

GENERAL CONDITIONS OF CONTRACT

FOR THE SUPPLY OF GOODS AND THE PROVISION ON GENERAL SERVICES

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BACKGROUND

(a) The Principal has engaged the Contractor to provide the Goods and/or Services.

(b) This Document sets out the terms and conditions upon which the Contractor shall provide the Goods and/or Services to the Principal.

OPERATIVE PART

PART A – DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

In this Document, except where the context indicates otherwise:

Acceptance means acceptance of the Goods and/or Services which occurs on the earlier of:

(a) the Principal notifying the Contractor in writing that the Goods and/or Services are accepted; or

(b) the expiry of the day 14 days after delivery of the Goods to the Delivery Point or completion of the Services where the Principal has not, during that 14 day period, notified the Contractor in writing that the Goods and/or Services, as the case may be, are rejected.

Affected Obligation has the meaning given in clause 35.1(a).

Approval means any certificate, licence, consent, permit, approval, authority or requirement necessary for the provision of the Goods and/or Services.

Assessment Notice means an assessment notice under section 12 of the Working With Children Act.

Authority means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

Background Intellectual Property Rights means any Intellectual Property Rights owned by a Party prior to the commencement of the Contract or which did not come into existence by reason of the Contract, and which a Party is entitled to exercise and sub-license, which are embodied in, attached to or otherwise relate to the Contract.

Business Days means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

Child-Related Work has the meaning given in section 6 of the Working With Children Act.

Child-Related Site means a location at which Goods are to be delivered and/or Services are to be performed where children are likely to be present.

Completion Date means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in an Order or agreed by the Parties in writing. Notwithstanding the foregoing, Completion Dates are good faith estimates and the Contractor must use best endeavours to meet Completion Dates and must provide not less than two (2) weeks' notice of any changes to Completion Dates. To avoid doubt, there may be multiple Completion Dates where the Contract applies to multiple Orders of Goods and/or Services.

Confidential Information means:

(a) the Contract;

(c) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;

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(d) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;

(e) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and

(b) any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person.

Conflict of Interest means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively.

Consequential Loss means any:

(f) loss of production, revenue, profit, business reputation, opportunities or anticipated savings; and

(a) loss arising from wasted overheads or business interruptions; and

(g) special, indirect, incidental, exemplary, consequential or punitive damages.

Contract means the agreement between the Parties regarding the supply of the Goods and/or Services containing the terms and conditions set out in this Document.

Contract Price means the prices or rates specified in an Order as the amount to be paid by the Principal for the provision of the Goods and/or Services the subject of that Order or otherwise set out in the Contract. To avoid doubt, there may be multiple Contract Prices where the Contract applies to multiple Orders of Goods and/or Services.

Contractor means the party who is engaged by the other party to provide the Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

Contractor's Vehicles and Equipment has the meaning given in clause 34.4.

Cyber Incident means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Principal Data residing on that system.

Defective means defective, of an inferior quality or inconsistent with the requirements of the Contract.

Defects Liability Period means the period of 12 months beginning on the Completion Date.

Delivery Point means the place for the delivery of Goods specified in the Order or agreed in writing by the Parties or directed by the Principal to the Contractor in writing.

Disbursement means reasonable out-of-pocket costs and expenses incurred by a Contractor in providing the Services which are:

(a) charged to the Principal at cost; and

(b) incidental to the provision of the Services.

Dispute means any dispute or difference between the Parties in connection with the Contract.

Dispute Notice has the meaning given in clause 36.1.

Document means this document called 'Goods and/or Services Contract Conditions'.

Extension Request has the meaning given in clause 13.4.

Force Majeure Event means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

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(a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;

(b) strike, lockout or other labour difficulty;

(c) default of any suppliers under any material contracts to which the Contractor is a party;

(d) act of public enemy, war, sabotage, embargo, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or

(e) a change in any Law or any authority exercised by an Authority or official by Law.

Force Majeure Event Termination Period means 120 consecutive days.

Goods means the goods specified in an Order or otherwise specified in the Contract.

GST means goods and services tax applicable to any taxable supplies as determined under the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax.

Insolvency Event means:

(a) in relation to a corporation, where that corporation:

(i) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;

(ii) is otherwise dissolved;

(iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;

(i) enters into any composition or scheme of arrangement with its creditors;

(ii) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or

(iv) is otherwise unable to pay all its debts as and when they fall due; and

(b) in relation to a natural person, where that natural person:

(i) commits an act of bankruptcy;

(ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;

(iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or

(iii) is otherwise unable to pay all its debts as and when they fall due.

Insurances means the insurances which the Contractor is required to obtain under clause 34.

Intellectual Property Right means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, semi-conductor, circuit and other eligible layouts, copyright (including future copyright), database rights and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time including any application or right to apply for any of these rights.

Invoice means a valid tax invoice under the GST Law.

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Law means statute, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or law of the Principal.

Legal Requirement means a requirement under any Law or Approval including a requirement to pay any fees and charges in connection with any Law or Approval.

Letter of Award means an Order or Long-Term Award issued by the Principal to the Contractor accepting the Request Response.

