



City of Canning

A welcoming and thriving city

Request Conditions and General Conditions of Contract

July 2019

Contents

| | |
|---|----|
| PART A – REQUEST CONDITIONS | 5 |
| 1. Definitions and Interpretation | 5 |
| 1.1 Definitions..... | 5 |
| 1.2 Interpretation..... | 5 |
| 2. Conditions | 7 |
| 2.1 Submission of Offer | 7 |
| 2.2 Cancellation and Variation | 7 |
| 2.3 Principals Rights | 8 |
| 2.4 Selection of Preferred Respondent | 8 |
| 2.5 Discretion | 9 |
| 2.6 Agreement with these Request Conditions..... | 9 |
| 2.7 Agreement by Respondent | 9 |
| 2.8 Withdrawal of Offer..... | 9 |
| 2.9 Offer Validity Period | 10 |
| 2.10 Award of Contract..... | 10 |
| 2.11 Disclosure of Other Information | 10 |
| 2.12 Conflict of Interest..... | 10 |
| 2.13 No Bribe, Inducement or Offer of Employment..... | 10 |
| 2.14 Use of Lobbyists | 11 |
| PART B – GENERAL CONDITIONS OF CONTRACT..... | 12 |
| 1. Definitions and Interpretation | 12 |
| 1.1 Definitions..... | 12 |
| 1.2 Interpretation..... | 17 |
| 1.3 Order of Preference..... | 18 |
| 2. Supply of Deliverables..... | 18 |
| 2.1 Term | 18 |
| 2.2 Further Term..... | 18 |
| 2.3 Performance | 18 |
| 2.4 Credit Check and Performance Guarantee | 19 |
| 2.5 Supply Obligations Generally | 19 |
| 2.6 Over Supply | 19 |

| | | |
|-----|---|----|
| 2.7 | Addition of Goods | 20 |
| 2.8 | Deletion of Goods | 20 |
| 2.9 | Substitution of Goods..... | 20 |
| 3. | Bank Guarantee | 20 |
| 3.1 | Provision of Bank Guarantee..... | 20 |
| 3.2 | Recourse to the Bank Guarantee | 20 |
| 3.3 | Duration of Entitlement to the Bank Guarantee | 21 |
| 4. | Contractor's General Obligations | 21 |
| 4.1 | Compliance with Legal Requirements | 21 |
| 4.2 | Directions | 21 |
| 4.3 | Quality..... | 21 |
| 4.4 | Contractor to have Informed Itself | 22 |
| 4.5 | Plant and Equipment..... | 22 |
| 4.6 | Working Hours..... | 23 |
| 4.7 | Works Conduct..... | 23 |
| 4.8 | Security – Keys and Access Cards | 24 |
| 4.9 | Disability Access Inclusion Plan..... | 24 |
| 5. | Safety Obligations..... | 24 |
| 5.1 | Safety Obligations..... | 24 |
| 5.2 | Occupational Health and Safety (OHS) Management Systems | 26 |
| 6. | Time for Performance and Extension of Time..... | 26 |
| 6.1 | Time for Performance | 26 |
| 6.2 | Extension of Time | 26 |
| 6.3 | Conditions Precedent to an Extension of Time..... | 27 |
| 6.4 | Granting an Extension of Time..... | 27 |
| 6.5 | Concurrent Delays..... | 28 |
| 6.6 | Liquidated Damages | 28 |
| 6.7 | Contractor's Entitlement to Delay Costs..... | 28 |
| 7. | Inspections and Meetings and Reports | 28 |
| 7.1 | Inspections and Information..... | 28 |
| 7.2 | Meeting and Reporting | 29 |
| 8. | Delivery and Completion..... | 29 |
| 8.1 | Delivery of Goods | 29 |
| 8.2 | Notification of Commencement of Completion Tests..... | 29 |

8.3 Completion Tests 29

8.4 Notification of Results of Completion Tests 29

8.5 Determination of Completion 30

8.6 Repetition of Completion Process 30

8.7 Use of Deliverables before Completion 30

8.8 Effect of Completion Certificate 30

9. Defects 31

9.1 Defects Liability of Goods 31

9.2 Defects Liability for Services 31

9.3 Principal's Rights 31

9.4 Title and Risk in Defective Goods 32

10. Personnel and Subcontractors 32

10.1 Representatives 32

10.2 Industrial Relation Matters and Industrial Action 32

10.3 Subcontracting 32

11. Invoicing and Payment 33

11.1 Price 33

11.2 Invoices 33

11.3 Payment of Price 33

11.4 Disputed Invoices 33

11.5 Payment is not Acceptance 33

11.6 Set Off and Deductions 33

11.7 Price Variation Mechanism 33

12. Title and Risk 34

12.1 Title and Risk 34

13. Variation 34

13.1 Variation Proposal 34

13.2 Principal to Direct Variations 34

13.3 Variation Form 35

13.4 Effect of Variations 35

14. Termination 35

14.1 Termination for Breach 35

14.2 Consequences of Termination 35

14.3 Preservation of Rights 36

15. Indemnity.....36

- 15.1 General Indemnity 36
- 15.2 Third Party Claims 36
- 15.3 Indemnity Particulars..... 37
- 15.4 Benefit of Indemnities 37

16. Limitations of Liability 37

- 16.1 Limitation Generally..... 37
- 16.2 Consequential Loss..... 37

17. Insurance 37

- 17.1 Insurances to be Effected 37
- 17.2 Common Terms 38
- 17.3 Contractor’s Further Obligations 38
- 17.4 Public and Product Liability Insurance..... 39
- 17.5 Vehicle and Equipment Insurance..... 40
- 17.6 Insurance of Employees 40
- 17.7 Professional Indemnity Insurance 40

18. Confidential Information..... 41

- 18.1 Confidential Information..... 41

19. Intellectual Property Rights 41

- 19.1 Intellectual Property Rights 41

20. Suspension 42

- 20.1 Suspension 42

21. Force Majeure Event..... 42

- 21.1 Force Majeure Event..... 42

22. Goods and Services Tax 43

- 22.1 Goods and Services Tax 43

23. Settlement of Disputes..... 43

- 23.1 Settlement of Disputes..... 43

24. Personal Property Securities Act 44


- 24.1 Personal Property Securities Act..... 44

25. Notices..... 45

- 25.1 Notices 45

26. General..... 45

- 26.1 Application of this Contract 45



| | | |
|-------|--|----|
| 26.2 | Governing Law | 45 |
| 26.3 | Assignment | 46 |
| 26.4 | Construction Contracts Act | 46 |
| 26.5 | Proportionate Liability | 46 |
| 26.6 | Severability..... | 46 |
| 26.7 | Entire Contract | 46 |
| 26.8 | Rights and Remedies..... | 46 |
| 26.9 | Waivers and Amendments..... | 47 |
| 26.10 | Variation to Contract Terms | 47 |
| 26.11 | Counterparts | 47 |
| 26.12 | Survival | 47 |
| 27. | Annual Performance Review | 47 |
| 27.1 | Annual Performance Review | 47 |
| 28. | Key Performance Indicators (KPI's) | 47 |
| 28.1 | Key Performance Indicators | 47 |

PART A – REQUEST CONDITIONS

1. Definitions and Interpretation

1.1 Definitions

In the Request:

| Term | Meaning |
|-----------------------|--|
| Addendum | means any addendum issued by the Principal) in relation to the Request and made publicly available via the Principal's Tenderlink portal. |
| Closing Time | means the time and date specified on the front of the Request as the Closing time for the submission of Offers. |
| Contract | means either: 1 The Framework Agreement between the Principal and the successful Respondents of a Pre-Qualified Panel of Suppliers, for the supply of Products and/or Services by the successful Respondents; or 2 The contract between the Principal and the successful Respondent for the supply of Products and/or Services by the successful Respondent. |
| General Conditions | means Part B of this document. |
| Offer | means the Offer submitted by the Respondent in response to the Request. |
| Offer Information | means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request. |
| Offer Validity Period | means the period specified in clause 1.3 of Section 1 in Part A of the Request. |
| Offered Price | means the Price, of the Price determined by applying the formula or method, specified in the Offer. |
| Products | means Goods. |
| Respondent | means any person who submits an Offer. |
| Request Conditions | means this Part A. |
| Section | means a Section of the Request document. |

1.2 Interpretation

In the Request and these Request Conditions, words defined in Part B – General Conditions of Contract of this document also apply to these Request Conditions, and unless the context otherwise requires:

- (a) Words in the singular include the plural and vice-versa;
- (b) A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) Words importing a gender include any gender;

- (d) A reference to a person include a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to, a person taking by novation) and permitted assigns;
- (f) If the Respondent consists of a partnership or joint venture, then:
 - (1) An obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;
 - (2) Each person who comprises the Respondent agrees to do all things necessary to enable the enable the obligations imposed on the Respondent under the Request to be undertaken; and
 - (3) The act of one person who comprises the Respondent binds the other persons who comprise the Respondent;
- (g) An agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) A reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Principal) or the Respondent;
- (i) A reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;
- (j) All the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Principal and the Respondent;
- (k) Headings are included for convenience and do not affect the interpretation of the Request;
- (l) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (m) No rule or interpretation is to be applied to disadvantage the Principal or the Respondent on the basis that it was responsible for preparing the Request;
- (n) If a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (p) A reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) A reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) A reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
- (s) If a period of time is specified and dates from a given day or the end of an event or act, it is to be calculated inclusive of that day;
- (t) If a date is stipulated for payment of for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) A reference to a monetary amount means that amount in Australian currency; and
- (v) A reference to time means the time observed by the general community from time to time in Western Australia.

2. Conditions

2.1 Submission of Offer

Any Offer which:

- (a) Is not submitted before the Closing Time;
- (b) Is incomplete at the Closing Time; or
- (c) Is not submitted in accordance with the provisions of clause 1.2 in Part A of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

When submitting the Offer electronically, the Respondent must ensure that the electronic copy of the Offer comprises two (2) files. The first must be a **single .pdf** file addressing all required areas within Part B, and any supplemental information the Respondent wishes to provide, to allow the Principal to evaluate the response. The second file must be the **returned .xls 'Schedule 3 – Pricing Submission'** file, appropriately completed.

The Offer must be received in full by the Principal prior to the Closing Time. In submitting the Offer electronically, the Respondent agrees that:

- (a) Receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Principal's computer records that the Offer was received;
- (b) If the electronic copy contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Principal all costs incurred by the Principal arising from, or in connection with, the virus;
- (c) Lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;
- (d) The Principal will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;
- (e) If the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Principal may request the Respondent to provide another copy of the Offer electronically;
- (f) If the Principal requests the provision of another copy of the Offer, then the Respondent must:
 - (1) Provide the copy in the form or forms requested within the period specified by the Principal;
 - (2) Provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and
 - (3) Provide a copy of the electronic tender lodgement service receipt for the initial electronic submission.

An Offer is not assignable by the Respondent without the prior written consent of the Principal.

If an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.

An Offer is, upon submission, the absolute property of the Principal and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the Principal may make such copies of the Offer as required for the proper evaluation of the Offer.

2.2 Cancellation and Variation

The Principal reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request prior to the Closing Date.

If the Principal cancels, varies, supplements, supersedes or replaces the Request, then;

- (a) The Principal will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
- (b) The Respondent shall not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

2.3 Principals Rights

The Principal is not obliged to accept the Offer containing the lowest Offered Price.

