



General Conditions of a Purchase Order

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PART A: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In these General Conditions, except where the context indicates otherwise:

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

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

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

Australian Standards means a set of specifications, procedures and standards as set by Standards Australia Limited (ACN 087 326 690)

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

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

Completion Date means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in an Order or agreed by the Parties in writing. To avoid doubt, there may be multiple Completion Dates where the Contract applies to multiple Orders of Goods and/or Services.

Contract means the contract made between the Parties for the supply of Goods and/or Services, which includes the Purchase Order, these General Conditions and any attachments or annexures.

Contract Materials means all things, materials, documents, information and items developed by or on behalf of the Contractor or its Personnel in the course of or in connection with the supply of the Goods and/or Services in any form whatsoever (including electronic form) and includes Intellectual Property Rights.

Contract Price means the prices or rates specified in the Purchase Order as the amount to be paid by the Principal for the provision of the Goods and/or Services the subject of the Purchase Order.

Contractor means the party who is engaged by the other party to provide the Goods and/or Services under the Contract and whose details are set out in the Purchase Order, also being the entity

referred to as a "Creditor" and "Supplier" pursuant to the Principal's policies and corporate procedures.

Contractor's Representative means any officer or person authorised by the Contractor, in writing, to act on their behalf for the purpose of the Contract, as detailed in the Purchase Order.

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

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

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

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

- charged to the Principal at cost; and
- incidental to the provision of the Services.

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

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

- act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- strike, lockout or other labour difficulty;
- act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic or terrorism; or
- a change in any Law or any authority exercised by an Governmental Body or official by Law.

General Conditions means these 'General Conditions of a Purchase Order'.

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

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

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

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

Insolvency Event means:

- in relation to a corporation and subject to Ipso Facto Laws, where that corporation:
- goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected

Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;

- (ii) is otherwise dissolved;
 - (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
 - (iv) enters into any composition or scheme of arrangement with its creditors;
 - (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
 - (vi) is otherwise unable to pay all its debts as and when they fall due; and
- (b) in relation to a natural person, where that natural person:
- (i) commits an act of bankruptcy;
 - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
 - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
 - (iv) is otherwise unable to pay all its debts as and when they fall due.

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

Invoice means a valid tax invoice under the GST Law.

Ipsa Facto Laws mean:

- (a) the amendments to the *Corporations Act 2001* (Cth) set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017* (Cth); and
- (b) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth).

Law means statute, equity, common law and the legally enforceable requirements of any Governmental Body, including any subsidiary legislation or regulation, law or by-law of the Principal.

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

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

Moral Rights mean the rights defined as 'Moral Rights' in the *Copyright Act 1968* (Cth).

Parties means the Principal and the Contractor.

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

Principal means the City of Gosnells, the Party engaging the Contractor to supply Goods and/or Services and whose details are set out on the Purchase Order.

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

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

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

Principal's Representative means any officer or person authorised by the Principal, to act on their behalf for the purpose of the Contract, as detailed in the Purchase Order.

Purchase Order means the Purchase Order from the Principal to the Contractor which is governed by these General Conditions, and which forms the contract between the Parties for the supply of the Goods and/or Services.

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

Site means the location where the Services are to be performed as specified in the Purchase Order.

Specification means a specification or scope of works for the Goods and/or Services provided by the Principal to the Contractor.

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

Start Date means the date specified in the Purchase Order or, where no such date is specified, means the date that the Parties agree in writing that the Contractor must commence the Services.

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

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

2. INTERPRETATION

In these General Conditions, unless the context suggests otherwise:

- (a) Headings are for convenience only and do not affect the interpretation of these General Conditions.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) A reference to:
 - (i) "includes" means without limitation;
 - (ii) "and/or" means one or the other or both, or any one or more or all, of the things or persons or parties in connection with which the conjunction is used;

- (iii) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (iv) a party includes its successors and permitted assigns;
 - (v) a document includes all amendments or supplements to that document;
 - (vi) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, the Contract;
 - (vii) the Contract includes all schedules and attachments to it;
 - (viii) an agreement other than the Contract includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (ix) any Act of Parliament includes any amendments or re-enactments of the same or any Regulations made under that Act; and
 - (x) a monetary amount is to Australian dollars (\$AUD).
- (f) To the extent permitted by law, if either Party consists of one or more persons, the Contract binds such persons jointly and severally.
- (g) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (h) No rule of contract construction applies to the disadvantage of a Party because that Party was responsible for the preparation of the Contract or any part of it.