Long-Term Award means the acceptance of a Request Response relating to the provision of goods and/or services in the future where the nature of the goods and/or services to be provided are not stated or known at the time of formation of the Contract and will be the subject of future Orders.

Loss means any liability, loss, damage, cost (including litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, demand, expense or proceeding whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising.

Order means a purchase order or other written direction from the Principal to the Contractor which requires the supply of specified Goods and/or Services as per the agreed Specification.

Original Product has the meaning given in clause 3.3.

OSH Laws means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under the Contract are being performed. This includes the *Occupational Health and Safety Act 1984* (WA), in addition to any other relevant legislation or regulations.

Parties means the Principal and the Contractor.

Personnel means the personnel engaged by the Principal, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, contractors and Sub-contractors and any director, officer, employee or agent of any contractor or Sub-contractor, but when used in the context of the Principal's Personnel, does not include the Contractor or the Contractor's Personnel.

Plant and Equipment means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under the Contract.

Principal means the party engaging the other Party to provide Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

Principal Data means information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Goods and/or Services or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract.

Principal Request means the written request provided by the Principal to the Contractor to submit an offer and price to provide the Goods and/or Services.

Principal's Documents means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, the Principal.

Principal's Premises means any property under the control, care and management of the Principal.

Request Response means the offer submitted by the Contractor to supply the Goods and/or Services made in response to a Principal Request.

Sale of Goods Act means the *Sale of Goods Act 1895* (WA).

Services means the services identified in the Order or otherwise specified in the Contract, and services that are ancillary to such services.

Specification means a specification or scope of works for the Goods and/or Services:

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(a) provided by the Principal to the Contractor before the Contractor provided its Request Response; or

(b) developed after the Contractor provided its Request Response or after the Contract came into effect, and agreed to by the Parties.

Specified Personnel means Personnel of the Contractor proposed in a Request Response to perform functions in relation to the provision of the Goods and/or Services.

Standards and Procedures means any guidelines, rules, requirements or information regarding site-specific conditions or the Principal's operations made available to the Contractor by the Principal from time to time.

Start Date means the date specified as such in the Principal Request or, where no such date is specified in the Principal Request, means the date that the Parties agree in writing that the Contractor must commence the Services. Notwithstanding the foregoing, all Start Dates are good faith estimates and the Contractor must use best endeavours to meet Start Dates and must provide not less than two (2) weeks' notice of any changes to Start Dates.

Sub-contractor means any person or entity engaged by the Contractor in connection with the provision of the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors, but does not include the Contractor's employees.

Substitute Product has the meaning given in clause 3.3.

Sustainability Objectives has the meaning given in clause 24.1.

Transition Plan means a written plan to facilitate the transition of the supply of the Goods and/or Services from the Contractor to another supplier or from another supplier to the Contractor.

Wilful Misconduct means any wrongful act or omission that was intentionally done or involved reckless disregard to the likely consequences, including an intentional breach of the Contract.

Working With Children Act means the *Working With Children (Criminal Record Checking) Act 2004* (WA).

2 INTERPRETATION

In this Document, unless the context suggests otherwise:

(a) a reference to the Contract means the Contract as novated or varied from time to time;

(b) a reference to 'including' 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;

(e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

(h) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;

(f) a reference to a clause is a reference to a clause of this Document;

(i) a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;

(g) headings are for convenience only and do not affect interpretation of this Document; and

(h) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it.

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PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY

3 QUALITY OF GOODS, SOURCES OF SUPPLY AND SUBSTITUTION

3.1 The Contractor must ensure that all Goods:

(j) comply with the requirements of the relevant Order and conform to any samples provided;

(k) are in accordance with relevant Australian Standards or, where no Australian Standard exists, any relevant ISO Standard;

(l) are properly, safely and securely packaged and labelled for identification; and

(a) are of merchantable quality and fit for their intended purpose.

3.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties applicable to the Goods.

3.3 With the Principal's consent and subject to any necessary variation to the Contract Price, the Contractor may permanently or temporarily substitute another product (**Substitute Product**) for any aspect of the Goods to be provided under the Contract (**Original Product**). To avoid doubt, the supply of the Substitute Product shall satisfy the Contractor's obligations to supply the Original Product.

4 QUANTITIES OF GOODS

4.1 The Contractor must supply to the Principal the Goods in the quantity specified in the relevant Order.

4.2 If the Contractor delivers more Goods than the quantity specified in the relevant Order, the Contractor must, upon the Principal's direction, collect the excess Goods from the Principal at the Contractor's risk and expense, unless the Principal elects, in its discretion, to return the excess Goods to the Contractor, which is done at the Contractor's sole risk and expense.

5 DELIVERY OBLIGATIONS AND DELIVERY POINT

The Contractor must deliver the Goods to the Delivery Point and in doing so must:

(m) not interfere with the Principal's activities;

(a) leave the Delivery Point secure and fit for immediate use;

(b) obtain the signature of a member of the Principal's Personnel who receives delivery of the Goods; and

(n) where it is not possible to satisfy clause 5(b), leave the Goods where requested by the Principal.