The Principal is under no obligation to accept any Offer and may reject any Offer or all Offers, at its absolute discretion, including:

- (a) If an Offer fails to comply with these Request Conditions;
- (b) If an Offer fails to comply with any of the requirements set out in Part B of the Request;
- (c) If an Offer contains information or representations that are false or misleading;
- (d) If anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the *Corporations Act 2001* (Cth);
- (e) In respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
- (f) If the Principal decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Principal may:

- (a) Request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
- (b) Request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Principal.

In evaluation an Offer, the Principal may take into account any information regarding the Respondent that the Principal has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other agreement, arrangement or dealing between the Respondent and a Public Authority.

The Principal reserves the right to conduct site visits as it deems appropriate.

2.4 Selection of Preferred Respondent

The Principal may select, but is not obliged to select, one (1) or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Conditions, including clause 2.3, continue to apply until such time as a Contract is awarded or the Request is terminated.

The Respondent agrees that, if it is selected as a preferred Respondent, then:

- (a) Its Offer will remain open for acceptance by the Principal at any time prior to the expiry of the Offer Validity Period;
- (b) The Principal may choose to negotiate any aspect of the Offer; and
- (c) The Principal may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Principal.

At any time during the negotiations, either the Principal or a preferred Respondent may terminate the negotiations for any reason.

If the Principal does terminate negotiations, the Principal may:

- (a) Accept the Respondent's original Offer; or
- (b) Select and then negotiate with any other Respondent as a preferred Respondent, in accordance with this clause 2.4; or
- (c) Decline all Offers and either re-tender or seek an alternate procurement process.

2.5 Discretion

Whenever the consent of the Principal is required under the Request, that consent may be given or withheld by the Principal, at its absolute discretion and may be given subject to such conditions as the Principal may determine.

2.6 Agreement with these Request Conditions

In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Conditions.

2.7 Agreement by Respondent

In submitting an Offer, the Respondent agrees that:

- (a) **Information True and Correct** – All information in its Offer and all Offer information is true and correct at the time of its submission;
- (b) **Relies on Own Enquiries** - Other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, the Request Conditions and the Supply of Goods and/or Services Supply Agreement;
- (c) **Understood Request** – It has examined and understood the Request, each addendum issued under the Request, the Request Conditions, the Supply of Goods and/or Services Supply Agreement and any other information available to the Respondent in respect of the Request;
- (d) **Made Reasonable Enquiries** – It has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;
- (e) **Does Not Rely on Warranties** – Other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal;
- (f) **No Secret Commission** – It has not paid or received and will not pay or receive any secret commission in respect of the Request;
- (g) **No Collusion** – It has not colluded and will not collude with any other person in respect of the Request;
- (h) **No Inflation or Deflation of Offered Price** – The Offered Price is not inflated or deflated to advantage another Respondent;
- (i) **No Unlawful Arrangement** – It has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;
- (j) **No Improper Influence** – It has not sought and will not seek to influence any decision in respect of the Request by improper means; and
- (k) **Own Cost and Expenses** – It will pay its own costs and expenses in connection with the preparation and submission of its Offer, and any discussions, enquiries or negotiations with, or provision or consideration or further information to the Principal, whether before or after the submission of Offer, irrespective of whether its Offer is accepted or not.

2.8 Withdrawal of Offer

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Principal in writing.

2.9 Offer Validity Period

Unless the Respondent withdraws its Offer under clause 2.8, the Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period.

The Offer Validity Period may be extended or further extended by the Principal by advising each Respondent in writing at any time or times.

2.10 Award of Contract

Upon selection of a recommended Respondent and the successful conclusion of any negotiations, the Principal will proceed to Award of Contract by notifying all parties involved as to the outcome.

The successful Respondent will be required to execute an Agreement with the Principal comprised of Part B of these Conditions, and the relevant Schedules from the Request document.

Failure to return a signed copy of the executed Agreement to the Principal within ten (10) Business Days may constitute grounds for the Principal to terminate the contract, and award to the next Value for Money Respondent.

2.11 Disclosure of Other Information

- (a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the *Freedom of Information Act 1992 (WA)* and may also be disclosed by the Principal under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- (b) By submitting an Offer, the Respondent releases the Principal from any liability whatsoever for any loss, injury, damage, liability, costs or expenses resulting from the disclosure of its Offer and its Offer Information under this clause by the Principal.
- (c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* and the *Auditor General's Act 2006* are not affected in any way by the Request.
- (d) Subject to this clause and to the provisions of the *Financial Management Act 2006*, the *Auditor General's Act 2006* and the *Local Government (Functions and General) Regulations 1996*, the Principal will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

2.12 Conflict of Interest

The Respondent must, prior to any acceptance of its Offer by the Principal, disclose to the Principal any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.


The Principal may, at its absolute discretion, accept or reject the Respondent's Offer if the Principal considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

2.13 No Bribe, Inducement or Offer of Employment

The Respondent must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request, with respect to:

- (a) An offer of employment; or
- (b) Availability of employment,

with the Respondent or any related entity.



The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Principal in connection with the Request.

2.14 Use of Lobbyists

The Respondent warrants and represents to the Principal that any “lobbyist” (as that term is defined in Public Sector Commissioner’s Circular 2009-013 “Public Sector Commissioner’s Circular”) which can be found at

www.publicsector.wa.gov.au/AgencyResponsibilities/PSCCirculars

that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with the Request, is duly registered as a “lobbyist” in terms of that Public Sector Commissioner’s Circular and has fully complied with its obligations under it.

PART B – GENERAL CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1 Definitions

In this agreement, except where the agreement otherwise requires:

| Term | Meaning |
|--------------------------|--|
| Affected Obligations | has the meaning given in clause 21. |
| Approval | any certificate, licence, consent, permit, approval, authority or requirement of any Law or any organisation having jurisdiction in connection with the supply of the Deliverables. |
| Approximate Quantities | has the meaning given in clause 2. |
| Authority | any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia. |
| Bank Guarantee | an irrevocable and unconditional bank guarantee: <ol style="list-style-type: none"> 1 substantially in the form set out in Form 1 – Bank Guarantee (or a form otherwise approved by the Principal); and 2 issued by an Australian trading bank registered under the <i>Banking Act 1959 (Cth)</i> or other financial institution, with a current Standard & Poor's rating of not less than A- or a similar rating from another financial institution approved in writing by the Principal. |
| Bank Guarantee Amount | the amount set out in Form 1 – Bank Guarantee (Bank Guarantee Amount) |
| Business Day | a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December. |
| Buying Rules | means the defined processes used by the Principal to purchase items under a Pre-Qualified Panel of Suppliers. |
| Claim | any claim, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort (including negligence), statute or otherwise. |
| Completion | <ol style="list-style-type: none"> 1 the Deliverables have been supplied and are substantially in accordance with the requirements of this agreement except for minor Defects which do not prevent the Deliverables from being reasonably capable of being used for their intended purpose; 2 the Deliverables have passed all Completion Tests (if any) in accordance with Scope of the Deliverables; and 3 all warranties, certificates, approvals, manuals, documents and other information required under this agreement (including the Scope of the Deliverables) for Completion to be achieved have been supplied to the Principal, and Complete and Competed have corresponding meanings |
| Completion Certificate | a certificate issued by the Principal under clause 8.5 evidencing the Date of Completion. |
| Completion Tests | the tests (if any) described in the Scope of Deliverables for the purposes of determining whether the Deliverables are Complete and Completion Testing has a corresponding meaning. |
| Confidential Information | the terms of this agreement and, in respect of a party, all information in connection with the party's business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of this agreement) and which: |

| | |
|-------------------------------------|---|
| | <p>1 is, by its nature, confidential;</p> <p>2 is treated or designated as confidential by the party; or</p> <p>3 the receiving party knows, or ought to know, is confidential,</p> <p>but does not include information which:</p> <p>4 is or becomes public knowledge other than by a breach of this agreement; or</p> <p>5 has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.</p> |
| Consequential Loss | <p>1 includes any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads; but</p> <p>2 does not include Loss arising from Claims by third parties, the Principal's Personnel or the Contractor's Personnel in respect of property damage, personal injury, sickness or death.</p> |
| Construction Contracts Act | the <i>Construction Contracts Act 2004 (WA)</i> . |
| Contractor Maximum Liability Amount | the amount set out in item 11 (Contractor Maximum Liability Amount) of Schedule 1 – Contract Details . |
| Contractor's Obligations | all of the obligations the Contractor is or may be required to perform under this agreement, and includes the supply of the Deliverables. |
| Contractor's Personnel | any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor. |
| Contractor's Representative | is the person named as such in item 20 (Contractor's Representative) of Schedule 1 - Contract Details or any replacement person notified to the Principal from time to time. |
| Contractor's Technical Material | <p>all Technical Material which is:</p> <p>1 prepared, or required to be prepared, by or on behalf of the Contractor under this agreement;</p> <p>2 delivered, or required to be delivered, by or on behalf of the Contractor to the Principal under this agreement; or</p> <p>3 incorporated into Technical Material described in paragraphs 1 or 2 of this definition.</p> |
| Date for Completion | the date for Completion specified in item 5 (Date for Completion) of Schedule 1 – Contract Details . |
| Date of Completion | the date that the Deliverables are Complete, as set out in the Completion Certificate issued under clause 8.5. |
| Defaulting Party | has the meaning given in clause 14.1. |
| Defect | in respect of a Deliverable, means that any aspect of that Deliverable is not in accordance with this agreement, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup, and Defective has a corresponding meaning. |
| Defects Liability Period | subject to clause 9.3(c), the period of time beginning on the Date of Completion and ending on the expiry of the time stated in item 16 (Defects Liability Period) of Schedule 1 – Contract Details . |
| Deleted Good | has the meaning given in clause 2.6. |
| Deliverables | each deliverable, including Goods or Services (or both), to be supplied by the Contractor under this agreement. |
| Delivery Point | the Site or such other place as is specified in item 7 (Delivery Point for Goods) of Schedule 1 - Contract Details as the place for the delivery of the Goods. |

| | |
|-----------------------------|--|
| Dispute | any dispute or difference between the parties arising in connection with the subject matter of this agreement. |
| Document | includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced. |
| End Date | the date set out in item 3 (End Date) of Schedule 1 – Contract Details , not including any options to extend the Term. |
| Fixed Quantities | has the meaning given in clause 2. |
| Force Majeure Event | any event or circumstance which: 1 is beyond the reasonable control of the party claiming force majeure; 2 prevents the affected party from performing its obligations under this agreement; and 3 cannot be prevented, overcome or remedied by the exercise by the party affected of a reasonable standard of care and diligence, but is not an event which arises from any of the following: 4 a breach of a contract, including this agreement, or Law by the Contractor; 5 negligence by the Contractor relating to the performance of the Contractor's Obligations; 6 an occurrence that is a risk assumed by the Contractor under this agreement; 7 a shortage or delay in the supply of the Deliverables required under this agreement; or 8 wet or inclement weather. |
| Good Industry Practice | 1 the exercise of the degree of skill, diligence, prudence and foresight that reasonably would be expected from a nationally experienced contractor of the highest skill and quality, with particular experience in Australia in undertaking obligations of the same nature as the Contractor's Obligations and under conditions comparable to those applicable to the Contractor's Obligations; 2 compliance with applicable standards and codes, being the standards and codes specified in this agreement or, if this agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied by a principal in the circumstances; and 3 compliance with any applicable Laws. |
| Goods | the goods (if any) to be supplied by the Contractor under this agreement, as specified in the Scope of Deliverables. |
| GST | goods and services tax applicable to any taxable supplies as determined under the GST Law. |
| GST Law | <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any related Act imposing such tax. |
| Improved Good | has the meaning given in clause 2.5(a)(2) |
| Industrial Action | a strike, lockout, demarcation or industrial dispute which affects the supply of the Deliverables |
| Industrial Relations Matter | any matter arising out of, or in connection with, the supply of the Deliverables and which relates to: 1 a claim for payment for, or on behalf of, any Subcontractor or employee of the Contractor; 2 a claim for payment for, or on behalf of, any employee of a Subcontractor of the Contractor; or 3 a claim arising out of, or in connection with, changes in State or Federal awards or work practices including any changes resulting from current State or Federal initiatives in regard to work procedures, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, site allowances and bonuses now or |

