**GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES**

**BACKGROUND**

### The Principal has engaged the Contractor to provide the Goods and/or Services.

### 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

# 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:

### the Principal notifying the Contractor in writing that the Goods and/or Services are accepted; or

### the expiry of the day 14 days after:

### delivery of the Goods to the Delivery Point; or

### the Contractor has notified the Principal in writing of the 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 39.1(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, semi-government authority, provider of public utility services and any other person, authority, instrumentality, or body having jurisdiction, rights, powers, duties or responsibilities pursuant to Law related to the provision of the Goods and/or Services.

**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.

**Certifications** means any certifications, certificated, drawings, plans or other documents in connection with the Goods or Services listed in Item 8 of Schedule 1.

**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. To avoid doubt, there may be multiple Completion Dates where the Contract applies to multiple Orders of Goods and/or Services.

**Confidential Information** means:

### the Contract;

### information relating to the Principal’s past, existing or future business, strategic plans or operations, finances, or customers.

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

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

### 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:

### loss of production, revenue, profit, business reputation, opportunities, or anticipated savings; and

### loss arising from wasted overheads or business interruptions.

**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 comprising of the documents listed in clause 22.3.

**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 Principal 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 38.4.

**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, and if any rectification works are carried out during the Defects Liability Period, means a further period of 12 months from the date such rectification works are completed or the Defective Goods are resupplied.

**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:

charged to the Principal at cost; and

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 40.1.

**Document** means this document called ‘Goods and/or Services Contract Conditions’.

**End Date** means the date in Item 3 of Schedule 1.

**Extension Request** has the meaning given in clause 13.4.

**Force Majeure Event** means an event or cause comprising any of the following:

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;

strike, lockout, or other industrial action;

act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, or terrorism; or

a change in any Law or any authority exercised by an Authority by Law,

provided such event or cause is beyond the reasonable control of the Party asserting the Force Majeure Event and that Party could not have prevented, overcome, or remedied the event or cause or its effects by the exercise of Good Industry Practice.

**Force Majeure Event Termination Period** means 120 consecutive days.

**Good Industry Practice** means that degree of skill, care, prudence, and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor, engaged in the same type (including as to scope and complexity) of project as the Contractor, under the same or similar circumstances.

**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:

### in relation to a corporation, where that corporation:

#### 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;

#### is otherwise dissolved;

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

#### enters into any composition or scheme of arrangement with its creditors;

#### 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

#### is otherwise unable to pay all its debts as and when they fall due; and

### in relation to a natural person, where that natural person:

#### commits an act of bankruptcy;

#### becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;

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

#### is otherwise unable to pay all its debts as and when they fall due.

**Insurances** means the insurances which the Contractor is required to effect and maintain under clause 38.

**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.

### **Law** means Acts, ordinances, regulations, by-laws, orders, awards, proclamations and the requirements of Authorities legally enforceable in the jurisdiction where the Goods and/or Services or any part thereof are being supplied.

**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 a letter issued by the Principal to the Contractor awarding the Contractor a Contract for the supply of goods and services, including an Order or a Long-Term Award.

**Long-Term Award** means a Letter of Award for a framework contract for the supply 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 (including a Letter of Award) which requires the supply of specified Goods and/or Services, except a purchase order issued in relation to a Variation under clause 14.

**Original Product** has the meaning given in clause 3.3.

**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** has the meaning given in clause 12.2.

**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 Policies and Procedures** means the Principal's policies, guidelines, standards, and rules of conduct applicable to the Goods and/or Services or the Site that are put in place or amended by the Principal and communicated to the Contractor.

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

**Provisional Sum** means any amount stated as a provisional sum in a Letter of Award or any Order, having the meaning given in clause 21.

**Reasonable Steps** means taking reasonable actions in accordance with Good Industry Practice.

**Request Response** has the meaning given in clause 12.4.

**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.

**SOP Act** means the *Building and Construction Industry (Security of Payment) Act* *2021* (WA).

**SOP Act Business Day** has the meaning given to business day in the SOP Act.

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

provided or referred to by the Principal to the Contractor in an Order; or

developed after an Order came into effect, and agreed to by the Parties.

**Specified Personnel** means Personnel of the Contractor proposed in an Order or otherwise in accordance with the Contract 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 Order or, where no such date is specified in the Order, means the date that the Parties agree in writing that the Contractor must commence the Services.

**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.

**Transition Plan** meansa 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.

**Variation** means any change to, including any increase, decrease, addition to, or omission from, the Goods and/or Services (including omission for the purpose of or with the intention of having another person supply those Goods or perform that part of the Services) or any change in the character, quantity or quality of the Goods and/or Services.

**Variation Form** means a notice substantially in the form set out in Schedule 2.

**WHS Contractor Guidelines** means the City of Nedlands guidelines developed to assist contractors and their workers to work safety while engaging work for, or on behalf of, the Principal.