PART B: PROVISIONS APPLICABLE TO SUPPLY OF GOODS ONLY

3. QUALITY OF GOODS, SOURCES OF SUPPLY AND SUBSTITUTION

- 3.1 The Contractor must ensure that all Goods:
- (a) comply with the requirements of the Purchase Order and conform to any samples provided;
 - (b) are in accordance with relevant Australian Standards or, where no Australian Standard exists, any relevant International Organisation for Standardisation (ISO) Standard;
 - (c) are properly, safely and securely packaged and labelled for identification; and
 - (d) are of merchantable quality and fit for their intended purpose.
- 3.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties applicable to the Goods.
- 3.3 With the Principal's consent and subject to any necessary variation to the Contract Price, the Contractor may permanently or temporarily substitute another product ("**Substitute Product**") for any aspect of the Goods to be provided under the Contract ("**Original Product**"). To avoid doubt, the supply of the Substitute Product shall satisfy the Contractor's obligations to supply the Original Product.

4. QUANTITIES OF GOODS

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

5. DELIVERY OBLIGATIONS AND DELIVERY POINT

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

- (a) not interfere with the Principal's activities;
- (b) leave the Delivery Point secure and fit for immediate use;
- (c) obtain the signature of a member of the Principal's Personnel who receives delivery of the Goods; and
- (d) where it is not possible to satisfy clause 5(c), leave the Goods where requested by the Principal.

6. PROPERTY AND RISK IN THE GOODS

- 6.1 Subject to these General Conditions, the Parties agree that:
- (a) risk in the Goods shall pass from the Contractor to the Principal on Acceptance; and
 - (b) upon payment for the Goods, property in the Goods shall pass to the Principal.
- 6.2 The Contractor warrants that it has complete ownership of the Goods free of any liens, charges and encumbrances.

PART C: PROVISIONS APPLICABLE TO SUPPLY OF SERVICES ONLY

7. QUALITY OF SERVICES

- 7.1 The Contractor must ensure that the Services provided by the Contractor:
- (a) match the description of the Services set out in the Purchase Order or otherwise in the Contract;
 - (b) are fit for their intended purpose;
 - (c) where they relate to design, the works or goods being designed are fit for their intended purpose;
 - (d) are performed with the professional skill, care and diligence expected of a person with the skills, experience, expertise and resources necessary to competently provide the Services; and
 - (e) are provided in accordance with any Specification.
- 7.2 The Contractor warrants, and agrees to ensure, that its Personnel engaged to perform the Services have the necessary skills, experience, expertise, licences, training, qualifications, approvals and resources available to it to competently and lawfully perform the Services.
- 7.3 The Contractor must regularly consult with the Principal about the progress of the Services and attend meetings where reasonably requested by the Principal.

8. QUANTITY AND VALUE OF SERVICES

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

PART D: PROVISIONS APPLICABLE TO SUPPLY OF GOODS AND/OR SERVICES

9. SUPPLY OF GOODS AND/OR SERVICES

- 9.1 The Contractor must:
- (a) at its expense, obtain any Approvals necessary for the provision of the Goods and/or Services;
 - (b) at its expense, comply with all reasonable directions of the Principal regarding the provision of the Goods and/or Services, including regarding the transition of the provision

of the Goods and/or Services from an alternative supplier to the Contractor;

- (c) where the Principal provides the Contractor with written notice that an alternative supplier will, in the future, be supplying the Principal with the Goods and/or Services provided under the Contract, at its expense provide reasonably requested assistance to the Principal in transitioning the supply of the Goods and/or Services to the new supplier, including making arrangements for the novation or assignment of relevant contracts with third parties; and
- (d) co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time, provided that the Contractor will be entitled, by prior written agreement with the Principal, to charge for costs incurred as a direct result of providing such co-operation and assistance.

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

10. PLANT AND EQUIPMENT

10.1 In this clause 10, "Plant and Equipment" means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under the Contract.

10.2 The Contractor must:

- (a) provide all Plant and Equipment and labour necessary for the performance of the Contractor's obligations under the Contract; and
- (b) ensure that Plant and Equipment and other items which the Contractor uses or supplies in connection with the Contract comply with Legal Requirements and are fit for their usual and intended purpose.