6 PROPERTY AND RISK IN THE GOODS

6.1 Subject to this Document, the Parties agree that:

(a) risk in the Goods shall pass from the Contractor to the Principal on Acceptance; and

(o) upon payment for the Goods, property in the Goods shall pass to the Principal.

6.2 The Contractor warrants that it has complete ownership of the Goods free of any liens, charges and encumbrances.

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7 SALE OF GOODS ACT

The Principal and Contractor acknowledge and agree that:

(a) the Sale of Goods Act applies to the Contract; and

(p) to the extent that there is any inconsistency between the Sale of Goods Act and the Contract, and to the extent permitted by Law, the Contract applies rather than the Sale of Goods Act.

PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY

8 QUALITY OF SERVICES

8.1 The Contractor must ensure that the Services provided by the Contractor:

(a) match the description of the Services set out in the Order or otherwise in the Contract;

(b) are fit for their intended purpose;

(c) where they relate to design, the works or goods being designed are fit for their intended purpose;

(d) are performed with the professional skill, care and diligence expected of a person with the skills, experience, expertise and resources necessary to competently provide the Services; and

(e) are provided in accordance with any Specification.

8.2 The Contractor warrants, and agrees to ensure, that its Personnel engaged to perform the Services have the necessary skills, experience, expertise, licences, training, qualifications, approvals and resources available to it to competently and lawfully perform the Services.

8.3 The Contractor must regularly consult with the Principal about the progress of the Services and attend meetings where reasonably requested by the Principal.

9 QUANTITY AND VALUE OF SERVICES

The Principal shall only be required to take or accept, and pay for, the quantity of the Services set out in the relevant Order, any Specification, or otherwise in the Contract, unless otherwise agreed by the Parties.

PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES

10 SUPPLY OF GOODS AND/OR SERVICES

10.1 The Contractor must:

(a) at its expense, obtain any Approvals necessary for the provision of the Goods and/or Services;

(q) at its expense, comply with all reasonable directions of the Principal regarding the provision of the Goods and/or Services, including regarding the transition of the provision of the Goods and/or Services from an alternative supplier to the Contractor;

(r) where the Principal provides the Contractor with written notice that an alternative supplier will, in the future, be supplying the Principal with the Goods and/or Services provided under the Contract, at its expense provide reasonably requested assistance to the Principal in transitioning the supply of the Goods and/or Services

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to the new supplier, including making arrangements for the novation or assignment of relevant contracts with third parties;

(s) comply with any Transition Plan; and

(t) co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time, provided that the Contractor will be entitled, by prior written agreement with the Principal, to charge for costs incurred as a direct result of providing such co-operation and assistance.

10.2 The Principal must provide the Contractor with any information reasonably necessary for the Contractor to provide the Goods and/or Services.

10.3 If a Transition Plan is not developed prior to the Contract coming into effect between the Parties, the Principal may:

(a) make a written request to the Contractor to prepare a draft Transition Plan for the Principal's review within a reasonable period of time specified by the Principal and the Contractor must comply with that request; and

(u) accept or propose reasonable amendments to the draft Transition Plan prepared by the Contractor in accordance with clause 10.3(a) and provide a final version of the Transition Plan to the Contractor.

11 PLANT AND EQUIPMENT

The Contractor must:

(a) provide all Plant and Equipment and labour necessary for the performance of the Contractor's obligations; and

(v) ensure that Plant and Equipment and other items which the Contractor uses or supplies in connection with the Contract comply with Legal Requirements and are fit for their usual and intended purpose.

12 ORDERS UNDER A LONG-TERM AWARD

12.1 This clause applies where the Letter of Award is a Long-Term Award.

12.2 From time to time the Principal may give the Contractor an Order containing the following information:

(w) a description and/or specification of the Goods and/or Services required, including the required quantity;

(a) the Completion Date; and

(x) where the Order relates to Goods, the Delivery Point.

12.3 Within 5 Business Days of receipt of an Order the Contractor must give notice to the Principal of:

(a) any aspect of the Order which it does not accept and supporting reasons; and/or

(b) any recommended changes to the Order and supporting reasons,

following which the Parties shall seek to agree on the terms of the Order and a revised Order shall be issued by the Principal to the Contractor.

12.4 If the Contractor does not give notice under clause 12.3, the Contractor must fulfil the Order.

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12.5 To avoid doubt, the Principal is not obliged to issue Orders to, or otherwise purchase Goods and/or Services from, the Contractor.

13 TIME FOR PERFORMANCE AND EXTENSIONS OF TIME

13.1 The Contractor must commence the provision of the Services on the Start Date.

13.2 Subject to this clause 13, the Contractor shall deliver the Goods to the Delivery Point and/or perform the Services, as the case may be, by the Completion Date.

13.3 The Contractor is entitled to an extension to the Completion Date if a delay to the provision of the Goods and/or Services is due to:

(a) a breach by the Principal of the Contract;

(y) delay or disruption caused by the Principal, except where such delay or disruption is caused by the Principal acting in accordance with the Contract;

(b) a Force Majeure Event occurring before the Completion Date;

(c) suspension of the Contract under clause 37.3 where the suspension is the result of a breach by the Principal; or

(d) a variation being agreed to the nature of the Goods and/or Services provided.