**WHS 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 *Work Health and Safety Act 2020* (WA) and the *Work Health and Safety (General) Regulations 2022* (WA), in addition to any other relevant Law.

**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).

# Interpretation

## In this Document, unless the context suggests otherwise:

### a reference to the Contract means the Contract as varied from time to time;

### a reference to 'including' must be read as if it is followed by '(without limitation)';

### 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;

### words in the singular include the plural and vice-versa;

### 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;

### a reference to any Party includes that Party’s executors, administrators, substitutes, successors and permitted assigns.

### a reference to a clause is a reference to a clause of this Document;

### a reference to a 'day' or 'month’ is a reference to a calendar day or calendar month;

### headings are for convenience only and do not affect interpretation of this Document; and

### 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.

# PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY

# Quality of Goods, sources of supply and substitution

## The Contractor must ensure that all Goods:

### comply with the requirements of the relevant Order and conform to any samples provided;

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

### are properly, safely, and securely packaged and labelled for identification; and

### are of merchantable quality and fit for their intended purpose.

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

## With the Principal’s prior written consent (which consent is at the Principal's absolute discretion) 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.

# Quantities of Goods

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

## 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.

# Delivery obligations and Delivery Point

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

### not interfere with the Principal's activities;

### leave the Delivery Point secure and fit for immediate use;

### obtain the signature of a member of the Principal’s Personnel who receives delivery of the Goods; and

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

# Property and risk in the Goods

## Subject to this Document, the Parties agree that:

### risk in the Goods passes from the Contractor to the Principal on Acceptance; and

### upon the earlier of payment for the Goods or delivery of the Goods, unencumbered title in the Goods passes to the Principal.

## The Contractor warrants that the Goods are free of any liens, charges and encumbrances at the time title in the Goods passes to the Principal under clause 6.1(b).

# Sale of Goods Act

The Principal and Contractor acknowledge and agree that:

### the Sale of Goods Act applies to the Contract; and

### 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

# Quality of Services

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

### match the description of the Services set out in the Order or otherwise in the Contract;

### are fit for their intended purpose;

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

### are performed in accordance with Good Industry Practice; and

### are provided in accordance with this Contract, including any Specification.

## 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 perform the Services competently and lawfully; and

## it and its Personnel will promptly review and become familiar with all of the Principal's Policies and Procedures as they are communicated to the Contractor.

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

# 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

# Supply of Goods and/or Services

## The Contractor must:

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

### 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;

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

### comply with any Transition Plan;

### provide any Certifications stated in Item 8 of Schedule 1 upon completion of the Goods and/or Services; and

### 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.

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

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

### 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

### 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.

# Plant and Equipment

## The Contractor must:

### provide all Plant and Equipment and labour necessary for the performance of the Contractor’s obligations; and

### 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.

# Orders under a Long-Term Award

## This clause applies where this Contract is formed by the issue of a Long-Term Award.

## From time to time the Principal may give the Contractor a notice containing the following information:

### a description and/or specification of the Goods and/or Services required, including the required quantity;

### the Contract Price in respect of that Order;

### the Completion Date; and

### where the Order relates to Goods, the Delivery Point,

### (**Principal Request**).

## Within 5 Business Days of receipt of a Principal Request, the Contractor must give notice to the Principal of:

### any aspect of the Principal Request which it does not accept and supporting reasons; and/or

### any recommended changes to the Principal Request and supporting reasons,

### (**Request Response**).

## Following the issue of a Request Response, the Parties shall seek to agree on terms and, once agreed an Order shall be issued by the Principal to the Contractor reflecting those terms.

## If:

## the Request Response proposes no changes to the Principal Request; or

## the Contractor does not give a Request Response,

## the Principal Request will be deemed to be a binding Order, and the Contractor must fulfil its obligations under that Order.

## To avoid doubt, the Principal is not obliged to issue a minimum volume of Orders to, or otherwise purchase Goods and/or request Services from, the Contractor.

## The Principal will not issue any further Orders after the End Date.

## Orders which have not achieved expiry of the Defects Liability Period by the End Date will continue to be governed by this Contract until it is terminated in accordance with clause 21.

## The End Date may be extended by written agreement between the Parties.

# Time for performance and extensions of time

## The Contractor must commence the provision of the Services in respect of an Order on the Start Date.

## Subject to this clause 13, the Contractor must:

## deliver the Goods to the Delivery Point and/or complete the Services, as the case may be; and

## obtain Acceptance by the Completion Date.

## 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 breach by the Principal of the Contract;

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

### a Force Majeure Event occurring before the Completion Date;

### suspension of the Contract under clause 41.3 where the suspension is the result of a breach by the Principal; or

### a Variation being agreed to the nature of the Goods and/or Services provided in accordance with clause 14,

### (each a **Delay Event**).

## To obtain an extension, the Contractor must:

## implement Reasonable Steps to prevent and mitigate the delay; and

## 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**).

## 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.

# Variations

* 1. The Contractor must not vary the Goods and/or Services except as directed by the Principal in a Variation Form issued to the Contractor and signed by or on behalf of the Principal.
  2. The Principal may (whether or not it has given the Contractor notice of a Proposed Variation) at any time prior to the Completion Date, direct the Contractor to perform a Variation and the Contractor must comply with the direction.
  3. No Variation directed under this clause 14 invalidates or repudiates this agreement.