| | |
|-----------------------------|---|
| | in the future to become allowable or payable within the construction industry. |
| Insurance | the insurances which the Contractor is required to obtain under clause 17. |
| Insurance End Date | in respect of each of the Insurances is, the date set out in clauses as the Insurance End Date for that Insurance |
| Insolvency Event | any of the following events in relation to a party: 1 the party commits an act of bankruptcy or an order is made for the party to be wound up (other than for the purpose of solvent restructuring or amalgamation); 2 a controller, receiver, receiver/manager or administrator or liquidator or provisional liquidator is appointed to the party; 3 the party takes any step such as calling a meeting of its shareholders or creditors or both or an application is made to a court with the aim of effecting one of the circumstances in paragraphs (1) or (2) above; 4 the party ceases or resolves to cease to carry on business; 5 the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts; or 6 any event analogous to the events listed in paragraphs (1), (2), (3), (4) or (5) above occurs. |
| Intellectual Property Right | 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 and analogous rights, trade secrets, know how, processes, concepts, plant breeders 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. |
| Invoice | an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law and which includes the information set out in clause |
| Law | 1 any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and 2 any common or customary law and equity. |
| LD Cap | the maximum amount of Liquidated Damages payable in respect of a failure to achieve Completion by the Date for Completion, as specified in item 17 (Liquidated Damages Cap) of Schedule 1 – Contract Details . |
| LD Rate | an amount of Liquidated Damages payable per day to the Principal if Completion is not achieved by the Date for Completion, as specified in item 18 (Liquidated Damages Rate) of Schedule 1. |
| Legal Requirement | 1 Laws; 2 Approvals; and 3 fees and charges payable in connection with the above. |
| Liquidated Damages | the liquidated damages (if any) payable in accordance with clause 6.6. |
| Local Government | any local government established under the <i>Local Government Act 1995 (WA)</i> other than the Principal (unless specifically included). |
| Loss | liability, loss, damage, cost, personal injury (including illness), death and amounts payable on a Claim (including all litigation costs on a full indemnity basis). |
| New Good | has the meaning given in clause 25(a)(1) |
| Non-Defaulting Party | has the meaning given in clause 14.1. |

| | |
|------------------------------------|---|
| Order | means a purchase order from the Principal to the Contractor which requires specific Deliverables under this agreement |
| Personnel | the Principal's Personnel or the Contractor's Personnel, as the case may be. |
| Plant and Equipment | all materials, plant, equipment, tools, vehicles and machinery necessary and incidental to the performance of the Contractor's Obligations. |
| PPS Law | the PPSA and any amendment made at any time to the <i>Corporations Act 2001 (Cth)</i> or any other legislation as a consequence of the PPSA. |
| PPSA | the <i>Personal Property Securities Act 2009 (Cth)</i> . |
| Pre-Qualified Panel of Suppliers | any Panel of pre-qualified suppliers, selected through an appropriate procurement process, engaged to supply the Principal with Products and/or Services as required |
| Price | the prices or rates specified in item 1 (Price) of Schedule 1 – Contract Details and includes any addition or deduction the subject of a Variation but excluding any other additions or deductions which may be required to be made pursuant to this agreement. |
| Price Variation Mechanism | the method under which the Price may be altered under the contract term, as such in item 6 (Price Variation Mechanism) of Schedule 1 – Contract Details . |
| Principal | the Principal is the Chief Executive Officer of the City of Canning, or their nominated delegate. |
| Principal Maximum Liability Amount | the amount specified in item 12 (Principal Maximum Liability Amount) of Schedule 1 – Contract Details . |
| Principal's Personnel | officers, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor's Personnel. |
| Principal's Representative | is the person named as such in item 19 (Principal's Representative) of Schedule 1 – Contract Details or any replacement person notified to the Contractor from time to time. |
| Representative | the Principal's Representative or the Contractor's Representative, as the case may be. |
| Scope of Deliverables | the scope of the Deliverables set out |
| Services | the services (if any) to be performed by the Contractor under this agreement, as set out in the Scope of the Deliverables, and includes: <ol style="list-style-type: none"> 1 any part of the services so identified and particularised; 2 any ancillary services; and 3 services required to be performed to deliver the Goods. |
| Site | the location where the Services will be performed as set out in item 9 (Site for Services to be Completed) of Schedule 1 – Contract Details . |
| Special Conditions | those conditions contained within Item 26 (Special Conditions) of Schedule 1 – Contract Details . |
| Standards and Procedures | any guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time. |
| Start Date | the date set out in item 2 (Start Date) of Schedule 1 – Contract Details . |
| Subcontractor | any person engaged by the Contractor in connection with the Deliverables and includes consultants, subcontractors, suppliers and other contractors. |
| Substitute Good | has the meaning given in clause 2.7 |
| Substituted Good | has the meaning given in clause 2.7 |
| Tax | any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to |

| | |
|---------------------|---|
| | another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty. |
| Technical Material | includes plans, designs, drawings, engineering information, data, specifications, reports, processes, concepts, manuals, specifications, accounts and any other material specified in this agreement. |
| Tender | the offer submitted by the Contractor to supply the Deliverables under this agreement and includes associated Documents. |
| Term | has the meaning given in clause 2. |
| Variable Quantities | has the meaning given in clause 2. |
| Variation | any change to the Deliverables, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Deliverables. |
| Variation Form | a notice substantially in the form set out in Form 2 – Variation Form under which the Principal has directed a Variation in accordance with clause 13. |
| Variation Proposal | has the meaning given in clause 13.1(b). |
| Wilful Misconduct | any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this agreement. |

1.2 Interpretation

In these General Conditions of Contract, headings are for convenience only and do not affect interpretation of this agreement and, unless the context otherwise requires:

- (a) Words in the singular include the plural and vice-versa;
- (b) Words importing a gender include any gender;
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority;
- (e) A reference to a clause, section, party, schedule, attachment or annexure is a reference to a clause of, section of, and a party, schedule, attachment and annexure to, this agreement and a reference to this agreement includes any schedule, attachment and annexure;
- (f) A reference to 'approved' or 'approval' will be deemed to mean approved in writing or approval in writing;
- (g) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) A reference to a party to a document includes that party's successors and permitted assigns;
- (j) A reference to a day, month, quarter or year is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (k) A promise on the part of 2 or more persons binds them jointly and severally;
- (l) A reference to 'including', 'includes', 'include' or any similar expression must be read as if it is followed by '(without limitation)';

- (m) No rule of construction applies to the disadvantage of a party on the bases that the party put forward this agreement or any part of it;
- (n) 'supply' and 'supplied', when used with reference to the Deliverables, includes supply, perform, deliver, install or provide, as applicable; and
- (o) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) Which ceases to exist; or
 - (2) Whose powers or functions (or a portion thereof) are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions or a portion thereof.

1.3 Order of Preference

To the extent of any inconsistency between the several parts of this agreement, the following parts are listed in order of precedence:

- (a) Special Conditions;
- (b) Clauses 1 to 26;
- (c) The Scope of Deliverables;
- (d) Any other schedule, attachment or annexure to this agreement; and
- (e) Any Order issued under a Contract or Pre-Qualified Panel of Suppliers.

2. Supply of Deliverables

2.1 Term

The agreement commences on the Start Date and Ends on the End Date (**Term**), unless terminated in accordance with its terms, not including any options to extend the Term.

2.2 Further Term

The Principal has the option or options to extend the Term for the period or periods (as applicable) specified in Item 4 (**Further Term**) of **Schedule 1 – Contract Details**.

If the Principal wishes to exercise an option under this agreement, then the Principal must give the Contractor a notice at least 20 Business Days before the expiry of the Term, stating the agreement is to be extended and the period of the extension.

If the Principal exercises an option to extend the agreement, then references to 'the Term' in this agreement is to be read as including the period of extension of the Term, and references to 'the End Date' are to be read as including the revised End Date after the extension option has been applied.

2.3 Performance

- (a) The Contractor must supply the Deliverables to the Principal, and perform the Contractor's Obligations, in accordance with this agreement.
- (b) In consideration of the Contractor's performance of the Contractor's Obligations, the Principal must pay the Contractor the Price in accordance with this agreement.
- (c) Other than expressly stated otherwise in this agreement, the Price is inclusive of:

- (1) All charges and costs for the supply of the Goods in accordance with this agreement, including packaging, packing, insurance and delivery of the Goods;
 - (2) All charges and costs for the performance of the Services, including the performance of any miscellaneous services or items which are commonly performed, used or supplied in conjunction with the Services; and
 - (3) All Taxes.
- (d) The Price will not be increased, except as expressly provided under Item 6 (**Price Variation Mechanism**) of **Schedule 1 – Contract Details**.

2.4 Credit Check and Performance Guarantee

The Principal reserves the right to conduct financial due diligence on the Contractor prior to entering into an agreement, and from time to time during the agreement. If the Principal determines, in its absolute discretion, that the Contractor lacks the financial capability to perform the requirements of this agreement during the Term then:

- (a) The Principal may seek a performance guarantee from the Contractor; and
- (b) If the Principal requests a performance guarantee, then the Contractor must provide the performance guarantee within 15 Business Days (or any other period agreed in writing by the parties).

2.5 Supply Obligations Generally

- (a) Where this agreement is for the supply of Goods by reference to:
 - (1) '**Approximate Quantities**', the quantities stated will be regarded as an estimate only of the quantity which may be required. The Principal will not be bound to purchase the exact nominated quantity of Goods, but the quantity order may vary within a margin not exceeding 25 percentage above or below the nominated approximate quantity and any such variance will not affect the unit price of the Goods;
 - (2) '**Fixed Quantities**', the Principal will purchase the actual quantity shown; or
 - (3) '**Variable Quantities**', the Principal will not be required to purchase all or any Goods listed except such of the Goods as may be ordered by the Principal.
- (b) Where this agreement does not specify whether the required quantities are Approximate Quantities, Fixed Quantities or Variable Quantities, the parties agree that they will be deemed to be Variable Quantities.
- (c) The Principal may order any one type or item of the Goods either in one single lot or instalments.
- (d) Where the quantity or value of Services set out in Scope of Deliverables is described as 'approximate' it will be regarded only as an estimate of the quantity or value which may be required under this agreement and the Principal will not be required to take or accept the nominated approximate quantity or value of Services.

2.6 Over Supply

If the Contractor:

- (a) Delivers more Goods than the quantity specified in this agreement, the Principal may return any quantity of Goods in excess of that specified in this agreement to the Contractor at the Contractor's sole risk and expenses associated with returning the excess quantity of Goods, logistics to storage and warehousing when required, including disposal of excess quantity of Goods when the Contractor notify the Principal in writing; or
- (b) Performs more Services than the quantity specified in this agreement, the Principal is not liable to pay for the additional quantity.

