contract, the General Conditions of Contract shall prevail to the extent only of the conflict or inconsistency.

8.2. SPECIFICATION

The scope and specification for the Works is attached hereto.

8.3. CONFIDENTIALITY AGREEMENT

Respondents must complete and submit via email the provided confidentiality agreement to tenders.wa@programmed.com.au to attain access to Annexure 1 – Scope, Specification & Drawings folder as part of the tender documentation.

Confidentiality Deed Poll is attached hereto.

9. DRAWINGS

The drawings for construction and reference (as stated below) comprise the following sheets and form part of this Contract:

Drawings		
Drawing Number	Description	Revision
LCE102743 - H00	COVER SHEET, LEGEND OF PIPEWORK & GENERAL NOTES	T1
LCE102743 - H01	SPECIFICATION NOTES & DETAILS	T1
LCE102743 - H02	BOILER ROOM DEMOLITION ARRANGEMENT	T1
LCE102743 - H03	LAUNDRY ROOM DEMOLITION ARRANGEMENT	T1
LCE102743 - H04	PROPOSED BOILER ROOM ARRANGEMENT	T1
LCE102743 - H05	PROPOSED LAUNDRY ROOM ARRANGEMENT	T1
LCE102743 - H06	BOILER ROOM ELECTRICAL ARRANGEMENT	T1
LCE102743 - H07	LAUNDRY ROOM ELECTRICAL ARRANGEMENT	T1
LCE102743 - H08	BOILER ROOM STEAM PLANT DEMOLITION ARRANGEMENT	T1
LCE102743 - H09	LAUNDRY STEAM PLANT DEMOLITION ARRANGEMENT	T1

and any additional drawings supplied by Programmed FM to the Contractor during the progress of the works. The drawings form part of this Contract and are binding upon the Contractor.

ANNEXURE 2 - AGENCY SPECIFIC REQUIREMENTS

ANNEXURE 3 - PFM ASSET DATA CAPTURE SPREADSHEET