**Variation Proposal**

* 1. The Principal may provide a notice of a proposed Variation to the Contractor, detailing relevant aspects of the proposed Variation (**Proposed Variation**).
  2. On receipt of a Proposed Variation, the Contractor must provide a response within 5 Business Days:
     1. detailing all the additional Goods and/or Services which the Contractor will need to supply/undertake to execute the Proposed Variation;
     2. pricing all aspects of the Proposed Variation and setting out the adjusted Contract Price;
     3. setting out the impact (if any) on the Completion Date; and
     4. expressly noting any excluded Goods and/or Services not priced by the Contractor,

(**Proposed Variation Response**).

* 1. The Contractor must bear the cost of preparing a Proposed Variation Response.
  2. Any additional Goods and/or Services which could be reasonably inferred to form part of the requirements of a Proposed Variation is deemed to have been priced within a Proposed Variation Response, unless such works are expressly noted as an exclusion.
  3. The Principal may at any time in its absolute discretion direct a Variation the subject of a Proposed Variation Response by issuing the Contractor a Variation Form, and such Variation Form may specify that the Principal:
     1. subject to clause 14.9, accepts the Proposed Variation Response that the Contractor provided; or
     2. rejects the Proposed Variation Response that the Contractor provided, in which case the Variation will be valued in accordance with clauses 14.11 to 14.13.
  4. Unless otherwise stated in the Variation Form, acceptance of the Proposed Variation Response under clause 14.8(a) will not be deemed to accept the impact on the Completion Date, and any adjustment to the Completion Date will be in accordance with clause 13.
  5. The adjustment to the Contract Price resulting from a Works Variation will be confirmed by the Principal in a purchase order issued by the Principal to the Contractor in relation to the relevant Variation.

**Valuation**

* 1. If the Principal has issued a Variation Form to the Contractor in accordance with clause 14.2, 14.8(b) or 14.15(a) in respect of the Goods and/or Services, the Contractor is entitled to claim an adjustment to the Contract Price in accordance with these clauses 14.11 to 14.13.
  2. The Contract Price must be adjusted to reflect the value of the varied Goods and/or Services which must be agreed between the parties. Where there is no agreement, the value will be calculated by the Principal as follows:
     1. where applicable rates and costs are included in this agreement, by applying those rates and costs; or
     2. where applicable rates and costs are not included in this agreement, the Principal’s assessment of the fair and reasonable price for the varied Goods and/or Services.
  3. In order that the Principal may make the assessment under clause 14.12, the Contractor must provide to the Principal all quotations, invoices, timesheets and other documents relevant to the actual cost to the Contractor of supplying the varied Goods or carrying out the varied Services (although the Contractor acknowledges that the actual cost of supplying the varied Goods or carrying out the varied Services will be used as an indication only of the reasonable price of the varied Goods and/or Services).

**If a direction constitutes a Variation**

* 1. If the Contractor considers that a direction given by the Principal other than a direction in a Variation Form, constitutes a Variation that will affect the Contract Price (where the Contractor is entitled to an adjustment to the Contract Price) or the Completion Date (where the Contractor is entitled to an adjustment to the Completion Date), it must within 5 Business Days and in any event before complying with the direction, notify the Principal, identifying the relevant direction and the estimated impact on the Contract Price and the Completion Date.
  2. As soon as reasonably practicable after receiving a notice under clause 14.14, the Principal mist either:
     1. direct the Contractor to comply with the direction by issuing a Variation Form to that effect, in which case the Contract Price will be adjusted in accordance with clauses 14.11 to 14.13 and the Completion Date will be adjusted in accordance with clause 13;
     2. direct the Contractor to comply with the direction on the basis that the Principal does not consider it to constitute a Variation, after which the Contractor must comply with the direction but may issue a notice of dispute under clause 40; or
     3. withdraw the direction.

# Receipt and Acceptance of Goods and/or Services

## The Parties agree that:

### 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

### 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.

## 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.

## For the avoidance of doubt, any written notification or request from the Principal under clause 15.2 will be deemed to be a notification to the Contractor that Acceptance has not been obtained.

# Rejection and removal of Defective Goods and/or Defective Services

## At any time prior to the expiry of the Defects Liability Period, the Principal may notify the Contractor in writing that any Goods and/or Services provided are Defective.