2.7 Addition of Goods

The Contractor must promptly notify the Principal in writing when it offers to supply:

- (a) A new Good which is similar in nature to, or has the same function as, a Good ('**New Good**'); or
- (b) A Good which is an improved version of a Good ('**Improved Good**') supplied under this agreement,

on a general commercial basis or otherwise to the public or other customers.

If requested in writing by the Principal, the Contractor must add the new or improved Good (as applicable) to the list of Deliverables offered to the Principal under this agreement.

2.8 Deletion of Goods

The Contractor may, with the Principal's prior written consent, remove a Good ('**Deleted Good**') from the list of Deliverables offered to the Principal under this agreement.

2.9 Substitution of Goods

The Contractor may, with the Principal's prior written consent, permanently or temporarily substitute another Good ('**Substitute Good**') for a Deliverable which is offered to the Principal under this agreement ('**Substituted Good**'), whether the substitute Good is:

- (a) Different in nature from, or has a different function to, the substituted Good,
- (b) Supplied or sourced from a different country of origin other than the substituted Good; or
- (c) Manufactured by a manufacturer other than the manufacturer of the substituted Good.

3. Bank Guarantee

3.1 Provision of Bank Guarantee

- (a) From the Start Date until the End Date, the Contractor must provide to the Principal a Bank Guarantee for the Bank Guarantee Amount in accordance with this clause 3.
- (b) The Contractor must obtain and deliver any Bank Guarantee to the Principal as soon as possible, and in any event, no later than 10 Business Days after the Start Date.
- (c) The Contractor is not entitled to lodge any claim for payment until it has delivered the Bank Guarantee in accordance with clause 3.1(b).
- (d) Where the Bank Guarantee has an expiry date and this agreement requires the Bank Guarantee to remain in force beyond that expiry date, then at least 20 Business Days prior to the expiry date of the Bank Guarantee, the Contractor must provide to the Principal a replacement Bank Guarantee meeting the requirements of this agreement.
- (e) If the Contractor does not provide a replacement Bank Guarantee to the Principal at least 5 Business Days prior to the expiry date of the existing Bank Guarantee, then the Principal may make a demand on the existing Bank Guarantee, and may hold those funds as cash security in an interest bearing account in lieu of a Bank Guarantee.
- (f) The Principal may access any cash security held by it in accordance with clause 3.1 in the same way the Principal may access the Bank Guarantee under this clause 3. The Contractor will own any interest earned on such cash security.

3.2 Recourse to the Bank Guarantee

- (a) The Principal has recourse to the whole or part of the Bank Guarantee if:

- (1) The Principal makes a Claim that it is owed any amount by the Contractor under this agreement and has not been paid that amount by the Contractor by its due date; or
- (2) The Contractor suffers an Insolvency Event

to the extent required to pay the Principal's Claim.

- (b) The amount of the Bank Guarantee retained by the Principal under clause 3.2 will not exceed the amount of the Principal's Claim.

3.3 Duration of Entitlement to the Bank Guarantee

- (a) The Principal's entitlement to the Bank Guarantee will cease at the later of:
 - (1) 10 Business Days after completion of all the Contractor's Obligations; or
 - (2) 10 Business Days after all sums of money owed by the Contractor to the Principal under this agreement have been paid in full.
- (b) Upon the Principal's entitlement to security ceasing, the Principal will release and return the Bank Guarantee to the Contractor.

4. Contractor's General Obligations

4.1 Compliance with Legal Requirements

The Contractor must:

- (a) Comply with all Legal Requirements in any way affecting or applicable to the Deliverables or this agreement (or both); and
- (b) Obtain any Approvals necessary for the supply of the Deliverables.
- (c) If a Legal Requirement is in conflict with a term of this agreement, the Contractor must notify the Principal in writing. If such Legal Requirement necessitates a change to the Deliverables or the way in which they must be supplied, the Principal may, acting reasonably, direct the Contractor as to how the inconsistency must be addressed. Such inconsistency will be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Price or to make any other Claim for relief.

4.2 Directions

The Contractor must, and must ensure the Contractor's personnel, comply with:

- (a) All directions given by the Principal's Representative or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to this agreement or the Deliverables; and
- (b) The Standards and Procedures that are applicable to this agreement.

4.3 Quality

The Contractor must ensure that:

- (a) All Deliverables conform to the description and standards specified in this agreement (including the Scope of Deliverables);
- (b) If the Contractor gave the Principal samples or prototypes of any of the Goods or demonstrations of any of the Services before the Principal entered into this agreement, the relevant Deliverables correspond in nature and quality with those samples, prototypes and demonstrations (as applicable);
- (c) The Goods and any items which the Contractor uses or supplies in conjunction with the Services:

- (1) Comply with any relevant Standards Australia Limited standard and any other standards specified in this agreement;
- (2) Are properly, safely and securely packaged and labelled for identification and safety; and
- (3) Are new (unless otherwise expressly authorised by the Principal in writing) and of merchantable quality;
- (d) All Deliverables are fit for their intended purpose and, to the extent that the Deliverables are design Services, the works being designed will be fit for their intended purpose as described in this agreement;
- (e) The Services are performed:
 - (1) By appropriately experienced, skilled, qualified and trained Contractor's Personnel;
 - (2) In accordance with Good Industry Practice; and
 - (3) With due care and skill.
- (f) The Contractor's Personnel are able to:
 - (1) Supply the Deliverables without the supervision of the Principal's Personnel; and
 - (2) Resolve any matters arising from the supply of the Deliverables.
- (g) The Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Principal's behalf if the Principal requests).

4.4 Contractor to have Informed Itself

- (a) The Contractor acknowledges it has:
 - (1) Examined this agreement carefully and any other information made available by the Principal to the Contractor in connection with the Tender or this agreement;
 - (2) Examined the Site and its surroundings (if applicable);
 - (3) Satisfied itself as to the correctness and sufficiency of its Tender and that the Price covers the cost of doing all things necessary for proper performance of this agreement; and
 - (4) Obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender or the performance of the Contractor's Obligations.
- (b) Failure by the Contractor to do all or any of the things set out in this clause 4.4 will not relieve the Contractor of its obligation to perform and complete the Scope of Deliverables in accordance with this agreement.

4.5 Plant and Equipment

- (a) Unless this agreement provides otherwise, the Contractor must supply all labour, Plant and Equipment to be used in the performance and Scope of Deliverables under the Contractor's Obligations, at the Contractor's expense.
- (b) The Contractor is responsible for, including the security of, the Contractor's Plant and Equipment used for the performance of the Contractor's Obligations.
- (c) If the Principal provides any Plant and Equipment to the Contractor (as specified in Item 8 (Principal's Plant and Equipment) of **Schedule 1 – Contract Details**, or as otherwise agreed to in writing by), that Plant and Equipment remains at the Principal's property or returned to the Principal's property within five Business Days after the issue of a Completion Certificate by the Principal..

- (d) The Contractor may only use that Plant and Equipment for performing the Contractor's Obligations and must keep the Principal's Plant and Equipment in good order and condition, except for fair wear and tear.
- (e) The Contractor must compensate the Principal for any Loss to the Principal's premises, property (including Plant and Equipment) or property in the Principal's possession or control caused by the Contractor or the Contractor's Personnel.

4.6 Working Hours

- (a) The Contractor must only supply the Deliverables on Business Days, between 7:00AM and 7:00PM (**Ordinary Work Hours**).
- (b) The Contractor may supply the Deliverables at times outside the Ordinary Working Hours if:
 - (1) The Contractor provides the Principal's Representative with a written request stipulating:
 - (A) The requested working date and times;
 - (B) The number or personnel who would be working; and
 - (C) Any reasons why the Contractor needs to supply the Deliverables outside the Ordinary Work Hours; and
 - (2) The Principal's Representative consents to the Contractor's written request, in writing.
- (c) Unless otherwise agreed in writing, the Contractor is liable for any costs incurred by the Principal due to these works being undertaken outside Ordinary Work Hours, to the extent that those costs are greater than what the Principal would have incurred if those works were undertaken during Ordinary Work Hours. Such costs include consultant attendance fees and staff wages.

The Contractor shall be liable for any additional costs, including all expenses in connection with additional attendance by the Principal's consultants, the Principal may incur as a result of work done outside these normal hours.

4.7 Works Conduct

- (a) The Contractor must liaise with the Principal's relevant employees and other contractors associated to the Deliverables, so as to ensure minimal disruption to the Principal's operations.
- (b) Vehicle speeds on the Principal's parks and reserves (other than trafficable roads) must not exceed ten (10) kilometres per hour.
- (c) If members of the public are nearby when the Contractor is to supply any aspect of the Deliverables, then the Contractor must:
 - (1) Take all due care to minimise inconvenience to the public;
 - (2) Where appropriate, warn the public as to the work about to be, or being performed, and any hazards which may be reasonably present during the supply of the Deliverables;
 - (3) If work becomes impractical to carry out:
 - (A) Cease work for the time being;
 - (B) Notify the Principal's Representative; and
 - (C) Return and complete the work later the same working day, or no later than the following working day, at no additional cost to the Principal.
- (d) If approached by a member of the public, the Contractor must:
 - (1) Be courteous at all times;

- (2) Only answer queries about the particular task being undertaken at the time (and only provide those answers if practical);
 - (3) Inform anyone with more substantial queries that the Contractor is not authorised to answer queries, and suggest they contact the Principal's Representative, should they wish to discuss the matter further.
- (e) If the agreement involves the supply of Services to the general public then the Contractor must:
- (1) To the extent practicable, abide by the Principal's Disability Access and Inclusion Plan, prepared under the *Disability Services Act 1993*; and
 - (2) Report annually to the Principal on the extent to which the Contractor complied with the Principal's Disability Access Plan.

4.8 Security – Keys and Access Cards

- (a) The Contractor must:
- (1) Comply with the Principal's security directions, when attending the Principal's facilities;
 - (2) Safeguard any keys/security devices provided to it by the Principal;
 - (3) Promptly report any loss of such keys or security devices to the Principal's Representatives;
 - (4) Return all keys/security devices to the Principal within five (5) Business Days of the Date of Completion or sooner determination of this agreement.
- (b) The Contractor is liable for all costs incurred or likely to be incurred by the Principal to replace those items if they are lost, or not returned to the Principal in accordance with clause 4.8(a)(4).

4.9 Disability Access Inclusion Plan

If the agreement involves the supply of Services to the general public, then the Contractor will:

- (a) To the extent practicable, implement the Principal's 'Disability Access and Inclusion Plan', prepared under the *Disability Services Act 1993*; and
- (b) Provide an annual report to the Principal during the Term reporting on the extent to which the Contractor has implemented the Principal's Disability Access and Inclusion Plan.

5. Safety Obligations

5.1 Safety Obligations

- (a) The Contractor must identify and comply with, and ensure that the Contractor's personnel comply with:
- (1) All Legal Requirements applicable to workplace health and safety, including the *Occupational Safety and Health Act 1984 (WA)* and all improvement notices, prohibition notices and codes of practice (if any) issued under that Act which are applicable to this agreement.
 - (2) Any Standards and Procedures that relate to work health and safety applicable to the Deliverables or the Site; and
 - (3) Any directions relevant or necessary for compliance with the Legal Requirements applicable to workplace health and safety.
- (b) The Contractor must provide or arrange to be provided all things necessary to ensure the Deliverables are supplied in a manner that is safe and without risks to health or any person, in compliance with any relevant Standards, design guidelines and/or Legislation as required.