13.4 To obtain an extension, the Contractor must make a written request to the Principal within 10 Business Days after the cause of delay has arisen or within any other period agreed in writing by the Parties, which request must include the facts on which the request is based (**Extension Request**).

13.5 The Principal, acting reasonably, must notify the Contractor within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether an extension of time to the Completion Date is granted and any relevant period of extension, which must be reasonable in the circumstances giving rise to the Extension Request.

14 RECEIPT AND ACCEPTANCE OF GOODS AND/OR SERVICES

14.1 The Parties agree that:

(a) delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal; and

(b) Acceptance by the Principal is without prejudice to the Principal's rights in respect of the Defects Liability Period applicable to any Goods and/or Services.

14.2 If, following any review, inspection, examination or witnessing of the Goods and/or Services, the Principal is not satisfied that the Goods and/or Services are being, or have been, provided in compliance with the Contract, the Contractor must, after receiving a written request from the Principal, promptly take all steps necessary to ensure compliance.

15 REJECTION AND REMOVAL OF DEFECTIVE GOODS AND/OR DEFECTIVE SERVICES

15.1 During the Defects Liability Period, the Principal may notify the Contractor in writing that any Goods and/or Services provided are Defective.

15.2 Where the Principal notifies the Contractor under clause 15.1, the Principal may direct the Contractor to replace, rectify or re-perform the Goods and/or Services, as the case may be, free of charge to the Principal and within a reasonable time specified by the Principal.

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15.3 The Contractor must comply with a direction under clause 15.2 within the time period specified in the notice or otherwise agreed in writing by the Parties.

15.4 Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 15.3, the Principal may give the Contractor written notice of its intention to rectify, replace or have re-performed the Goods and/or Services by a third party, together with the estimated and itemised reasonable costs of the Principal in rectifying, replacing or having re-performed the Goods and/or Services.

15.5 Following receipt of a notice under clause 15.4 from the Principal, the Contractor has 5 Business Days to notify the Principal in writing as to whether the Contractor will replace, rectify or re-perform the Goods and/or Services and to reach agreement with the Principal regarding the timeframe for doing so, otherwise the Principal may rectify, replace or have re-performed the Goods and/or Services and recover its costs in doing so from the Contractor.

15.6 Where the Contractor has made good any Defective Goods and/or Services, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods and/or Services from the date the Contractor completes making good the Defective Goods and/or Services.

15.7 The Principal shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Contractor has been notified in writing by the Principal that they are Defective.

15.8 Without limiting clause 33, any cost or expense reasonably incurred by the Principal in connection with, or as a result of, the Defective Goods and/or Services shall be a debt due from the Contractor to the Principal.

15.9 To avoid doubt, nothing in this clause shall prejudice any other right of the Principal arising out of the failure by the Contractor to provide Goods and/or Services in accordance with the Contract.

16 FAILURE TO PROVIDE GOODS AND/OR SERVICES

16.1 The Contractor must provide written notice to the Principal as soon as possible if the Contractor is unable to provide the Goods and/or Services and the period of time for which the Contractor will be so unable.

16.2 Where the Contractor provides written notice to the Principal under clause 16.1, the Principal may, acting reasonably, and without being liable in any way to the Contractor, obtain or acquire such goods and/or services as it requires from a third party until the Principal receives a further written notice from the Contractor that the Contractor is able to recommence the provision of Goods and/or Services.

17 INFORMATION

The Contractor must keep the Principal fully informed about:

(a) any matters that may adversely affect the Contractor's ability to provide the Goods and/or Services; and

(b) delivery of the Goods and/or completion of the Services.

18 PRICE BASIS

18.1 The Contract Price shall be firm and not subject to rise and fall.

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18.2 To avoid doubt, the Principal's liability to the Contractor for the Contractor's costs in providing the Goods and/or Services is capped at the Contract Price, unless otherwise agreed in writing by the Parties.

19 FORMATION OF CONTRACT AND TERM

19.1 Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document.

19.2 Where this Document is not executed by the Parties:

(a) the Contract shall be formed, and shall commence, on the date of the Letter of Award; and

(b) the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract's existence.

19.3 The Contract shall terminate 10 Business Days after Acceptance or upon expiry of the time period specified in the Letter of Award, whichever is the later, subject to clauses 19.4 and 19.5.

19.4 The Parties may agree in writing to extend the term for an agreed period of time.

19.5 The Contract may terminate before the expiry of the period of time in clause 19.3:

(a) if the Parties agree in writing; or

(b) otherwise in accordance with this Document.

19.6 The termination of the Contract does not affect:

(z) any rights of the Parties accrued before the date of termination; and

(a) the rights and obligations of the Parties which survive termination.