## Where the Principal notifies the Contractor under clause 16.1, the Principal may direct the Contractor to at its own cost replace, rectify or re-perform the Goods and/or Services, as the case may be, within a reasonable time specified by the Principal.

## The Contractor must comply with a direction under clause 16.2 within the time period specified in the notice issued under clause 16.1 or otherwise agreed in writing by the Parties.

## Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 16.3, 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.

## Following receipt of a notice under clause 16.4 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.

## 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.

## 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.

## Without limiting clause 37, 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.

## 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.

# Quality Assurance plan

## If the Principal directs, the Contractor must, within 5 Business Days or such other period as may be agreed by the parties, submit to the Principal a proposed quality assurance plan, setting out how the Contractor will manage and monitor the quality of all aspects of its delivery of the Goods or performance of the Services (**Quality Assurance Plan**).

## The proposed Quality Assurance Plan must be prepared in accordance with Good Industry Practice and be consistent with the Principal's Policies and Procedures.

## Within 5 Business Days of receipt of the draft Quality Assurance Plan, or such other period as may be agreed by the parties, the Principal must notify the Contractor that:

### the Principal accepts the proposed Quality Assurance Plan; or

### the Principal requires the Contractor to make changes to the proposed Quality Assurance Plan.

## If the Principal does not issue the Contractor a notice within the time required under clause 17.3, the Principal is deemed to have issued a notice that it accepts the proposed Quality Assurance Plan.

## The Contractor must incorporate into the proposed Quality Assurance Plan any changes the Principal requires provided the changes are reasonably required by the Principal in order to ensure the Quality Assurance Plan complies with clause 17.2 and resubmit the amended proposed Quality Assurance Plan for acceptance in accordance with clause 17.3.

## The Contractor must comply with the accepted Quality Assurance Plan.

# Failure to provide Goods and/or Services

## 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.

## Where the Contractor provides written notice to the Principal under clause 18.1, 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.

# Information

## The Contractor must keep the Principal fully informed about:

### any matters that may adversely affect the Contractor’s ability to provide the Goods and/or Services; and

### delivery of the Goods and/or completion of the Services.

# Price basis

## The Contract Price shall be fixed and not subject to rise and fall unless expressly stated in the Contract.

## 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.

# Provisional Sums

* 1. A Provisional Sum included in the Contract shall not itself be payable by the Principal but where, pursuant to a direction by the Principal, the Goods and/or Services to which the Provisional Sum relates is carried out or supplied by the Contractor, the Goods and/or Services shall be priced (subject to clause 21.3) in the same manner as a Variation in accordance with clauses 14.12 and 14.13, and the difference shall be added to or deducted from the Contract Price.
  2. Notwithstanding clause 21.1 but subject to clause 21.3, where any part of such Goods and/or Services are carried out or supplied by a Sub-contractor, the adjustment to the Contract Price shall be:
     1. the amount payable by the Contractor to the Sub-contractor for the Goods and/or Services; plus
     2. a reasonable amount on account of profit and overheads.
  3. Despite the valuation methods stated in clauses 21.1 and 21.2, the Principal is not required to pay any amount in respect of a Provisional Sum which exceeds the Provisional Sum by more than 10%.

# Formation of contract and Term

## 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.

## Where this Document is not executed by the Parties:

## the Contract shall be formed, and shall commence, on the date of the:

## where a Long-Term Award is issued, the date of the Long-Term Award; or

## where no Long-Term Award is issued, the date of the Order; and

## 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.

## The Contract comprises:

### the Letter of Award;

### where a Long-Term Award is issued, an Order;

### clauses 1 to 46 (inclusive) of this Document;

### Schedule 1 (Contract Specifics); and

### Schedule 2 (Variation Form).

## To the extent of any inconsistency between the documents forming part of the Contract, a document higher in the list in clause 22.3 prevails over each lower document.

## Where a Long-Term Award is issued, subject to clause 22.7, the Contract shall terminate upon expiry of the last Defects Liability Period in respect of any Order issued under the Contract.

## Where no Long-Term Award is issued, subject to clause 22.7, the Contract will terminate upon the expiry of the Defects Liability Period in respect of the Order.

## The Contract may terminate before the expiry of the period of time in clause 22.5 or 22.6 (as applicable):

### if the Parties agree in writing; or

### otherwise in accordance with this Document.

## The termination of the Contract does not affect:

### any rights of the Parties accrued before the date of termination; and

### the rights and obligations of the Parties which survive termination.

## Clauses 1 (definitions), 2 (interpretation), 3.2 (manufacturer’s warranties), 6.2 (warranty regarding property in goods), 8.2(a) (warranties regarding personnel), 10.1(c) and 10.1(d) (transition out), 14 (Acceptance and Defects Liability Period), 16 (Defective Goods and/or Services), 22.8 and 22.9 (term), 23 (Contractor to have informed itself), 34 (Confidentiality), 35 (Data security), 36 (Intellectual Property Rights), 37 (Liability and indemnity), 40 (Settlement of disputes), 42.2 to 42.4 (inclusive) (termination), 45 (Notices), 46.1 (relationship of Parties) and 46.7 (Governing law) shall survive termination of the Contract.