(c) The Contractor must:

- (1) Notify both the Principal's Representative and the Principal's Work Health and Safety Team (whsteam@canning.wa.gov.au) of any accident, incident, injury or property damage which:
 - (A) Occurs during the supply of the Deliverables; or
 - (B) Is associated with the Deliverables.

and in accordance with the following reporting timeframes:

| Incident Severity | Severity Definition | Reporting timeframe |
|-----------------------------|--|---|
| Regulator Reportable | Actual or Potential of the incident is likely to result in the need to report to a Regulator | Within one (1) hour to Principal's Representative |
| Serious Incident | Actual or Potential of the incident is likely to result in a: <ul style="list-style-type: none">· fatality;· lost time injury to worker;· serious damage to environment;· injury to member of public;· any incident involving electrical shock; and/or· damage to property or equipment not belonging to the contractor | Within one (1) hour to Principal's Representative |
| Incident | All other incidents | Within three (3) hours or no later than end of shift in which the incident occurred |

(2) Provide the Principal with any further information when requested by the Principal.

(d) The Contractor must ensure, in performing the Contractor's Obligations, the health, safety and welfare of:

- (1) The Principal and the Principal's Personnel;
- (2) The Contractor's Personnel; and
- (3) The public,

when they are on, or adjacent to, any premises over which the Contractor has control.

- (e) The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this agreement of the Deliverables.
- (f) The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal reasonably considers breaches this clause 5.
- (g) If the Principal observes or becomes aware of a condition that breaches this clause 5, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction.
- (h) The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under clause 5(f) or 5(g) does not relieve the Contractor from complying with its obligations under this clause 5.
- (i) Where the Contractor is required to take possession of any Principal owned Site in order to supply the Deliverables, the Principal will hand over control of the Site to the Contractor using a Contractor Commencement Checklist. The boundaries and means of control over the Site are to be agreed upon and signed by both the Principal and the Contractor, prior to the commencement of any works at that Site.
- (j) Where the Contractor is required to take possession of any Principal owned Site in order to supply the Deliverables, the Contractor must, in a means agreed to with the Principal, set up the Site in such a manner to ensure access or egress to Site can be controlled to prevent unauthorised access by:

- (1) The Principal and the Principal's Personnel;
 - (2) The Contractor's Personnel or Sub-contractors; and
 - (3) The public.
- (k) On reasonable notice, being no less than 24 hours, the Contractor must grant site access to the Principal's Representative, members of the Principal's Work Health and Safety team, or it's agent for the purpose of:
- (1) Carrying out inspections of the site including the management of site control and access; and
 - (2) Measuring compliance against any OHS requirements specified by the Principal.
- (l) Measuring the implementation of safe systems of work as they relate to the Deliverables. The Contractor must grant timely access to site or personnel for the purposes of:
- (1) Incident investigations where the Contractor has experienced an incident related to the Deliverables and the Principal has deemed it necessary to either carry out an investigation or collect evidence related to the incident;
 - (2) Carrying out random testing as required to measure compliance against the Principal's Alcohol and Drugs Procedure.

5.2 Occupational Health and Safety (OHS) Management Systems

On reasonable notice from the Principal, being no less than 24 hours, the Contractor must provide evidence of an Occupational Health and Safety (OHS) management system, including evidence of implementation, monitoring and review activities related to the OHS management system.

6. Time for Performance and Extension of Time

6.1 Time for Performance

The Contractor must:

- (a) Perform the Contractor's Obligations with due expedition, without delay and otherwise in accordance with the times stated in this agreement; and
- (b) Achieve Completion by the Date for Completion.

6.2 Extension of Time

- (a) If the Contractor considers that the Date for Completion has been, or is likely to be, delayed, the Contractor must immediately give the Principal and the Principal's Representative notice of the delay, including details of the nature, cause and the likely extent of the delay.
- (b) Subject to clauses 6.3 and 6.5, the Contractor may claim an extension to the Date for Completion if the Contractor is or will be delayed in achieving Completion by the Date for Completion because of a:
 - (1) Breach by the Principal of its obligations under this agreement;
 - (2) Delay or disruption caused by the Principal or the Principal's Representative (but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this agreement);
 - (3) Force Majeure Event occurring before the Date for Completion;
 - (4) Suspension of this agreement under clause 18, other than suspension for breach of this agreement by the Contractor or the Contractor's Personnel; or

- (5) Variation being granted under clause 13
- (c) The claim submitted by the Contractor under clause 6.2(b) must be submitted to the Principal within 10 Business Days (or any other period agreed in writing by the parties) of the cause of the delay and must set out:
 - (1) The facts on which the claim is based; and
 - (2) The period for which an extension of time is claimed.

6.3 Conditions Precedent to an Extension of Time

It is a condition precedent to any entitlement to an extension of time that the Contractor:

- (a) Could not reasonably foresee the delay at the date of this agreement;
- (b) Has taken all reasonable steps to mitigate the delay and the effect of the delay;
- (c) Did not, and any Contractor's Personnel did not, cause the delay, whether by breach of this agreement or otherwise; and
- (d) Has strictly complied with all notice requirements in this clause 6 with respect to the claim for an extension of time.

6.4 Granting an Extension of Time

- (a) If the Principal's Representative reasonably considers that:
 - (1) The Claim for an extension to the Date for Completion relates to an event listed in clause 6.2(b); and
 - (2) Clause 6.3 has been satisfied,

the Principal must notify the Contractor within 10 Business Days of receiving the Claim for an extension of time (or such other time agreed by the parties) that an extension is granted.

- (b) The Principal's notice granting an extension of time must include the period of extension granted, which will be reasonable having regard to the nature of the event specified in clause 6.2(b) (as determined by the Principal, acting reasonably).
- (c) The Principal may by written notice to the Contractor direct an extension of time to the Date for Completion at:
 - (1) Any time that the Principal directs a Variation; or
 - (2) Any other time at the absolute discretion of the Principal,

even if the Contractor has not submitted, or is not entitled to submit, a Claim for an extension to the Date for Completion. This clause 6.4(c) does not impose any obligation on the Principal to grant an extension of time.

- (d) If the Principal considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the parties) of receiving the Claim that the Date for Completion remains unchanged.
- (e) A failure of the Principal to grant a reasonable extension of time or to grant an extension of time within the time provided for in clause 6.4(a) does not cause the Date for Completion to be set at large. However if:
 - (1) The Principal does not respond to a claim for an extension of time within 10 Business Days; and
 - (2) As a result, the Contractor is entitled to an extension of time under clause 6.2(b),

the Contractor will be entitled to claim an extension of time in relation to the Principal's delay in responding (over and above the 10 Business Day period).

6.5 Concurrent Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not an event listed in clause 6.2(b), then to the extent that the delays are concurrent, the Contractor is not entitled to an extension of time to the Date for Completion.

6.6 Liquidated Damages

- (a) If the Contractor fails to achieve Completion by the Date for Completion, the Contractor must pay the Principal Liquidated Damages at the LD Rate for every day after the Date for Completion to the Date of Completion and up to the LD Cap.
- (b) If an extension of time to the Date of Completion is granted in accordance with clause 6.4 after the Contractor has paid or the Principal has set off the Liquidated Damages, the Principal will repay to the Contractor such of those Liquidated Damages that represent the days the subject of the extension of time.
- (c) The payment of Liquidated Damages will not relieve the Contractor from any of the Contractor's Obligations.
- (d) Liquidated Damages will become due upon the issue of a notice by the Principal Claiming Liquidated Damages and setting out the amount of Liquidated Damages payable by the Contractor to the Principal.
- (e) The Principal may recover the amount of Liquidated Damages:
 - (1) On demand from the Contractor; or
 - (2) By setting off such amount under clause 11.6,

after the Date for Completion has passed.

- (f) The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this clause 6.6 represent the Principal's genuine pre-estimate of the Loss likely to be suffered by it if Completion is not achieved by the Date for Completion and such sums will not be construed as a penalty.

6.7 Contractor's Entitlement to Delay Costs

- (a) If the Contractor has been granted an extension of the Date for Completion under clause 6.4 for a delay referred to in clauses 6.2(b)(1), 6.2(b)(2), 6.2(b)(4) or 6.2(b)(5) (other than where a Variation is requested at the request of the Contractor), the Principal will reimburse the Contractor for any extra costs reasonably and actually incurred by the Contractor as a direct result of the delay.
- (b) Clause 6.7(a) does not apply where the relevant costs are reimbursable pursuant to clauses 13 or 20.

7. Inspections and Meetings and Reports

7.1 Inspections and Information

- (a) The Contractor must keep the Principal fully informed on all aspects of the Deliverables, and must supply on request:
 - (1) Progress reports on the supply of the Deliverables; and
 - (2) The Contractor's Technical Material, reports, data and a detailed supply program, relating to the Deliverables.
- (b) On reasonable notice, the Principal may itself or through an agent:
 - (1) Review, inspect, examine and witness tests of, any Deliverables, or the performance of any Deliverables; and
 - (2) Inspect any equipment used in measuring any Deliverables at any time up to 12 months after the measurement of the Deliverables occurs,

at the Site, the premises of the Principal, the Contractor or any Subcontractors, as the case may be, and the Contractor must ensure that the Principal is granted the necessary access required for the Principal to exercise its rights under this clause 7.1(b).

- (c) The Contractor must give the Principal 10 Business Days' notice (or such other period as the parties agree) prior to the date the Deliverables will be ready for supply, inspection or testing (as applicable).
- (d) Any review, inspection, examination or witnessing of testing by the Principal does not relieve the Contractor of the Contractor's Obligations.
- (e) If, as a result of any review, inspection, examination or witnessing of testing, the Principal (acting reasonably) is not satisfied with the Deliverables will comply with this agreement and the Contractor is notified in writing of such dissatisfaction, the Contractor agrees to take such steps as necessary to ensure compliance.

7.2 Meeting and Reporting

- (a) The Contractor must comply with any reporting and meeting requirements specified in Scope of Deliverables.
- (b) Without limiting clause 7.2(a), on request by the Principal, the Contractor must, in a form acceptable to the Principal, provide to the Principal and the Principal's Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law or otherwise reasonably required by the Principal, including:
 - (1) Producing written reports;
 - (2) Recommending efficiency opportunities;
 - (3) Collecting data; and
 - (4) Monitoring or metering,

in respect of any thing used, produced or created in connection with the performance of the Contractor's Obligations.

8. Delivery and Completion

8.1 Delivery of Goods

The Contractor must deliver the Goods to the Delivery Point, prior to the Due Date, and in doing so must:

- (a) Not interfere with the Principal's activities or the activities of any person at the Delivery Point; and
- (b) Leave the Delivery Point secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Point immediately prior to the delivery of Goods.

8.2 Notification of Commencement of Completion Tests

The Contractor must provide the Principal and the Principal's Representative with at least 2 Business Days' notice of the commencement of Completion tests.

8.3 Completion Tests

- (a) The Contractor must perform the Completion Tests in accordance with the Scope of the Deliverables.
- (b) The Principal or any third party nominated by the Principal may be present during the conduct of the Completion Tests.
- (c) Each party must provide all assistance reasonably requested by the other in connection with the Completion Tests.