11. PURCHASE ORDER

11.1 The Principal's required Goods and/or Services are set out in the Purchase Order.

11.2 If the Parties cannot agree on the Contract Price or any other information or requirements for the Purchase Order, the Principal, acting reasonably, may determine:

- (a) any fees applicable to the Purchase Order and such fees will be deemed to be the Contract Price for the Purchase Order; and
- (b) the other information and requirements of the Purchase Order provided that such information and requirements fall within the scope of, and do not breach, the Contract.

11.3 The Principal is not obliged to issue Purchase Orders or otherwise purchase Goods and/or Services from the Contractor or any other party.

11.4 The Principal or the Principal's Representative may cancel the Purchase Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Goods delivered to the Delivery Point and any Services provided prior to the date the cancellation is notified to the Contractor.

12. TIME FOR PERFORMANCE

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

12.2 The Contractor shall deliver the Goods to the Delivery Point and/or perform the Services, as the case may be, by the Completion Date.

13. RECEIPT AND ACCEPTANCE OF GOODS AND/OR SERVICES

13.1 The Parties agree that:

- (a) delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal; and
- (b) Acceptance by the Principal is without prejudice to the Principal's rights in respect of the Defects Liability Period applicable to any Goods and/or Services.

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

14. REJECTION AND REMOVAL OF DEFECTIVE GOODS AND/OR DEFECTIVE SERVICES

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

14.2 Where the Principal notifies the Contractor under clause 14.1, the Principal may direct the Contractor to replace, rectify or re-perform the Goods and/or Services, as the case may be, free of charge to the Principal and within a reasonable time specified by the Principal.

14.3 The Contractor must comply with a direction under clause 14.2 within the time period specified in the notice or otherwise agreed in writing by the Parties.

14.4 Following receipt of a notice under clause 14.4 from the Principal, the Contractor has 5 Business Days to notify the Principal in writing as to whether the Contractor will replace, rectify or re-perform the Goods and/or Services and to reach agreement with the Principal regarding the timeframe for doing so, otherwise the Principal may rectify, replace or have re-performed the Goods and/or Services and recover its costs in doing so from the Contractor.

14.5 Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 14.3, the Principal may give the Contractor written notice of its intention to rectify, replace or have re-performed the Goods and/or Services by a third party, together with the estimated and itemised reasonable costs of the Principal in rectifying, replacing or having re-performed the Goods and/or Services.

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

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

14.8 Without limiting clause 32, any cost or expense reasonably incurred by the Principal in connection with, or as a result of, the Defective Goods and/or Services shall be a debt due from the Contractor to the Principal.

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

15. FAILURE TO PROVIDE GOODS AND/OR SERVICES

15.1 The Contractor must provide written notice to the Principal as soon as possible if the Contractor is unable to provide the Goods

and/or Services and the period of time for which the Contractor will be so unable.

- 15.2 Where the Contractor provides written notice to the Principal under clause 15.1, the Principal may, acting reasonably, and without being liable in any way to the Contractor, obtain or acquire such goods and/or services as it requires from a third party until the Principal receives a further written notice from the Contractor that the Contractor is able to recommence the provision of Goods and/or Services.

16. INFORMATION

The Contractor must keep the Principal fully informed about:

- (a) any matters that may adversely affect the Contractor's ability to provide the Goods and/or Services; and
- (b) delivery of the Goods and/or completion of the Services.

17. INVOICING AND PAYMENT

- 17.1 The Contract Price payable by the Principal to the Contractor for the Goods and/or Services is stated in the Purchase Order.
- 17.2 Subject to the Contractor satisfactorily providing the Goods and/or Services, the Principal must pay the Contractor the Contract Price in accordance with this clause and the Contractor's preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.
- 17.3 As soon as reasonably practicable following the end of each month, or at another time or frequency agreed in writing by the Parties, the Contractor must provide to the Principal an Invoice for the provision of the Goods and/or Services or any delivered or completed part of the Goods and/or Services.
- 17.4 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices issued in accordance with this clause within 14 Business Days of issue to the Principal or such other period as agreed in writing by the Parties, except where the Principal disputes the Invoice, in which case, to the extent permitted by any Legal Requirement:
- (a) the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
 - (b) the Contractor must continue to perform its obligations under the Contract in the event of a Dispute about an invoice, while that Dispute is resolved.
- 17.5 The Contractor is not entitled to payment for any Goods and/or Services not included in the Contract Price or a Purchase Order unless prior written notice of such Goods and/or Services were provided to the Principal and the Principal approved such Goods and/or Services in writing.
- 17.6 A payment made pursuant to the Contract is taken to be payment on account and is not proof or admission of the value of the Goods and/or Services provided or that the Goods delivered and/or the Services performed, or any part thereof, were to the Principal's satisfaction.
- 17.7 The Parties agree that failure by the Principal to pay the amount payable at the due time will not be grounds for the Contractor to terminate, invalidate or avoid the Contract.