**Discrepancies**

## The Contractor must, if it finds any error, omission, ambiguity, discrepancy or inconsistency (**Discrepancy**) between any document comprising the Contract, immediately give written notice to the Principal, who will direct the Contractor as to the interpretation which must be followed.

## If:

### the Principal's direction under clause 22.10 is inconsistent with the order of precedence set out in clause 22.4; and

### the Discrepancy could not have reasonably been identified and allowed for by the Contractor exercising Good Industry Practice at the time of tender,

#### then the Contract Price will be adjusted to allow for any increase or decrease in costs incurred by the Contractor in carrying out the Goods and/or Services which directly result from the Contractor's compliance with the Principal's direction under clause 22.10.

## The Contractor must provide to the Principal all quotations, invoices, timesheets and other documents relevant to substantiate the change to the Contract Price under clause 22.11.

## The Contractor will not be entitled to any remedy for the Principal's direction as to the interpretation of a Discrepancy except as provided for in clauses 22.10 to 22.12 (inclusive).

# Contractor to have informed itself

## By entering into the Contract, the Contractor acknowledges that it has examined carefully, and has acquired actual knowledge of the contents of this Document and any other information made available in writing by the Principal to the Contractor for the purposes of the Contract.

### By providing a Request Response or otherwise entering into an Order the Contractor acknowledges that it has satisfied itself as to the correctness and sufficiency of the Contract Price to cover 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 all of its obligations under the Contract with respect to that Order.

# Conflict of interest

## If a Long-Term Award is issued, the Contractor must, to the best of its knowledge, in each instance that a Principal Request is issued, declare 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.

## If no Long-Term Award is issued, the Contractor must immediately declare to the Principal in writing, to the best of its knowledge, any Conflicts of Interest in the performance of its obligations under the Contract.

## 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.

# Legal Requirements, industrial awards and Standards and Procedures

## 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.

## The Contractor shall:

## 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;

## 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;

## use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 25.2(a) and 25.2(b) in relation to the Sub-contractors’ own employees; and

## 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.

# Safety obligations

## The Contractor must:

### 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;

### perform all relevant functions and fulfil all relevant duties under all relevant WHS 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 WHS Laws;

### unless otherwise directed by the Principal in writing, perform the functions and fulfil the relevant duties of 'principal contractor' (as that term is defined under WHS Laws;

### comply with the Principal's Policies and Procedures pertaining to health and safety; and

### agree, follow and sign (if required) the WHS Contractor Guidelines when performing its obligations under the Contract.

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

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

### provide the Principal with any further information requested by the Principal.

## 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 Policies and Procedures and do so at the Contractor’s own risk.

## Without limiting clauses 41.3 to 41.5 (inclusive), any breach by the Contractor of this clause 26 which gives rise to circumstances which:

### present actual or potential risk of life or serious injury; or

### are otherwise required to be notified under WHS Laws,

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

# Contractor’s Personnel

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

### 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;

### do not cause any damage, loss or injury to any property or person; and

### act, in all circumstances and at all times, in a fit and proper manner.

## 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.

## 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.

## If any police clearance obtained under clause 27.3 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.

## 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:

### 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

### 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.

# 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.

# Invoicing and payment

## 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 29 and the Contractor’s preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.

## 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.

## 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 30 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.

## 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.

## 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.

## 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.

# SOP Act Payment

## This clause 30 applies to the extent of any inconsistency with clause 29 if the SOP Act is deemed to apply as nominated in Item 5 of Schedule 1.

* 1. At the time or frequency set out in Item 6 of Schedule 1 or as otherwise agreed in writing by the Parties (or if neither are applicable, as soon as reasonably practicable following the end of each month in which Services are performed), the Contractor must give the Principal a detailed, itemised Payment Claim specifying:
     1. the amount claimed to be due to the Contractor for any part of the Services carried out up to the date of the Payment Claim, including a breakdown of such amounts and description of the Services carried out;
     2. any other amounts claimed to be owed by the Principal to the Contractor at the date of the Payment Claim; and
     3. any other information required for Payment Claims set out in Item 7 of Schedule 1 or directed in writing by the Principal.
  2. The Principal shall assess a valid Payment Claim and, subject to the deduction of any amount which the Principal may be entitled to deduct or set off or which is otherwise due and payable by the Contractor to the Principal, the Principal must pay the amount assessed as due from the Principal to the Contractor within 20 SOP Act Business Days. To avoid doubt, nothing in the Contract obliges the Principal to pay for any Goods or Services that are not in accordance with the Contract.
  3. If the Principal assess the amount due by the Principal to the Contractor in respect to a Payment Claim as less than the amount of the Payment Claim, or intends to deduct or set off from or against a Payment Claim under clause 30.3, it must issue the Contractor with a notice within 10 SOP Act Business Days explaining its reasons for the assessment, deduction or set off.
  4. The Principal is not liable for any Payment Claim issued by the Contractor that, when calculated in aggregate with all prior Payment Claims, exceeds the Contract Sum.