8.4 Notification of Results of Completion Tests

Promptly after completing the Completion tests under clause 8.3, the Contractor must deliver to the Principal a notice setting out full and substantiated results for the Completion Tests and any other Tests the Contractor is required to perform prior to Completion.

8.5 Determination of Completion

Within 15 Business Days of the Principal receiving a notice under clause 8.4:

- (a) If the Principal is satisfied that the Deliverables are Complete:
 - (1) The Principal must issue a Completion Certificate for the Deliverables to the Contractor and take over the Deliverables;
 - (2) The Completion Certificate must identify any omissions or Defects of which the Principal is aware that do not otherwise affect the requirements of Completion being met; and
 - (3) The Contractor must, at its cost, promptly make good the omissions or Defects identified in the Completion Certificate within a reasonable time;
- (b) If the Principal is not satisfied that the Deliverables are Complete:
 - (1) Subject to clause 8.5(c), the Principal must issue a notice to the Contractor stating:
 - (A) The reasons why the Principal considers the Deliverables are not Complete;
 - (B) What action is required to be taken by the Contractor to render the Deliverables Complete; and
 - (C) The time period for the Contractor to take such action;
 - (2) In accordance with the Principal's notice, the Contractor must either correct the Deliverables in such a way as to make them Complete or replace or re-supply the Deliverables with Complete Deliverables within the time period stated in the notice; and
 - (3) Once the Contractor has rectified or replaced the Deliverables the process of Completion, as outlined in this clause 8, will apply as if those Deliverables had been delivered or performed (as the case may be) for the first time; or
- (c) If the Principal is not satisfied that the Deliverables are Complete, the Principal may in its discretion:
 - (1) Elect not to issue a notice under clause 8.5(b)(1); and
 - (2) Issue a Completion Certificate subject to a reasonable reduction in the Price as agreed by the parties prior to the issue of the Completion Certificate to reflect the reduced functionality or quality of the Deliverables.

8.6 Repetition of Completion Process

For clarity, the Principal may require a repetition of the procedure specified in clauses 8.2 to 8.5 until the Deliverables achieve a Completion or the Principal terminates this agreement in accordance with clause 14.

8.7 Use of Deliverables before Completion

- (a) Other than for the purposes of undertaking Completion Testing pursuant to clause 8.3, the Principal will not use the Deliverables before Completion without the written approval of the Contractor.
- (b) If the Principal uses the Deliverables other than in accordance with this clause 8.7, a Completion Certificate will have been deemed to have been given by the Principal under clause 8.5(a).

8.8 Effect of Completion Certificate

The issue of a Completion Certificate does not constitute approval of the relevant Deliverables and does not prejudice any Claim by the Principal.

9. Defects

9.1 Defects Liability of Goods

- (a) If, following the delivery of the Goods and during the Defects Liability Period the Principal finds any Defect in the Goods, the Principal may give the Contractor notice in writing of the Defect and require the Contractor to:
 - (1) Make good the Defect; or
 - (2) Replace Goods that have the Defect;

within the reasonable time period stated in the notice.

- (b) The Contractor will not be liable for any Defect in the Goods caused by the negligence of the Principal or the Principal's Personnel.

9.2 Defects Liability for Services

- (a) If, following the performance of the Services and during the Defects Liability Period the Principal finds any Defect, the Principal may give the Contractor notice in writing of the Defect and require the Contractor to:
 - (1) Make good the Defect; or
 - (2) Re-perform the Services to rectify the Defect;

within the reasonable time period stated in the notice.

- (b) The Contractor will not be liable for any Defect in the Services caused by the negligence of the Principal or the Principal's Personnel.

9.3 Principal's Rights

- (a) If the Contractor fails to comply with a notice issued under clauses 9.1(a) or 9.2(a) within the time specified in that notice, the Principal may:
 - (1) Make good or engage another contractor to make good the relevant Defect (including by replacing the relevant Goods or re-performing the relevant Services (as applicable), with goods or services (as the case may be) of the same or similar quality); or
 - (2) Have the relevant Goods redelivered to the Contractor's premises at the Contractor's risk and expense, and the Principal may recover any Losses it suffers as a result of doing so from the Contractor; or
 - (3) Elect to retain the relevant Deliverable and recover from the Contractor an amount which the Principal reasonably considers represents the reduction in value of the relevant Deliverable given the reduced functionality or quality (or both) resulting from the Defect.
- (b) The Principal's rights under this clause 9.3 do not in any way affect:
 - (1) The Contractor's Obligations;
 - (2) Any other right which the Principal may have against the Contractor arising out of the failure by the Contractor to provide Deliverables in accordance with this agreement; or
 - (3) The Principal's rights to claim for any Loss it may suffer because of the Contractor's failure to fulfil any of the Contractor's Obligations.
- (c) Where the Contractor has made good any Defect under this clause 9, the relevant Deliverables will be subject to the same Defects Liability Period as the original Deliverables, from the date the Contractor made good the relevant Defect.

- (d) Without limiting clause 15, any Loss incurred by the Principal in connection with any Defect under this clause 9 will be a debt due from the Contractor to the Principal.

9.4 Title and Risk in Defective Goods

- (a) Where risk in Defective Goods have previously passed to the Principal, the Principal will no longer be responsible for the care or custody of those Defective Goods after the Contractor has been notified that they are Defective.
- (b) Where title in Defective Goods has previously passed to the Principal and the Principal elects to redeliver the relevant Defective Goods to the Contractor in accordance with clause 9.3(a)(2), title to those relevant Defective Goods will revert to the Contractor upon refund by the Contractor of the Price paid by the Principal for those Defective Goods.

10. Personnel and Subcontractors

10.1 Representatives

- (a) Each party must appoint a Representative who will be authorised to act on behalf of the relevant party in relation to this agreement.
- (b) The Principal's Representative may exercise all of the Principal's rights and functions under this agreement (including giving directions), except in connection with:
 - (1) Terminating this agreement;
 - (2) Resolving a Dispute which is the subject of the Dispute resolution procedure in clause 22; or
 - (3) Any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.
- (c) The Contractor's Representative is responsible for the quality, timeliness, cost and supply of the Deliverables in accordance with this agreement. The Contractor is liable for all acts and omissions of the Contractor's Representative.

10.2 Industrial Relation Matters and Industrial Action

- (a) The Contractor is responsible for all losses, delay or disruption it suffers arising out of or in connection with any Industrial Relations Matter relating to, or Industrial Action of, the Contractor's Personnel.
- (b) The Contractor warrants that, before the date of this contract, it informed itself of all Industrial Relations Matters relevant to the Contractor's Obligations.

10.3 Subcontracting

- (a) The Contractor must not subcontract the whole or any part of this agreement without the Principal's prior written approval (not to be unreasonably withheld).
- (b) The Contractor must ensure that any subcontract contains terms that oblige the Subcontractor to perform its obligations under the subcontract in a way that ensures that the Contractor complies with its obligations under this agreement.
- (c) Where the Contract has subcontracted the whole or any part of this agreement, the Contractor continues to be liable:
 - (1) For the Contractor's Obligations; and
 - (2) To the Principal for acts and omissions of any Subcontractors and any Subcontractor's directors, employees, agents, contractors or subcontractors as if they were the Contractor's acts or omissions.

11. Invoicing and Payment

11.1 Price

In consideration for the Contractor supplying the Deliverables, the Principal must pay the Contractor the Price.

11.2 Invoices

- (a) Subject to clause 11.2(c), on or promptly after the Date of Completion, the Contractor must submit an Invoice to the Principal for the Price due to the Contractor.
- (b) Invoices must display the supplied Deliverables, in the appropriate unit of measure and Price, as quoted, unless agreed otherwise by the Principal.
- (c) If agreed in writing by the Principal, the Contractor may submit an Invoice to the Principal at the end of each month for any Deliverables supplied during that or a previous month provided that those Deliverables have not already been included in a previous Invoice.

11.3 Payment of Price

- (a) Subject to clause 11.6, the Principal must pay all Invoices, which comply with the requirements for an Invoice per Item 22 (Invoices) of **Schedule 1 – Contract Details**, and which are issued in accordance with clause 11.2, within 30 Calendar Days of their receipt except where the Principal:
 - (1) Is required by any Law to pay within a shorter time frame, in which case the Principal must pay within that time frame; or
 - (2) Disputes the Invoice.
- (b) The Contractor will not be entitled to any interest or charge for extending credit or allowing time for the Payment of the Price.

11.4 Disputed Invoices

Where the Principal Disputes an Invoice under clause 11.3(a)(2):

- (a) To the extent permitted by any Law, the Principal may withhold payment of the Disputed part of the relevant invoice pending resolution of the Dispute; and
- (b) If the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.

11.5 Payment is not Acceptance

A payment made pursuant to this agreement will not be taken or construed as proof or admission that the Deliverables (or any part of them) are to the satisfaction of the Principal but will only be taken to be payment on account.

11.6 Set Off and Deductions

The Principal may deduct from moneys due to the Contractor any money due, or which may become due, from the Contractor to the Principal under, or in connection with, this agreement or otherwise in connection with this agreement and if those moneys are insufficient, the Principal may have recourse to the Bank Guarantee.

11.7 Price Variation Mechanism

The Price shall only be varied during the Contract Term, by the method as stated in Item 6 (Price Variation Mechanism) of **Schedule 1 – Contract Details**.

12. Title and Risk

12.1 Title and Risk

- (a) Title to the Deliverables passes from the Contractor to the Principal upon payment of the Price applicable to the Deliverables.
- (b) The Contractor bears the risk in the Deliverables until the Date of Completion, at which time risk passes to the Principal.
- (c) The Contractor warrants that:
 - (1) It has complete ownership of the Deliverables free of any liens, charges and encumbrances and will provide the Deliverables to the Principal on that basis; and
 - (2) The Principal will be entitled to clear, complete and quiet possession of the Deliverables.

13. Variation

13.1 Variation Proposal

- (a) A direction to the Contractor to perform a Variation may only be effected in accordance with this clause 13.
- (b) If the Principal or the Principal's Representative requests, the Contractor must prepare and submit a variation proposal to any proposed Variation (Variation Proposal) within 5 Business Days (or within such other period as the parties agree) of the Principal's request for proposal.
- (c) The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal.
- (d) The Variation Proposal must specify:
 - (1) The effect the Contractor anticipates the proposed Variation will have on the Date for Completion and the Price (if any); and
 - (2) Any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- (e) Following receipt of the Variation Proposal by the Principal, the parties must seek to agree on the price for the Variation and the impact of the Variation on the relevant Date for Completion.
- (f) The Contractor may request that the Principal direct a Variation, in which case the Principal or the Principal's Representative may, in its absolute discretion, request the Contractor to prepare a Variation Proposal in accordance with its request.

13.2 Principal to Direct Variations

- (a) Neither the Principal nor the Principal's Representative is obliged to direct a Variation after receiving the Variation Proposal from the Contractor or after discussions regarding the effect of the Variation.
- (b) The Contractor acknowledges and agrees that, subject to clause 13.3(c), the Principal or the Principal's Representative may direct the contractor in accordance with clause 13.4(b) to perform the Variation even if the parties are unable to agree on the price for the Variation or the impact of the Variation on the relevant Date for Completion.
- (c) The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with clause 13.4(b).