18. WITHHOLDING FEES

The Principal may deduct from any money due or becoming due to the Contractor under the Contract, including but not limited to:

- (a) all debts, damages, costs, expenses or any other moneys due from the Contractor or its Sub-contractors to the Principal under or by virtue of any provision of the Contract, the supply or non-supply of the Goods and/or Services, or the Contractor's presence on the Site; and

- (b) all costs, losses, charges, damages, liquidated sums and expenses which the Principal may have paid or incurred and which, or for which, the Contractor or its Personnel is or are liable to bear, pay or make reimbursement to the Principal.

19. GOODS AND SERVICES TAX

- 19.1 Words capitalised in this clause and not otherwise defined have the meaning given in the GST Law.
- 19.2 Where an amount of Consideration is payable for a Taxable Supply made under the Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.
- 19.3 The Party making a Taxable Supply under the Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
- 19.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under the Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

20. VARIATIONS

- 20.1 The Principal may, by written notice to the Contractor, vary the Purchase Order, including any Goods and/or Services the subject of a Purchase Order to be supplied under this Agreement ("**Variation Notice**").
- 20.2 Without limiting the generality of clause 20.1, the Principal may vary a Purchase Order or its associated Goods and/or Services to:
- (a) omit any part of the Goods and/or Services;
 - (b) supply additional Goods;
 - (c) increase or decrease the frequency and/or duration of performance of all or any part of the Services; or
 - (d) perform additional work or Services.
- 20.3 Within five 5 Business Days of receiving a Variation Notice, the Contractor will provide to the Principal a reasonable written quotation ("**Variation Quotation**") which includes:
- (a) the variation as requested by the Variation Notice;
 - (b) a reasonable variation (if any) to the Contract Price including evidence justifying the variation; and
 - (c) all relevant specifications, time frames and operational requirements relating to the varied Goods and/or Services additional to but not inconsistent with those in the Variation Notice.
- 20.4 The Principal may by written notice to the Contractor:
- (a) accept the Variation Quotation within 20 Business Days of receiving it; or
 - (b) reject the Variation Quotation at any time if that Variation Quotation has not already been accepted.
- 20.5 If the Principal does not accept the Variation Quotation within 20 Business Days under clause 20.4(a), that Variation Quotation will be deemed to have been rejected.
- 20.6 The Principal is not required to pay any additional fees unless and until:
- (a) the Principal accepts the Variation Quotation under clause 20.4(a);
 - (b) the Parties otherwise agree in writing to the varied terms and fees.

21. TERM

- 21.1 Subject to any earlier termination under these General Conditions, the Contract shall terminate when both Parties have

performed all their obligations under the Purchase Order, subject to clauses 21.2 and 21.3.

- 21.2 Before the expiry date of the Contract, the Parties may agree in writing to extend the term of the Contract for an agreed period of time.
- 21.3 The Contract may terminate before the expiry of the period of time in clause 21.1:
- (a) if the Parties agree in writing; or
 - (b) otherwise in accordance with these General Conditions.
- 21.4 The termination of the Contract does not affect:
- (a) any rights of the Parties accrued before the date of termination; and
 - (b) the rights and obligations of the Parties which survive termination.

22. CONFLICT OF INTEREST

- 22.1 In this clause, “**Conflict of Interest**” means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively, and includes a conflict between a duty owed by the Contractor to a person and a duty owed by the Contractor to the Principal.
- 22.2 The Contractor warrants that, to the best of its knowledge, as at the date of providing the Goods and/or Services:
- (a) the Contractor has declared in writing to the Principal any Conflicts of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
 - (b) the information contained in the Contractor’s declaration as to the existence of any Conflicts of Interest is correct and comprehensive.
- 22.3 The Contractor must:
- (a) monitor and, unless the Principal gives prior written consent to the Conflict of Interest, avoid the occurrence of any Conflict of Interest; and
 - (b) notify the Principal immediately on becoming aware of a Conflict of Interest or a significant risk of a Conflict of Interest arising.
- 22.4 A Conflict of Interest involving the Contractor, or where a Conflict of Interest is likely to arise, will be treated as a material breach of the Contract by the Contractor and the Principal may proceed under clause 37.1.

23. LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES

- 23.1 The Contractor shall comply with all Legal Requirements, and Standards and Procedures affecting or applicable to the Goods and/or Services and/or the performance of the Contract and ensure that its Personnel also comply with the same, at the Contractor’s cost.
- 23.2 The Contractor shall:
- (a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor for the purposes of providing the Goods and/or Services;
 - (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;
 - (c) to the extent practicable, use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of

clauses 23.2(a) and 23.2(b) in relation to the Sub-contractors’ own Personnel; and

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

24. SAFETY OBLIGATIONS

- 24.1 In this clause 24, the following terms have the following meanings:
- (a) “**Person Conducting a Business or Undertaking**” has the meaning given in the Work Health and Safety Act.
 - (b) “**WHS Laws**” means all work, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Governmental Body and standards, where any part of the Contractor’s obligations under the Contract are being performed. This includes the Work Health and Safety Act and all regulations made or amended under that Act, in addition to any other relevant legislation or regulations.
 - (c) “**Work Health and Safety Act**” means the *Work Health and Safety Act 2020* (WA).
- 24.2 The Contractor must:
- (a) do all things reasonably necessary to ensure that the Goods and/or Services are provided in a manner that is safe and not likely to cause injury or illness to any person;
 - (b) perform all relevant functions and fulfil all relevant duties under all relevant WHS Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under WHS Laws; and
 - (c) promptly comply with all the Principal’s procedures, policies and directions regarding WHS Laws and work, health and safety provisions.
- 24.3 Where any injury, property damage, accident or incident occurs, the Contractor must:
- (a) as soon as practicable, but in any event within 24 hours, notify the applicable Person Conducting a Business or Undertaking of that injury, property damage, accident or incident; and
 - (b) provide the applicable Person Conducting a Business or Undertaking with any further information requested by the applicable Person Conducting a Business or Undertaking.
- 24.4 The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter the Site, the Principal’s Premises or other premises under the control of the Principal or the Principal’s Personnel, the Contractor’s Personnel must comply with the Principal’s work health and safety policies and procedures and do so at the Contractor’s own risk.
- 24.5 Any breach by the Contractor of WHS Laws or this clause 24:
- (a) will be treated as a material breach of the Contract and the provisions of clause 37.1 will apply; and
 - (b) which gives rise to circumstances which:
 - (i) present actual or potential risk of life or serious injury; or
 - (ii) are otherwise required to be notified under WHS Laws, entitles the Principal, in its absolute discretion, to:
 - (iii) suspend the whole or part of the performance of the Contractor’s obligations under the Contract; or
 - (iv) immediately terminate the Contract without notice.

25. CONTRACTOR'S PERSONNEL

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

- (a) comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the Goods and/or Services;
- (b) do not cause any damage, loss or injury to any property or person; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

25.2 If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Personnel specified in the Purchase Order (if any) to perform functions in relation to the provision of the Goods and/or Services, it must obtain the prior written approval of the Principal.

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

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

25.5 Specific provisions for Child-Related Work

- (a) In this clause 25.5 the following terms have the following meanings:
 - (i) **"Assessment Notice"** means an assessment notice under section 12 of the *Working With Children (Criminal Record Checking) Act 2004* (WA);
 - (ii) **"Child-Related Work"** has the meaning given in section 6 of the *Working With Children (Criminal Record Checking) Act 2004* (WA); and
 - (iii) **"Child-Related Site"** means a location at which Goods are to be delivered and/or Services are to be performed where children are likely to be present.
- (b) If the Goods and/or Services to be provided by the Contractor involve Child-Related Work or involve the delivery of the Goods and/or Services at a Child-Related Site:
 - (i) the Contractor must provide to the Principal an Assessment Notice in respect of all Personnel involved in performing the Child-Related Work, or providing the Services or delivering Goods at the Child-Related Site, before they commence such work; and
 - (ii) the Principal may require the Contractor to immediately remove any of the Contractor's Personnel who do not have a current Assessment Notice and the Contractor must comply with such a request as soon as possible.