# SOP Act

* 1. Nothing in the Contract shall be construed to make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act) a breach of the Contract unless the Principal would have been in breach of the Contract had the SOP Act had no application.
  2. If any of the Contractor's Sub-contractors at any time suspends performance of its obligations or takes any other action under the SOP Act, despite any other provision of the Contract:
     1. the Contractor shall not be relieved of any of its obligations under the Contract and the suspension or other action by the Sub-contractor shall not entitle the Contractor to any claim against the Principal (including for an extension of time); and
     2. the Contractor shall immediately provide to the Principal full details of the circumstances giving rise to the Sub-contractor's right or alleged right to suspend or take other action.
  3. If, pursuant to the SOP Act, the time within which the Contractor must issue a notice pursuant to any provision of this Contract is deemed to be unfair and therefore of no effect, that time is in each case adjusted to 28 days.

# Goods and services tax

## Words capitalised in this clause 30 and not otherwise defined have the meaning given in the GST Law.

## 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.

## 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.

## 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.

# Access to Principal’s Premises and Principal’s Documents

## 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.

## 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.

## The Contractor acknowledges and agrees that:

### the Principal may need to obtain the consent of third parties to the disclosure of Principal’s Documents to the Contractor;

### 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

### 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.

# Confidentiality

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

### ‘**Disclosing Party**’ means the Party which has disclosed Confidential Information that is confidential to that Party; and

### ‘**Receiving Party**’ means the Party to whom Confidential Information is disclosed by the Disclosing Party.

## Subject to clause 34.3, the Parties must not:

### disclose Confidential Information to any other person; or

### use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.

## Subject to clause 34.4, a Party may disclose Confidential Information to a third party:

### with the prior consent of the Disclosing Party;

### to the extent required by any Law or applicable securities regulation or rule;

### in connection with any dispute or litigation concerning the Contract or its subject matter;

### to the extent required by any Authority having jurisdiction over the Receiving Party; or

### 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.

## Before making a disclosure to a person under clause 34.3, the Receiving Party must:

### 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 34.3(b) applies;

### 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

### where clause 34.3(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.

# Data security

## The Contractor must:

### 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;

### 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

### either return to the Principal or destroy any Principal Data immediately following the termination of the Contract.

## 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 38 shall apply to this insurance with any necessary modifications.

# Intellectual Property Rights

## 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.

## 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.

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

## 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.

## 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.

## 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.

## The Contractor must ensure that:

### 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

### 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.

## A Party must not:

### 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

### do or allow to be done, or fail to do, any act that may infringe the other Party’s Intellectual Property Rights.

## 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.

# Liability and indemnity

## Subject to the other provisions of this clause 37, 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:

### any breach of the Contract by the Contractor;

### any Wilful Misconduct, or a negligent act or omission, by the Contractor or its Personnel;

### any loss or damage to the Principal’s premises or property caused by the acts or omissions of the Contractor or its Personnel;

### 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

### 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***

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

### the Law requires otherwise;

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

### the Consequential Loss is specified in or otherwise covered by an Insurance (or would have been covered by an Insurance but for the wrongful act or omission of the insured Party).

***Civil Liability Act***

## 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 in relation to any Dispute, claim, action, right, obligation or liability arising out of or in connection with the Contract, including in respect to any of the Contractor’s Sub-contractors or such Sub-contractors’ personnel.

# Insurance and risk management

## The Contractor must:

### procure and maintain the Insurances with the minimum level of cover set out in this Document, or otherwise specified by the Principal in the Order, 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:

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

#### 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;

### 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;

### 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;

### 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;

### 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;

### pay all premiums and deductibles applicable to any of the Insurances when due;

### promptly reinstate any Insurance required if it lapses or cover is exhausted;

### 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

### 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.

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

### 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

### where the Principal is entitled to cover under the Insurance:

#### 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;

#### 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;

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

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

#### 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.

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

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

### covers the liability of the Contractor, its Personnel and the Principal in respect of:

#### loss of, damage to, or loss of use of, any real or personal property; and

#### 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

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

## 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:

### cover all loss and/or damage to the Contractor’s Vehicles and Equipment;

### 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;

### be unlimited in the number of occurrences; and

### to the extent available from the insurance market from time to time, contain a principal’s indemnity extension in favour of the Principal.