19.7 Clauses 1 (definitions), 2 (interpretation), 3.2 (manufacturer's warranties), 6.2 (warranty regarding property in goods), 8.2 (warranties regarding personnel), 10.1(r) and 10.1(s) (transition out), 14 (Acceptance and Defects Liability Period), 15 (Defective Goods and/or Services), 19.6 and 19.7 (term), 20 (Contractor to have informed itself), 30 (Confidentiality), 31 (Data security), 32 (Intellectual Property Rights), 33 (Liability and indemnity), 36 (Settlement of disputes), 38.2 to 38.4 (inclusive) (termination), 41 (Notices), 42.1 (relationship of Parties) and 42.7 (Governing law) shall survive termination of the Contract.

20 CONTRACTOR TO HAVE INFORMED ITSELF

By providing the Request Response, the Contractor acknowledges that it has:

(a) examined carefully, and has acquired actual knowledge of the contents of, its Request Response, this Document and any other information made available in writing by the Principal to the Contractor for the purposes of the Request Response and the Contract; and

(b) satisfied itself as to the correctness and sufficiency of the Request Response and that the Contract Price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the proper performance and completion of the Contract.

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21 CONFLICT OF INTEREST

21.1 The Contractor warrants that, to the best of its knowledge, as at the date of providing the Request Response:

(a) the Contractor has declared in its Request Response any Conflicts of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and

(b) the information contained in the Contractor's Request Response as to the existence of any Conflicts of Interest is correct and comprehensive.

21.2 If a Conflict of Interest or risk of Conflict of Interest arises, including because of work undertaken by the Contractor for a person other than the Principal, the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Principal.

22 LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES

22.1 The Contractor shall comply with all Legal Requirements, Standards and Procedures affecting or applicable to the Goods and/or Services and/or the performance of the Contract and ensure that its Personnel also comply with the same, at the Contractor's cost.

22.2 The Contractor shall:

(a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor for the purposes of providing the Goods and/or Services;

(b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;

(c) to the extent practicable, use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 22.2(a) and 22.2(b) in relation to the Sub-contractors' own employees; and

(d) ensure that it pays each of its Sub-contractors in accordance with the Contractor's agreement with that Sub-contractor, subject to the Contractor's acceptance of the goods and/or services provided by the Sub-contractor.

23 SAFETY OBLIGATIONS

23.1 The Contractor must:

(a) do all things reasonably necessary to ensure that the Goods and/or Services are provided in a manner that is safe and not likely to cause injury or illness to any person; and

(b) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under OSH Laws.

23.2 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:

(a) as soon as practicable, but in any event within 24 hours, notify the Principal of that injury, property damage, accident or incident; and

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(b) provide the Principal with any further information requested by the Principal.

23.3 The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter premises under the control of the Principal or the Principal's Personnel they must comply with the Principal's occupational health and safety policies and procedures and do so at the Contractor's own risk.

23.4 Without limiting clauses 37.3 to 37.5 (inclusive), any breach by the Contractor of OSH Laws or this clause which gives rise to circumstances which:

(aa) present actual or potential risk of life or serious injury; or

(bb) are otherwise required to be notified under OSH Laws,

entitles the Principal to suspend the whole or part of the performance of the Contractor's obligations.

24 SUSTAINABLE PROCUREMENT

24.1 The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by clause 24.2 (**Sustainability Objectives**) and acknowledges that its support of the Sustainability Objectives assists the Member in meeting its own Sustainability Objectives.

24.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply the Goods and/or Services in a manner which seeks to support the Sustainability Objectives, which endeavours may include:

(a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;

(b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:

(i) using recycled materials and products;

(ii) reducing emissions;

(iii) adopting greener energy solutions;

(iv) adopting environmentally sustainable design; and

(v) reducing wastage;

(c) providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);

(d) sponsoring and supporting local community groups and local community development initiatives;

(e) promoting fair workplace practices;

(f) promoting workplace health;

(g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and

(h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.

24.3 The Contractor agrees to provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.

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24.4 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Goods and/or Services to the Principal are supplied from sustainable sources.

25 CONTRACTOR'S PERSONNEL

25.1 The Contractor must, and must ensure its Personnel, when providing the Goods and/or Services:

(a) comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the Goods and/or Services;

(b) do not cause any damage, loss or injury to any property or person; and

(i) act, in all circumstances and at all times, in a fit and proper manner.

25.2 If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Specified Personnel, it must obtain the prior written approval of the Principal.

25.3 The Contractor must provide the Principal with an Australia-wide police clearance in respect of any of its Personnel within 30 Business Days of such a request being made in writing by the Principal to the Contractor.

25.4 If any police clearance obtained under clause 25.3 evidences that any of the Contractor's Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to its other rights under the Contract, request the Contractor to promptly remove that person from involvement in the provision of the Goods and/or Services, and the Contractor must comply with such a request as soon as possible.

25.5 If the Goods and/or Services to be provided by the Contractor involve Child-Related Work or involve the delivery of the Goods and/or Services at a Child-Related Site:

(a) the Contractor must provide to the Principal an Assessment Notice in respect of all Personnel involved in performing the Child-Related Work, or providing the Services or delivering Goods at the Child-Related Site, before they commence such work; and

(j) the Principal may require the Contractor to immediately remove any of the Contractor's Personnel who do not have a current Assessment Notice and the Contractor must comply with such a request as soon as possible.