26. REPRESENTATIVES

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

27. ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS

27.1 The Principal agrees to provide the Contractor with access to the Site and/or the Principal's Premises and/or the Principal's

Documents (as the case may be) as reasonably required to provide the Goods and/or Services.

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

27.3 The Contractor acknowledges and agrees that:

- (a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;
- (b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Site, the Principal's Premises, or the Principal's Documents at any time; and
- (c) where the Principal has suspended or denied the Contractor's access to the Site, the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

28. AUDIT AND RECORDS

28.1 The Contractor must permit the Principal and/or its auditors access, on reasonable notice and during normal business hours on Business Days, to all records, books, staff, premises and other facilities of the Contractor and its Sub-contractors in connection with any audit of the Contractor's performance of the Contract, including for the purpose of verifying any Contract Price, fees and other amounts paid or payable under the Contract.

28.2 The Principal will bear the costs of any audit under clause 28.1 unless the audit reveals that the Contractor has overcharged the Principal by 5% or more in relation to any particular Goods and/or Services, in which case the Contractor will reimburse the Principal its reasonable costs and expenses of the audit and must promptly reimburse the Principal for the amount of any overcharges.

28.3 If an audit reveals that the Contractor is not complying with its obligations under the Contract, then the Contractor must take, and must ensure that any relevant Sub-contractor takes, such actions as are necessary promptly to remedy the non-compliance.

28.4 The Contractor must comply, and ensure that any relevant Sub-contractor complies, with any reasonable directions or instructions from the Principal as to the manner (including timing) in which such non-compliance referred to in clause 28.3 must be remedied.

28.5 The Contractor must retain, and ensure each of its Personnel retain, all financial and operational records relevant to the Contract in an auditable and accessible format and otherwise as required by Law during the Term and for a period of at least 7 years after the Contract has been terminated or expired.

29. CONFIDENTIALITY

29.1 In this clause 29 the following terms have the following meanings:

- (a) **"Confidential Information"** means:
 - (i) the Contract;
 - (ii) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;
 - (iii) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;
 - (iv) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and

- (v) any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above, but excludes information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person.

(b) **“Disclosing Party”** means the Party which has disclosed Confidential Information that is confidential to that Party; and

(c) **“Receiving Party”** means the Party to whom Confidential Information is disclosed by the Disclosing Party.

29.2 Subject to clause 29.3, the Parties must not:

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.

29.3 Subject to clause 29.4, a Party may disclose Confidential Information to a third party:

- (a) with the prior consent of the Disclosing Party;
- (b) to the extent required by any Law or applicable securities regulation or rule;
- (c) in connection with any dispute or litigation concerning the Contract or its subject matter;
- (d) to the extent required by any Governmental Body having jurisdiction over the Receiving Party; or
- (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.

29.4 Before making a disclosure to a person under clause 29.3, the Receiving Party must:

- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party’s obligations under the Contract, except where clause 29.3(b) applies;
- (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) where clause 29.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

30. DATA SECURITY

30.1 The Contractor must:

- (a) do all things that a reasonable and prudent person or entity would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- (b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and
- (c) either return to the Principal or destroy any Principal Data immediately following the termination of the Contract.

30.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal’s reasonable satisfaction, to protect against the risks of a cyber incident, which includes any action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor’s information systems and technology and/or Principal Data residing on that system.

31. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

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

31.7 The Contractor must ensure that:

- (a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Sub-contractor of the Contractor or any other third party; and
- (b) no third party is in a position to successfully assert any Moral Rights or other proprietary interests in relation to the Goods and/or Services or the Contract contrary to the interests of the Principal. To the extent that a third party has Moral Rights in the Goods and/or Services, the Contractor must obtain or procure all consents or waivers from the individual creator (or any licensee or subsequent assignee or owner of the copyright, as the case may be) necessary to ensure that the Principal may do or authorise any acts or omissions in relation to the Contract Materials.

31.8 A Party must not:

- (a) grant any third party access to the other Party’s Intellectual Property Rights without that other Party’s prior written consent; or
- (b) do or allow to be done, or fail to do, any act that may infringe the other Party’s Intellectual Property Rights.