13.3 Variation Form

- (a) If the Principal determines, in its discretion, to direct a Variation, the Principal must, after consultation with the Contractor, prepare a Variation Form.
- (b) If the parties agree on the details in the Variation form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
- (c) If the parties are unable to agree on:
 - (1) The price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
 - (A) If this agreement prescribes rates or prices to be applied in respect of the Deliverables, those rates or prices must be used; or
 - (B) If this agreement does not prescribe rates or prices to be applied, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
 - (2) The impact of the Variation on the Date for Completion, then the Principal's Representative must determine a reasonable impact and amend the relevant Date for Completion by notice in writing to the Contractor.

13.4 Effect of Variations

- (a) A Variation does not invalidate this agreement.
- (b) A direction is not a Variation unless a Variation form has been signed by the Principal.

14. Termination

14.1 Termination for Breach

A party (**Non-Defaulting Party**) may terminate this agreement by written notice to the other party (**Defaulting Party**), if the Defaulting Party:

- (a) Breaches a material provision of this agreement and fails to remedy that breach within 20 Business Days of the Non-Defaulting Party giving written notice of the breach; or
- (b) Suffers an Insolvency Event.

14.2 Consequences of Termination

- (a) On termination of this agreement, the Contractor must:
 - (1) Immediately cease performance of the Contractor's Obligations;
 - (2) Take such action as the Principal directs, and as is otherwise necessary, for the transfer, protection and preservation of the Deliverables; and
 - (3) Deliver to the Principal within 10 Business Days after the termination:
 - (A) All of the Principal's material (including Confidential Information); and
 - (B) Any other property or documents which the Principal owns or in which the Principal has an interest,

except as otherwise specified in a direction by the Principal.

- (b) If this agreement is terminated by the Contractor by giving a notice under clause 14.1, the Principal must pay the Contractor that part of the Price for any Contractor's Obligations performed prior to termination that have not already been paid by the Principal.
- (c) If this agreement is terminated by the Principal by giving a notice under clause 14.1, the Principal must pay the Contractor (as the Contractor's sole and exclusive remedy in respect of the termination of this agreement under clause 14.1):
 - (1) That part of the Price for any Contractor's Obligations performed prior to termination that have not already been paid by the Principal; and
 - (2) The cost of materials and equipment reasonably ordered by the Contractor for the Deliverables and which the Contractor is liable to accept, but only if they will become the Principal's property on payment.
- (d) If this agreement is terminated by the Principal giving a notice under clause 14.1, except as set out in clause 14.2(c), the Contractor is not entitled to, and the Principal is not liable for, any additional parts of the Price whatsoever.

14.3 Preservation of Rights

- (a) Subject to clause 14.2(d), if a party breaches or repudiates this agreement, nothing in this clause 14 prejudices the right of the other party to recover damages or exercise any other right under this agreement or at Law.
- (b) The termination of this agreement does not affect:
 - (1) Any rights of the parties which may have accrued before the End Date; and
 - (2) The rights and obligations of the parties under any clause or part of this agreement which, expressly or by implication from its nature, is intended to continue after the End Date.

15. Indemnity

15.1 General Indemnity

The parties indemnify each other from and against any direct Loss and Claim suffered or incurred by the other directly arising out of or in connection with:

- (a) Injury to, or death of, any person directly caused by an act or omission of the indemnifying party; or
- (b) The loss of or damage to any property, whether or not owned by the indemnifying party, arising directly out of or in connection with any act or omission of the indemnifying party;

to the extent caused by the indemnifying party.

any Wilful Misconduct or gross negligence, fraudulent or unlawful act or omission of the Contract or the Contractor's Personnel during and after the contract period.

15.2 Third Party Claims

The parties indemnify each other from and against any direct Loss suffered or incurred by the other in connection with any Claim by a third party:

- (a) Arising directly out of or in connection with the indemnifying parties performance of this agreement; or
- (b) That any Deliverable or Intellectual Property Right supplied under this agreement infringes any Intellectual Property Right of that third party.

15.3 Indemnity Particulars

- (a) The indemnities in this clause 15 do not apply to any Loss to the extent that the Loss is caused by the Wilful Misconduct or negligent act or omission of the indemnifying party.
- (b) A party need not incur any cost or make any payment before enforcing any right of indemnity under this clause 15.

15.4 Benefit of Indemnities

- (a) In clauses 15.1 and 15.2, a reference to the 'Principal' includes the 'Principal's Personnel'.
- (b) The Principal holds the benefit of clauses 15.1 and 15.2 for itself and on trust for each of the Principal's Personnel.

16. Limitations of Liability

16.1 Limitation Generally

- (a) Subject to clause 16.1(c), the maximum aggregate liability of the Contractor for all Claims arising out of or in connection with this agreement, is limited to the greater of:
 - (1) The Contractor Maximum Liability Amount; and
 - (2) Any amount recovered under insurance taken out or required to be taken out by the Contractor under this agreement.
- (b) Subject to clause 16.1(c), the maximum aggregate liability of the Principal for all Claims arising out of or in connection with this agreement, is limited to the Principal Maximum Liability Amount.
- (c) The limitation on the parties' liability in clauses 16.1(a) and 16.1(b) does not apply to, limit or restrict in any way, the parties' liability for Claims and Losses arising out of:
 - (1) The personal injury to, or illness or death of, any person;
 - (2) The loss or damage to property cause by a party;
 - (3) Claims from third parties; or
 - (4) The fraud, criminal acts or Wilful Misconduct of a party or its Personnel.
- (d) A party's liability for Claims and Losses arising out of the matters set out in clause 16.1(c) do not contribute towards the cap on that party's liability under 16.1(a) or 16.1(b) (as applicable).

16.2 Consequential Loss

- (a) Subject to clause 16.2(b) but notwithstanding any other clause, neither party will be liable to the other party in any circumstances for any Consequential Loss, to the extent permitted by Law.
- (b) Clause 16.2(a) does not exclude the Contractor's liability for Consequential Loss to the extent that the Contractor recovers under a policy of insurance under this agreement for Consequential Loss, and the Contractor must use its best endeavours to recover any amounts that it can under a policy of insurance.

17. Insurance

17.1 Insurances to be Effected

- (a) The Contractor must, at its own cost and expense, procure and maintain the Insurances.
 - (1) On the terms and conditions set out in this clause 17 and otherwise on terms acceptable to the Principal; and
 - (2) 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 and approved by the Principal, which either:

- (A) Carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
- (B) If an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia.
- (b) The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- (c) Without limiting clause 17.1(a), the Contractor must:
 - (1) Pay all premiums and deductibles applicable to the Insurance when due; and
 - (2) Promptly reinstate any Insurance required under this clause 17 if it lapses or if cover is exhausted.
- (d) The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this agreement.

17.2 Common Terms

To the extent available at the times of placement and each renewal, each Insurance must:

- (a) 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;

come into effect on or before the Start Date and be maintained until the Insurance End Date;

- (b) Provide that a notice of claim given by the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
- (c) Provide, where the Principal is entitled to cover under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and
- (d) State that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia will have exclusive jurisdiction in any dispute under the state's policy and Principal's operational policies.

17.3 Contractor's Further Obligations

- (a) 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 Insurance.
- (b) The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- (c) The Contractor must ensure that its Subcontractors are insured as required by this clause 17, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- (d) The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this agreement is current by providing to the Principal current and updated certificates of Insurance or the terms and conditions (including schedules) of the insurances, to demonstrate compliance with this agreement. Nothing in this clause 17 will fix the Principal with notice of the contents of the policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- (e) If the Contractor fails to procure and maintain the Insurance in accordance with this agreement, the Principal may (but is not obliged to) procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.

- (f) Whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence.
- (g) The Contractor must:
 - (1) Inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this agreement under any of the Insurances, except claims which the Principal may have against the Contractor; and
 - (2) Where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of Insurance claims.
- (h) The Insurances are primary, and not secondary, to the indemnities referred to in this agreement. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this agreement. In addition, the parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this agreement before the insurer considers or meets the relevant claim.
- (i) The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this agreement in accordance with AS/NZS 4360-2004 Risk Management.

17.4 Public and Product Liability Insurance

The Contractor must maintain public and product liability insurance and the policy must:

- (a) Be for an amount of not less than the amount set out in Items 13 and 14, respectively, of **Schedule 1 – Contract Details**, in respect of any one claim and unlimited in the amount of occurrences and not less than the amount set out in the items in the aggregate, in relation to products liability during any one twelve (12) month period of insurance;
- (b) Include a cross liability endorsement 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);
- (c) Cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
 - (1) Loss of, damage to, or loss of use of, any real or personal property; and
 - (2) 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).
- (d) Be endorsed:
 - (1) To cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this agreement; and
 - (2) To cover sudden and accidental pollution; and
 - (3) Provide waiver of subrogation in favour of the Principal in relation to this agreement where the Principal is not a named insured.
- (e) The insurance must be in the name of the Contractor and be endorsed to note the Principal for their respective rights and interests in relation to this agreement.
- (f) The public and product liability insurance end date is 3 months following the End Date, unless otherwise agreed by the Contractor and the Principal in writing.

17.5 Vehicle and Equipment Insurance

- (a) In addition to any compulsory third party motor vehicle insurance required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain vehicle and equipment insurance for the Contractor's vehicles, plant and equipment used in connection with this agreement whether owned, hired or leased (**Contractor's Vehicles**). The vehicle and equipment liability policy must:
 - (1) Cover against all loss or damage (or both) to the Contractor's Vehicles;
 - (2) Cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
 - (3) Not be less than the amount of coverage equal to the market value of the Contractor's Vehicles;
 - (4) Include a cross liability endorsement 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); and
 - (5) Be endorsed to note the Principal for its respective right and interests in relation to the agreement.
- (b) Other than compulsory third party motor vehicle insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, the insurance must be in the name of the Contractor and be endorsed to contain a principal's indemnity extension in favour of the Principal.
- (c) The Contractor's Vehicle and Equipment Insurance end date is 3 months following the End Date, unless otherwise agreed by the Contractor and the Principal in writing.

17.6 Insurance of Employees

- (a) The Contractor must insure against liability for death or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law.
- (b) The Contract must effect and maintain workers' compensation insurance in accordance with the *Workers' Compensation and Injury Management Act 1981 (WA)* and \$50,000,000 for common law liability.
- (c) In the event that the Contractor is a sole trader and no workers' compensation policy is in place, the Contractor must insure against the loss of income and illness by the purchase of income protection or salary continuance policy.
- (d) The insurance must be in the name of the Contractor, and to the extent permitted by Law, be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor.
- (e) The employee insurance end date is 3 months following the End Date, unless otherwise agreed by the Contractor and the Principal in writing.

17.7 Professional Indemnity Insurance

- (a) The Contractor must maintain professional indemnity insurance under this agreement unless:
 - (1) The Services do not comprise of any advisory type services (being services such as design services or advice on the required capacity or specifications of any item);
 - (2) The Services comprise of services which do not require professional indemnity insurance; or
 - (3) Item 15 of **Schedule 1 – Contract Details** states professional indemnity insurance is not required.
- (b) The professional indemnity policy must:

- (1) Be for not less than the amount set out in Item 15 of **Schedule 1 – Contract Details** in respect of any one claim and not less than the amount set out in the same Item in the aggregate for all claims arising in any one twelve (12) month period of insurance.
 - (2) Include one full automatic reinstatement of the limit of liability;
 - (3) Cover liability arising from any act or omission in connection with, or arising out of, the professional activities and duties under this agreement; and
 - (4) Cover claims in respect of this agreement under the *Competition and Consumer Act 2010* (Cth), *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.
- (c) The insurance must be in the name of the Contractor.
- (d) The Contractor's professional indemnity insurance end date is 7 years following the End Date.