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

### 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 an Order, in respect of any one event; or

### 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.

## Where specified in an Order or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:

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

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

### include one full automatic reinstatement of the limit of liability;

### 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;

### 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; and

### be effected and maintained by the Contractor for the duration specified in the Order, or if not so specified, for the duration commencing on the Start Date and ending on the date that is 6 years after the termination of this Contract in accordance with clause 21.

## Notwithstanding any other provision of this clause 38, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:

### it is lawful for the Contractor to do so;

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

### 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.

## The Parties acknowledge and agree that:

### 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;

### 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;

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

### 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;

### nothing in this clause 38 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

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

## 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.

# Force Majeure Event

## A Party must:

### 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

### if it gives such a notice, either:

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

#### 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.

## 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.

## 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.

## 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.

# Settlement of Disputes

## 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**).

## 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.

## In the event that the Dispute remains unresolved after the time period referred to in clause 40.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for arbitration in accordance with clause 40.4.

## An arbitration under this clause 40 shall:

## be conducted by a single arbitrator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice under clause 40.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;

## be conducted according to the rules proposed by the appointed arbitrator; and

## 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 arbitrator of his or her appointment.

## The Parties shall each pay their own costs of the arbitration and will each pay half of the arbitrator’s fees and costs.

## If the Parties are unable to resolve the Dispute within the arbitration period stipulated in, or agreed under, clause 40.4(c), either Party may take whatever other action is available to it under the Contract or at Law, including initiating proceedings in a court of competent jurisdiction.

## Nothing in this clause 40 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.

* 1. To avoid doubt, nothing in this clause 40 affects or limits a Party’s right to apply for an adjudication under the SOP Act.

# Default, suspension and termination for breach

## ***Default***

## 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:

### identifying the nature of the alleged breach;

### requiring the Party to comply with the relevant provision of the Contract; and

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

## 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***

## If a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 41.1, 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.

## The Contractor must bear any cost it incurs as a result of a suspension under clauses 26.4 or 41.3 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.

## To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clause 41.3, 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***

## 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 41.1, then the other Party may terminate the Contract by written notice to the defaulting Party.

## Notwithstanding clause 41.6, 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.

# Termination

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

### subject to Chapter 5 of the *Corporations Act 2001* (Cth), commits an Insolvency Event;

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

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

### 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.

## 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.

## Where the Principal terminates the Contract under clauses 41.6, 41.7 or this clause 42, 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.

## When the Contract is terminated, the Contractor must:

### 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

### 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.

# Assignment and subcontracting

## The Contractor shall not:

### assign all or any part of its rights and obligations under the Contract; or

### sub-contract the whole or any part of the Contract,

### without:

### the Principal’s prior written approval, which must not be unreasonably withheld; and

### in the case of an assignment under clause 43.1(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.

## 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.

# 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.

# Notices

## 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:

### hand delivery or prepaid post to the address of the receiving Party specified in an Order 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

### email to the email address of the receiving Party specified in an Order 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.

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

### if by delivery in person, when delivered to the address of the receiving Party;

### if by post, 5 Business Days from and including the date of postage; and

### 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.

# General

## Relationship of the Parties

### 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.

### 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.

## Severability

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

### read down, if possible, so as to be valid and enforceable; or

### 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.

## Variation to Contract terms

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

## Waiver

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

### 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 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.

## 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.

## 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.

## 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.

# EXECUTION

*[Guidance note: alternative options for ‘electronic’ and ‘paper/handwritten’ signature are provided below. Select the appropriate method of execution for the Principal and the Contractor and delete any unused panels. If the Principal is not a local government, an alternative execution panel for the Principal may need to be inserted.]*

***(use for electronic signature only)***

**Principal**

[*WALGA to insert electronic signature panel]*

*[Guidance note: complete the relevant panel below and delete the irrelevant panel]*

|  |  |  |
| --- | --- | --- |
|  | **Contractor – where the Contractor is a company** | |
|  | Signed by  ***[Insert Contractor Name in full]***  in accordance with section 127(1) of the *Corporations Act 2001* (Cth): | |
| *Sign here* ► | {{Sig\_es\_:signer1:signature}} |  |
|  | Company Secretary/Director/Sole Company Secretary/Director |  |
| *Full name* | {{fullname\_es\_:signer1:fullname}} |  |
| *Sign here* ► | {{Sig\_es\_:signer2:signature}} |  |
|  | Company Secretary/Director (\*Not applicable if company has a sole Company Secretary-Director) |  |
| *Full name* | {{fullname\_es\_:signer2:fullname}} |  |

\_

**Contractor – where the Contractor is an individual**

*[WALGA to insert electronic signature panel]*

***(use the below for ‘paper’ or ‘handwritten’ signature only)***

*[Guidance note: if the Principal is executing the Contract by hand, complete the relevant panel below for the Principal and delete the irrelevant panel.]*