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

31.10 The Contractor agrees to:

- (a) notify the Principal as soon as it becomes aware of any suspected, threatened or actual infringement of any of the Principal's Intellectual Property Rights;
- (b) provide all reasonable assistance the Principal may request to protect the Principal's Intellectual Property Rights; and
- (c) provide all reasonable assistance in defending or prosecuting (as the case may be) any such infringement.

32. INDEMNITY

32.1 To the extent permitted by law, each Party ("**Indemnifying Party**") indemnifies the other Party and its Personnel ("**Indemnified Parties**") from and against any Losses which any of the Indemnified Parties pays, suffers, incurs or is liable for arising out of or in connection with:

- (a) any breach of this Contract by the Indemnifying Party;
- (b) the death or personal injury of any person to the extent caused or contributed to by any act or omission of the Indemnifying Party or its Personnel;
- (c) loss of, or damage to, any property to the extent caused or contributed to by any act or omission of the Indemnifying Party or its Personnel;
- (d) any breach of any Legal Requirement by the Indemnifying Party or its Personnel;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights) by the Indemnifying Party or its Personnel; and
- (f) any act or omission of fraud, dishonesty, reckless or Wilful Misconduct or misrepresentation by the Indemnifying Party or its Personnel.

32.2 Any liability of the Indemnifying Party to indemnify the Indemnified Parties under this clause 32 against any Loss sustained by the Indemnified Parties shall be reduced proportionally to the extent that:

- (a) such Losses have been caused by the Indemnified Party's failure to comply with their obligations and responsibilities under this Contract; and/or
- (b) the Indemnified Party's negligence or other wrongful act or omission has contributed to such loss or damage.

32.3 Without limitation to the above indemnity, the Indemnified Parties must use reasonable endeavours to minimise any Claim which is the subject of the above indemnity.

32.4 Clauses 32.1, 32.2 and 32.3 do not exclude any other right of the Indemnified Parties at law.

33. LIABILITY

33.1 Consequential Loss

- (a) In this clause 33, "**Consequential Loss**" means any:
 - (i) loss of production, revenue, profit, business reputation, opportunities or anticipated savings; and
 - (ii) loss arising from wasted overheads or business interruptions.
- (b) Notwithstanding any other clause of the Contract, neither Party will be liable to the other Party for any Consequential Loss unless:
- (c) the Law requires otherwise;
- (d) the Parties agree in writing that a Party will be liable for that Consequential Loss; or
- (e) the Consequential Loss is specified in or otherwise covered by an Insurance.

33.2 Civil Liability Act

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

34. INSURANCE

34.1 The Contractor must effect and maintain the insurances specified by the Principal as part of its original onboarding process in the form or forms appropriate to the Contractor's activities and with insurers approved by the Australian Prudential Regulation Authority.

34.2 All the Contractor's required insurances must be effected and in place before commencing the supply of the Goods and/or Services.

34.3 The Contractor must provide, on the Principal's request, certificates of currency and such other evidence satisfactory to the Principal of insurance coverage specified in this clause 34.

34.4 Each certificate of currency in respect of each insurance policy required to be provided under clause 34.3 must show:

- (a) the insurance policy numbers;
- (b) the expiry date of each policy; and
- (c) the amount of insurance cover required to be held under the Contract.

34.5 Without limiting the Contractor's other obligations under the Contract, if the Contractor fails to promptly provide evidence when required under clause 34.3, the Principal may give the Contractor a written notice requiring the Contractor to provide the evidence required within a specified period being not less than 5 Business Days from when the notice is served and specifying the Principal's intent to exercise its rights under clause 34.6 if the Contractor does not comply.

34.6 If the Contractor does not comply with clause 34.5, the Principal may:

- (a) effect and maintain the insurances, pay the premiums and deduct these payments from moneys due or to become due to the Contractor from the Principal; and/or
- (b) treat the Contractor's failure to comply with clause 34.5 as a material breach of the Contract and the provisions of clause 37.1 will apply.

34.7 Notwithstanding the other provisions of this clause 34, if the Contractor has been awarded a formal contract by the Principal, the insurance required under the formal contract will be applicable.

35. FORCE MAJEURE EVENT

35.1 If either Party can no longer perform their obligations under the Contract by virtue of a Force Majeure Event, they shall immediately notify the other Party of the Force Majeure Event and shall be temporarily relieved of their respective obligations under the Contract whilst the Force Majeure Event continues. Regardless of such relief, the Party making the notification of the Force Majeure Event shall do everything within its power to minimise the duration of the Force Majeure Event and shall notify the other Party immediately upon cessation of the circumstances relating to the Force Majeure Event.