26 REPRESENTATIVES

Each Party may appoint a Representative, and give them authority, to act on its behalf for the purpose of the Contract within delegation limits advised in writing to the other Party.

27 INVOICING AND PAYMENT

27.1 Subject to the Contractor satisfactorily providing the Goods and/or Services, the Principal must pay the Contractor the Contract Price in accordance with this clause 27 and the Contractor's preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.

27.2 As soon as reasonably practicable following the end of each month, or at another time or frequency agreed in writing by the Parties, the Contractor must provide to the Principal an Invoice for the provision of the Goods and/or Services or any delivered or completed part of the Goods and/or Services.

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27.3 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices issued in accordance with this clause within 20 Business Days of issue to the Principal or such other period as agreed in writing by the Parties, except where the Principal disputes the Invoice, in which case, to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute.

27.4 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing. To avoid doubt, the Principal must not unreasonably withhold its consent to any reasonable Disbursements.

27.5 A payment made pursuant to the Contract is taken to be payment on account and is not proof or admission of the value of the Goods and/or Services provided or that the Goods delivered and/or the Services performed, or any part thereof, were to the Principal's satisfaction.

27.6 The Parties agree that failure by the Principal to pay the amount payable at the due time will not be grounds for the Contractor to terminate, invalidate or avoid the Contract.

28 GOODS AND SERVICES TAX

28.1 Words capitalised in this clause 28 and not otherwise defined have the meaning given in the GST Law.

28.2 Where an amount of Consideration is payable for a Taxable Supply made under the Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.

28.3 The Party making a Taxable Supply under the Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.

28.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under the Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

29 ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS

29.1 The Principal agrees to provide the Contractor with access to the Principal's Premises and Principal's Documents as reasonably required to provide the Goods and/or Services.

29.2 The Contractor must only use the Principal's Documents for the sole purpose of providing the Goods and/or Services and must take reasonable security measures to protect the Principal's Documents from unauthorised disclosure or use.

29.3 The Contractor acknowledges and agrees that:

(a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;

(b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Principal's Premises or Principal's Documents at any time; and

(c) where the Principal has suspended or denied the Contractor's access to the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

30 CONFIDENTIALITY

30.1 In this clause 30 the following terms have the following meanings:

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(a) '**Disclosing Party**' means the Party which has disclosed Confidential Information that is confidential to that Party; and

(b) '**Receiving Party**' means the Party to whom Confidential Information is disclosed by the Disclosing Party.

30.2 Subject to clause 30.3, the Parties must not:

(a) disclose Confidential Information to any other person; or

(b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.

30.3 Subject to clause 30.4, a Party may disclose Confidential Information to a third party:

(a) with the prior consent of the Disclosing Party;

(b) to the extent required by any Law or applicable securities regulation or rule;

(c) in connection with any dispute or litigation concerning the Contract or its subject matter;

(d) to the extent required by any Authority having jurisdiction over the Receiving Party; or

(e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.

30.4 Before making a disclosure to a person under clause 30.3, the Receiving Party must:

(a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under the Contract, except where clause 30.3(b) applies;

(b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and

(c) where clause 30.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

31 DATA SECURITY

31.1 The Contractor must:

(a) do all things that a reasonable and prudent person or entity would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;

(b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and

(c) either return to the Principal or destroy any Principal Data immediately following the termination of the Contract.

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31.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 34 shall apply to this insurance with any necessary modifications.

32 INTELLECTUAL PROPERTY RIGHTS

32.1 The Contractor warrants that any supply by it of the Goods and/or Services and any designs, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.

32.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the supply of the Goods and/or Services or from any designs, documents or methods of working provided by it to the Principal.

32.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.

32.4 The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of the Contract.

32.5 The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal's Background Intellectual Property Rights to the extent necessary for the Contractor to supply the Goods and/or Services.

32.6 All Intellectual Property Rights (other than the Contractor's Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor's cost or as otherwise agreed by the Parties.

32.7 The Contractor must ensure that:

(a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Sub-contractor of the Contractor or any other third party; and

(b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Goods and/or Services or the Contract contrary to the interests of the Principal.

32.8 A Party must not:

(k) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or

(l) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.

32.9 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

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33 LIABILITY AND INDEMNITY

33.1 Subject to the other provisions of this clause 33, the Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss suffered by the Principal or its Personnel arising directly or indirectly from:

(a) any breach of the Contract by the Contractor;

(m) any Wilful Misconduct, or a negligent act or omission, by the Contractor or its Personnel;

(n) any loss or damage to the Principal's premises or property caused by the acts or omissions of the Contractor or its Personnel;

(b) any claim made by a third party against the Principal or its Personnel, to the extent that the claim arose out of any act or omission of the Contractor or its Personnel; and

(c) any act or omission of the Contractor or its Personnel that causes the Contractor to breach any Legal Requirement,

except to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or its Personnel.

Consequential Loss

33.2 Notwithstanding any other clause of the Contract, neither Party will be liable to the other Party for any Consequential Loss unless:

(o) the Law requires otherwise;

(a) the Parties agree in writing that a Party will be liable for that Consequential Loss; or

(p) the Consequential Loss is specified in or otherwise covered by an Insurance.