**Principal – where applying common seal**

|  |  |  |
| --- | --- | --- |
|  | The common seal of the [*insert local government*] was hereunto affixed on [*insert date*] by authority of a resolution of the Council in the presence of: |  |
| *sign here* ► |  |  |
|  | Mayor/President (delete whichever is not applicable) |  |
| *print name* |  |  |
| *sign here* ► |  |  |
|  | Chief Executive Officer |  |
| *print name* |  |  |

**Principal – where executing in accordance with a Council resolution**

|  |  |  |
| --- | --- | --- |
|  | Signed by an authorised person(s) on behalf of the [*insert local government*] in accordance with a resolution of the Council passed on [*insert date*]: |  |
| *sign here* ► |  |  |
|  | [Insert title of authorised person] |  |
| *print name* |  |  |

*[Guidance note: complete the relevant panel below and delete the irrelevant panel. If the Contractor is not a company or an individual, the correct panel for the Contractor must be inserted]*

**Contractor – where the Contractor is a company**

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED** by **[insert name]** ACN [insert ACN] in accordance with section 127(1) of the *Corporations Act 2001* (Cth): | )  )  ) |  |  |
|  | ← |  | ← |
| Director/Secretary/Sole Director-Secretary (signature)  (Delete whichever is not applicable) |  | Director/Secretary (signature)  (Delete whichever is not applicable) |  |
| Director/Secretary/Sole Director-Secretary (print full name)  (Delete whichever is not applicable) |  | Director/Secretary (print full name)  (Delete whichever is not applicable) |  |

**Contractor – where the Contractor is an individual**

|  |  |  |
| --- | --- | --- |
| **SIGNED** by **[*insert name*]** in the presence of: | )  )  ) |  |
|  |  | **Signature of Contractor** |
|  |  |  |
| Signature of Witness |  | Date |
|  |  |  |
| Full name of Witness (print) |  | Address of Witness |

# Schedule 1 – CONTRACT SPECIFICS

**CONTRACT SPECIFICS**

[*Guidance note: this schedule will be completed as part of any finalised Contract*.]

| **ITEM** | **DESCRIPTION** | **CONTRACT SPECIFIC** |
| --- | --- | --- |
|  | **Principal's Representative** | **[*Insert name, title*]**  Address: [***insert***] Telephone: [***insert***] Email: [***insert***] |
|  | **Contractor’s Representative** | **[*Insert name, title*]**  Address: [***insert***] Telephone: [***insert***] Email: [***insert***] |
|  | **End Date** | *[insert]*  *If nothing stated, the date specified in the Letter of Award.* |
|  | **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 $XX.  **Products liability insurance:** where applicable the Contractor shall maintain Insurance to a value of $XX.  **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 $XX.  **Vehicle and equipment insurance:** where applicable the Contractor shall maintain insurance to a value of $XX  **Professional indemnity insurance**: where applicable the Contractor shall maintain insurance to a value of $XX. |
|  | **SOP Act applicable** | [Yes/No]  *If nothing stated, it will be deemed that the parties intend for the SOP Act to apply.* |
|  | **Time for Payment Claim** |  |
|  | **Additional Payment Claim requirements** | [insert] |
|  | **Certifications** | [insert any Certifications required] |

# Schedule 2 – Variation form

1. This Variation Form identified below is a Variation Form for the purposes of clause 14 of the agreement.
2. The Principal directs the Variation to the Goods and/or Services as set out below.

|  |  |  |
| --- | --- | --- |
| **Principal:** | **City of Nedlands (ABN 92 614 728 214)** of 71 Stirling Hwy, Nedlands, WA 6009 | |
| **Contractor:** | [Insert Contractor's name, ABN and address] | |
| **Goods and Services Contract:** | [Insert description of Goods and Services agreement by reference to the parties and the date of the agreement] | |
| **Contract Number:** | [Insert contract number for Goods and Services agreement] | |
| **Date of Variation Form:** | [Insert date this Variation Form is issued to the Contractor] | |
| **Description of Variation** | | |
|  | | |
| **Proposed Variation Response:** | [Insert reference to, or attach, any Variation Response under clause 14 applicable to the Variation required by this Variation Form or state that the Contract Price is to be adjusted in accordance with clause 14.12(b)] | |
| **New Completion Date (if applicable):** | [Insert new Completion Date only if accepting in line with the Variation Response] | |
| **New Contract Price:** | [To be confirmed in a purchase order once assessed in accordance with clause 14.] | |
| **Approved By:** | **Signature:** | …………………...………………………………. |
| **Name:** | …………………...………………………………. |
| **Position:** | …………………...………………………………. |
| **Date:** | …………………...………………………………. |