18. Confidential Information

18.1 Confidential Information

- (a) Each party must:
- (1) Keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
 - (A) To the extent necessary for the performance of its obligations under this agreement;
 - (B) That a party may disclose to its legal advisers who are under a duty of confidence; or
 - (C) That a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
 - (2) Immediately provide notice to the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other party's Confidential Information.
- (b) The Contractor must return to the Principal, or destroy or delete as the Principal directs, all original documents and copies (including in electronic form) in the Contractor's possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information of the Principal, at the earliest of the following:
- (1) Immediately on demand from the Principal; or
 - (2) On the termination of this agreement.
- (c) As per the requirements of the *Local Government (Functions and General) Regulations 1996*, Part 4, Division 2, R19, the particulars of the agreement award will not be considered confidential as they are required to be made available publicly. The agreement particulars are considered to include:
- (1) The name of the successful Contractor;
 - (2) The agreement value accepted by the Principal.

19. Intellectual Property Rights

19.1 Intellectual Property Rights

- (a) The Contractor warrants that:

- (1) The Deliverables and any design, Document or method of working supplied by the Contractor does not infringe any Intellectual Property Right; and
- (2) All payments and royalties payable in respect of any Intellectual Property rights required in respect of performance of the obligations under this agreement are included in the Price and will be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
- (b) Except as otherwise provided for in this agreement, ownership of Intellectual Property Rights (other than third party Intellectual Property rights) associated with the Deliverables and any Documents supplied by the Contractor pursuant to this agreement vests in the Contractor.
- (c) Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property rights) vests in the Principal.
- (d) The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free, transferrable and sub-licensable license (with the right to grant sub-licenses on the same terms) to use and reproduce all Intellectual Property Rights associated with the Deliverables and any Documents provided pursuant to this agreement.

20. Suspension

20.1 Suspension

- (a) The Principal or the Principal's Representative may, at any time and for any reason, suspend this agreement or any part of this agreement.
- (b) When the Contractor received a written notice of suspension under clause 20(a), the Contractor must suspend the performance of the Contractor's Obligations until such time that the Principal or the Principal's Representative directs that this agreement is no longer suspended and then promptly recommence the performance of the Contractor's Obligations.
- (c) If the Principal or the Principal's Representative suspends this agreement or any part of it in accordance with clause 20(a) (and such suspension is not due to default or action by the Contractor or the Contractor's Personnel):
 - (1) The Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this agreement; and
 - (2) The Date for Completion and End Date are extended by the period of that suspension.
- (d) The remedies set out in clause 20(c) are the Contractor's sole and exclusive remedies in respect of the Principal suspending this agreement.

21. Force Majeure Event

21.1 Force Majeure Event

- (a) A party must give timely notice to the other party of any Force Majeure Event that prevents the party from complying with its obligations under this agreement (**Affected Obligations**) and must either:
 - (1) To the extent practicable, specify in the notice the length of the delay to the Date for Completion that will result from the Force Majeure Event; or
 - (2) Where it is impracticable to specify the length of the delay at the time the notice is delivered, provide periodic supplemental notices during the period over which the Force Majeure Event continues.
- (b) 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.

- (c) The affected party must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- (d) If a Force Majeure Event continues to prevent a party from complying with its obligations under this agreement for a continuous period of 180 days, the non-affected party may terminate this agreement by serving written notice on the affected party and neither party has liability to the other except in respect of any event arising prior to the date of termination.

22. Goods and Services Tax

22.1 Goods and Services Tax

- (a) Any reference in this clause 22 to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Law.
- (b) The consideration for any supply made under this agreement does not include an amount of account of GST (**GST Exclusive Consideration**) except as provided under this clause 22.
- (c) If GST is payable for any supply made by a party (**Supplier**) under this agreement, the consideration to be provided for that supply is increased by an amount equal to the GST Exclusive Consideration (or its GST Exclusive market value if applicable), or the relevant part thereof, multiplied by the rate at which GST is imposed in respect of the supply.
- (d) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of provision of the consideration for the supply as increased under clause 22(c).
- (e) Whenever an adjustment event occurs in relation to a supply made under this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid on account of GST, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (f) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount payable is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 22(c).

23. Settlement of Disputes

23.1 Settlement of Disputes

- (a) In the event of a Dispute either party may deliver a written notice to the other party that identifies the Dispute (**Notice of Dispute**).
- (b) The Notice of Dispute must detail the:
 - (1) Alleged facts on which the Dispute is based;
 - (2) Legal basis on which the Dispute is made; and
 - (3) Relief that is Claimed.
- (c) Within 10 Business Days of a Notice of Dispute being delivered, the receiving party must deliver a written response to the other party stating:

- (1) Its position in relation to the Dispute; and
- (2) The basis for its position.
- (d) Within 10 Business Days of receipt of the response referred to in clause 23(c), the parties agree to meet and attempt in good faith to resolve the Dispute through negotiation.
- (e) If the parties are unable to resolve the Dispute within the 10 Business Days of the negotiations described in clause 23(d), either party may initiate proceedings in a court of competent jurisdiction.
- (f) If the Dispute relates to the Deliverables and whether the Deliverables comply with this agreement, then:
 - (1) Either party may, with the agreement of the other party, at any time, refer the Dispute relating to the Deliverables (or any part thereof) to an appropriate independent expert, agreed to by the parties, for examination and report as to their compliance with this agreement; and
 - (2) The decision of the expert will be final and binding upon both parties, and the expense of such reference will be paid by the unsuccessful party.

24. Personal Property Securities Act

24.1 Personal Property Securities Act

- (a) For the purposes of this clause 24:
 - (1) The **Principal's Personal Property** means all personal property the subject of a security interest granted under this agreement; and
 - (2) Words and phrases used in this clause 24 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise dictates.
- (b) If the Principal determines that this agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents and getting documents completed) which the Principal considers necessary for the purposes of:
 - (1) Ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (2) Enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; or
 - (3) Enabling the Principal to exercise rights in connection with the security interest.
- (c) The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- (d) The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
 - (1) If any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property; or
 - (2) If any of the Principal's Personal Property is located or situated outside Australia.
- (e) The Contractor must not:
 - (1) Create any security interest or lien over any of the Principal's Personal Property whatsoever;
 - (2) Sell, lease or dispose of its interest in the Principal's Personal Property;

- (3) Give possession of the Principal's Personal property to another person except where the Principal expressly authorises it to do so;
- (4) Permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
- (5) Change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Contractor is required to do under this clause 24 is at the Contractor's expense.
- (g) Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 24 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- (h) Nothing in this clause 24 prohibits the Contractor from enforcing or effecting any security interest granted to the Contractor under this agreement (provided that the relevant personal property is not the Principal's Personal Property).

25. Notices

25.1 Notices

- (a) Any notice or other communication under this agreement must be in legible writing, in English and signed and must be given or served only by hand delivery, pre-paid post, facsimile transmission or email to a party at the address, facsimile number or email address for that party specified in Item 21 (**Notice Details**) in **Schedule 1 – Contract Details** (or any other address, facsimile number or email address specified by a party by notice).
- (b) Any notice or other communication to or by a party is regarded as being given by the sender and received by the addressee:
 - (1) If by delivery in person, when delivered to the address of the recipient;
 - (2) If by post, 3 Business Days from and including the date of postage;
 - (3) If by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
 - (4) If sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipients email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.30pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.

- (c) In this clause 25, reference to a recipient includes a reference to a recipient's officers, agents or employees.

26. General

26.1 Application of this Contract

This agreement applies to the performance of the Contractor's Obligations whether performed before, on or after the Start Date.

26.2 Governing Law

- (a) This agreement and any Dispute arising out of or in connection with it or its subject matter will be governed by the Laws of the State of Western Australia.

- (b) The parties irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this agreement or its subject matter or formation.
- (c) The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply to this agreement.

26.3 Assignment

- (a) Subject to clause 26.3(b), neither party may assign, transfer, mortgage, novate, charge, or otherwise encumber this agreement or any payment or other right, benefit, money or interest under or in respect of this agreement, without the prior written consent of the other party (not to be unreasonably withheld).
- (b) The Principal may, without the Contractor's consent, assign or novate this agreement to another Local Government as part of a restructure, reorganisation or amalgamation of the Principal.

26.4 Construction Contracts Act

- (a) The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation to the Construction Contracts Act that the Contractor receives from a Subcontractor.
- (b) If a Subcontractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Subcontractor such money that may be owing to the Subcontractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.
- (c) The Contractor must ensure that none of its subcontracts contain terms which are prohibited by the Construction Contracts Act.

26.5 Proportionate Liability

Each party agrees that Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to this agreement.

26.6 Severability

Should any part of this agreement be invalid or unenforceable, that part will be:

- (a) Read down, if possible, so as to be valid and enforceable; and
- (b) Severed from this agreement to the extent of the invalidity or unenforceability,

and the remainder of this agreement will not be affected by such invalidity or unenforceability.

26.7 Entire Contract

- (a) To the extent permitted by Law, this agreement embodies the entire agreement between the parties and supersedes all prior conduct, arrangement, agreement s, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this agreement.
- (b) To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Principal in respect of the Deliverables, those terms and conditions will be of no legal effect and will not constitute part of this agreement.

26.8 Rights and Remedies

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal will or may be entitled to against the Contractor whether under a Legal Requirement or this agreement.

26.9 Waivers and Amendments

- (a) This agreement may only be amended, or its provisions waived, in writing by the parties.
- (b) A failure or delay by the Principal in enforcing the provisions of this agreement will not prejudice, restrict or limit the rights of the Principal, nor will any waiver of those rights operate as a waiver of any subsequent breach.

26.10 Variation to Contract Terms

None of the terms of this agreement can be varied, waived, discharged or released, except by the express written agreement of the parties.

26.11 Counterparts

- (a) This agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement by signing any counterpart.

26.12 Survival

This clause 26.12 and clauses 1, 3, 15, 16, 17, 18, 19, 26 and Schedule 7 survive the expiry or termination of this agreement.

27. Annual Performance Review

27.1 Annual Performance Review

The Principal shall review the performance of the agreement annually (where applicable), 40 Business Days prior to the anniversary of the Start Date.

The review panel shall consist of representatives from the Contractor and the Principal.

A written report and/or minutes shall be produced and issued to all parties involved in the review.

The review shall consider, but not be limited to:


- (a) Operation issues;
- (b) The number and frequency of complaints and/or commendations reported either verbally or in writing;
- (c) The number and frequency of failures by the Contractor to supply the Deliverables within the timeframes set out in the key performance indicators;
- (d) The quality and standard of the Deliverables, including any improvements required;
- (e) Responsiveness, including promptness of the Contractor in replying to requests from the Principal;
- (f) Customer service levels; and
- (g) Accuracy of invoices.

28. Key Performance Indicators (KPI's)

28.1 Key Performance Indicators

The Contractor's performance will be assessed against the KPI's listed in Schedule 8 of this document.

The Contractor shall maintain appropriate records on KPI's to assist in determining the extent to which KPI's have or have not been met. The Principal's Representative, in an ongoing basis, will monitor whether the KPI's have been met in accordance with the methods of assessment set out in the schedule.



Failure to meet any of the KPI's may constitute a breach of this agreement.