Civil Liability Act

33.3 Each Party agrees that Part 1F of the Civil Liability Act 2002 (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with the Contract and any of the Contractor's Sub-contractors or such Sub-contractors' personnel.

Limitation of Liability

33.4 Except to the extent that an exclusion or limitation of liability is prohibited by law:

(a) The Contractor's maximum liability under any order, including liability arising out of goods delivered, services performed or from contractor's negligence or other acts or omissions, will be limited to two times the value of the Contract for the goods and/or services giving rise to the claim; and

(b) This limitation does not apply in relation to liability:

(i) For personal injury (including sickness and death);

(ii) For loss of, or damage to, tangible property;

(iii) Under an indemnity provided by the Contractor under this Contract;

(iv) Breach of confidence;

(v) Breach of intellectual property rights; or

(vi) Breach of privacy.

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34 INSURANCE AND RISK MANAGEMENT

34.1 The Contractor must:

(a) procure and maintain the Insurances with the minimum level of cover set out in this Document, or otherwise specified by the Principal in the Principal Request, from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Principal, which either:

(i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or

(ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;

(b) ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the provision of the Goods and/or Services to the Principal;

(c) upon the Principal's written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;

(d) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor;

(e) disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the provision of the Goods and/or Services by the Contractor or a claim in connection with the Contract;

(f) pay all premiums and deductibles applicable to any of the Insurances when due;

(g) promptly reinstate any Insurance required if it lapses or cover is exhausted;

(h) give the Principal at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and

(i) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

34.2 To the extent possible, at the times of placement or renewal of any Insurances, each Insurance must:

(a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and

(b) where the Principal is entitled to cover under the Insurance:

(i) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;

(ii) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;

(iii) except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering

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each party insured (without increasing the deductibles or reducing the overall limit of indemnity);

(iv) provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and

(v) provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

34.3 The Contractor must procure and maintain public liability insurance and product liability insurance which:

(a) is for an amount not less than $10 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;

(b) covers the liability of the Contractor, its Personnel and the Principal in respect of:

(i) loss of, damage to, or loss of use of, any real or personal property; and

(ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),

arising out of or in connection with the Contractor's performance of the Contract; and

(c) covers the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the Contract and sudden and accidental pollution.

34.4 Where the Contractor shall be using its own vehicles, plant and equipment in providing the Goods and/or Services, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (**Contractor's Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), which must:

(a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;

(b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;

(c) be unlimited in the number of occurrences; and

(d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Principal.

34.5 Unless otherwise agreed in writing by the Principal, the Contractor must procure and maintain workers' compensation insurance as follows:

(a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than $50 million, or such amount as is specified in a Principal Request, in respect of any one event; or

(b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.

34.6 Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:

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(a) be for not less than $5 million, or such other amount as is specified in the Principal Request, or otherwise reasonably requested by the Principal in respect of any one claim;

(b) be for an amount not less than the amount specified in the Principal Request in the aggregate for all claims arising in any one 12 month period of insurance (if an amount is so specified);

(c) include one full automatic reinstatement of the limit of liability;

(c) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under the Contract; and

(d) cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.

34.7 Notwithstanding any other provision of this clause 34, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:

(a) it is lawful for the Contractor to do so;

(b) the Contractor identifies in writing to the Principal which of the risks required to be insured are being self-insured; and

(c) if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Principal's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.

34.8 The Parties acknowledge and agree that:

(e) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under the Contract;

(a) the Insurances are primary, and not secondary, to the indemnities referred to in this Document and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;

(f) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;

(b) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances;

(c) nothing in this clause 34 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and

(d) where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.

34.9 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.

35 FORCE MAJEURE EVENT

35.1 A Party must:

(a) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under the Contract (**Affected Obligations**); and

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(b) if it gives such a notice, either:

(i) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or

(ii) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.

35.2 The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

35.3 The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.

35.4 If a Force Majeure Event continues to affect the provision of the Goods and/or Services for the duration of the Force Majeure Event Termination Period, the Principal may terminate the Contract by serving written notice on the Contractor.

36 SETTLEMENT OF DISPUTES

36.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).

36.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.

36.3 In the event that the Dispute remains unresolved after the time period referred to in clause 36.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with clause 36.4.

36.4 A mediation under this clause 36 shall:

(a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice of intention under clause 36.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;

(b) be conducted according to the rules proposed by the appointed mediator; and

(c) be conducted during a period of 10 Business Days (or such longer period as the Parties may agree in writing) from the acceptance by the mediator of his or her appointment.

36.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.

36.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 36.4(c), either Party may take whatever other action is available to it under the Contract or the Law, including initiating proceedings in a court of competent jurisdiction.

36.7 Nothing in this clause 36 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

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37 DEFAULT, SUSPENSION AND TERMINATION FOR BREACH

Default

37.1 If a Party breaches a provision of the Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:

(g) identifying the nature of the alleged breach;

(h) requiring the Party to comply with the relevant provision of the Contract; and

(i) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice.

37.2 If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages or exercise any other right under the Contract or under any applicable Legal Requirement.

Suspension

37.3 If a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 37.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party's reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of the Contract is no longer suspended at which point the Parties must promptly recommence the performance of their obligations.

37.4 The Contractor must bear any cost it incurs as a result of a suspension under clauses 23.4 or 37.3 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor under this clause become a debt due to the Principal by the Contractor, where the Contractor is the defaulting Party.

37.5 To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clause 37.3, the Completion Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

Termination for breach

37.6 Subject to clause 37.7, without limiting the other circumstances in which the Contract may be terminated, if a Party breaches a provision of the Contract and fails to comply with a notice issued under clause 37.1, then the other Party:

(j) may give a further notice to the defaulting Party of its intention to terminate the Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and

(a) by a further and final notice in writing to the defaulting Party immediately terminate the Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 37.6(j).

37.7 If a Party breaches a material provision of the Contract and that default is incapable of remedy or rectification, the non-defaulting Party may terminate the Contract by written notice to the defaulting Party.

38 TERMINATION

38.1 Without limiting the other circumstances in which the Contract may be terminated, if a Party:

(a) commits an Insolvency Event;

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(b) assigns or sub-contracts the Contract or any part thereof without any prior written consent of the other Party required by the Contract;

(c) or any of its Personnel are found guilty of any criminal act relating to the Goods and/or Services; or

(k) includes in its Request Response any statement, representation, description of fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Party or not,

then the other Party may by notice in writing to that Party immediately terminate the Contract.

38.2 If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to provide similar or equivalent goods and/or services to the Goods and/or Services.

38.3 Where the Principal terminates the Contract under clauses 37.6, 37.7 or this clause 38, the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.

38.4 When the Contract is terminated, the Contractor must:

(a) promptly return to the Principal or destroy any of the Principal's property or Principal's Documents as directed in writing by the Principal; and

(l) if requested by the Principal, co-operate with and assist the Principal to transition the provision of the Goods and/or Services to the Principal or to another contractor engaged by the Principal, including by complying with the terms of any agreed Transition Plan.

39 ASSIGNMENT AND SUBCONTRACTING

39.1 The Contractor shall not:

(a) assign all or any part of its rights and obligations under the Contract; or

(b) sub-contract the whole or any part of the Contract,

without:

(m) the Principal's prior written approval, which must not be unreasonably withheld; and

(c) in the case of an assignment under clause 39.1(a) where obligations are to be assigned, the proposed assignee executing a deed in favour of the Principal agreeing to comply with and be bound by the obligations of the Contractor under the Contract.

39.2 To avoid doubt, the Principal's approval to sub-contract does not discharge or release the Contractor from any liability or obligation under the Contract.

40 RESTRUCTURE OF THE PRINCIPAL

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure. To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

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41 NOTICES

41.1 Any notice under the Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:

(a) hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or

(b) email to the email address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.

41.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:

(a) if by delivery in person, when delivered to the address of the receiving Party;

(b) if by post, 5 Business Days from and including the date of postage; and

(n) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving Party's time), it is regarded as received at 9.00am on the following Business Day.

42 GENERAL

42.1 Relationship of the Parties

(o) The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise.

(a) Nothing in the Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated in this Document.

42.2 Severability

Should any part of the Contract be invalid or unenforceable, that part shall be:

(a) read down, if possible, so as to be valid and enforceable; or

(b) if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,

and the remainder of the Contract shall not be affected by such invalidity or unenforceability.

42.3 Variation to Contract terms

The terms of the Contract shall not be varied except by the written agreement of the Parties.

42.4 Waiver

(a) A Party may only waive a right or power it has under the Contract by written notice to the other Party.

(b) No forbearance, delay or indulgence by a Party in enforcing a provision of the Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers

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of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

42.5 Entire agreement

The Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of the Contract.

42.6 Rights are cumulative

Subject to any express provision in the Contract to the contrary, the rights of a Party under the Contract are cumulative and are in addition to any other rights of that Party.

42.7 Governing Law

The Contract and any Dispute shall be governed by the Laws of the State of Western Australia and the Parties agree that the courts of that State will have exclusive jurisdiction to deal with any Dispute.

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SCHEDULE 1 – CONTRACT SPECIFICS

CONTRACT SPECIFICS

ITEM	DESCRIPTION	CONTRACT SPECIFIC
1.	**Contract Manager**	**City of Kalgoorlie-Boulder** Address: 577 Hannan Street, Kalgoorlie WA 6430 Telephone: Email:
2.	**Contractor's Representative**	
3.	**End Date**	
4.	**Additional Period**	
5.	**Insurances**	Insurances must be maintained for the duration of the Contract with the following minimum levels of cover: **Public liability insurance:** where applicable the Contractor shall maintain Insurance to a value of $20,000,000. **Products liability insurance:** where applicable the Contractor shall maintain Insurance to a value of $20,000,000 **Workers' compensation insurance:** where applicable the Contractor shall maintain insurance in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA) and to a value of $50,000,000. **Vehicle and equipment insurance:** where applicable the Contractor shall maintain insurance to a value of $30,000,000.

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SCHEDULE 2 – SPECIFICATION

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SCHEDULE 3 – PRICING AND RATES

As per Tender Response documentation

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