35.2 Without limiting a Party's rights under this clause, if the Force Majeure Event continues for a period in excess of 120 days, either Party may terminate the Contract without penalty by giving written notice to the other Party.

36. SETTLEMENT OF DISPUTES

- 36.1 If any dispute arises out of or in connection with the Contract or the interpretation of its terms (a “Dispute”), a Party may not commence any court proceedings relating to the dispute unless this clause 36 has first been complied with, except where that Party seeks urgent interlocutory relief.
- 36.2 The Parties will attempt to resolve any Dispute as follows:
- (a) Either Party may notify the other Party in writing of the occurrence of a Dispute and the Parties must meet within 5 Business Days or such other time as agreed to discuss and attempt to resolve the Dispute.
 - (b) On receipt of the notice specified in clause 36.2(a) the Parties must use their reasonable efforts to expeditiously resolve the Dispute.
 - (c) If the Parties cannot resolve the Dispute within 10 Business Days after the first meeting between the Parties specified in clause 36.2(a), or any further period as the Parties may agree to in writing, the Dispute must (at the instigation of any Party) go to mediation.
 - (d) The mediation is to be conducted in accordance with the Australian Disputes Centre’s Mediation Guidelines with a mediator as agreed by the Parties or, failing agreement, as appointed by the Australian Disputes Centre or its nominee.
 - (e) The mediation will be confidential, and the Parties must equally bear the mediator’s costs to the Dispute, and each Party must also bear their own legal costs.
 - (f) The forum for mediation shall be Perth, Western Australia.
 - (g) If the Dispute is not resolved at mediation within 10 Business Days of the first mediation meeting, then any Party is at liberty to claim their costs against the other Parties, including the costs referred to in clause 36.2(e), and either Party may commence legal proceedings.
- 36.3 The Parties must continue to perform their obligations under the Contract, including the delivery of Services and Deliverables, and payment of any Fees, while any Dispute is being resolved in accordance with this clause 36.

37. TERMINATION

- 37.1 Without limiting the other circumstances in which the Contract may be terminated, the Contract may be:
- (a) immediately terminated by either Party giving notice in writing to the other Party if the other Party:
 - (i) commits an Insolvency Event (subject to Ipso Facto Laws to the extent that they apply to the Contract);
 - (ii) breaches a material provision of the Contract which is incapable of remedy or rectification; or
 - (iii) breaches a material provision of the Contract and does not remedy that breach within 5 days of receiving notice of such breach from the other Party;
 - (b) terminated by either Party in accordance with clause 35.2 (Force Majeure Event); or
 - (c) immediately terminated by the Principal:
 - (i) giving notice in writing to the Contractor if any of the Contractor’s Personnel are found guilty of any criminal act relating to the Goods and/or Services; or
 - (ii) in accordance with clause 24.5(b)(iv) (Safety Obligations).
- 37.2 If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to provide similar or equivalent goods and/or services to the Goods and/or Services.

- 37.3 Where a Party terminates the Contract under this clause 37, each Party (“Affected Party”) shall ascertain the amount of all damages and expenses suffered or incurred by the Affected Party as a result of any of the matters referred to in this clause and any other applicable clauses and all such amounts may be deducted from amounts then owing to the other Party or may be recovered by the Affected Party as a debt due by the other Party to the Affected Party.

- 37.4 When the Contract is terminated, the Contractor must:

- (a) promptly return to the Principal or destroy any of the Principal’s property or Principal’s Documents as directed in writing by the Principal; and
- (b) if requested by the Principal, co-operate with and assist the Principal to transition the provision of the Goods and/or Services to the Principal or to another contractor engaged by the Principal.

38. ASSIGNMENT AND SUBCONTRACTING

- 38.1 Neither Party shall:

- (a) assign or novate all or any part of its rights and obligations under the Contract; or
- (b) sub-contract the whole or any part of the Contract, without:
 - (c) the other Party’s prior written approval, which must not be unreasonably withheld; and
 - (d) in the case of an assignment under clause 38.1(a) where obligations are to be assigned, the proposed assignee executing a deed in favour of the other Party agreeing to comply with and be bound by the obligations of the proposed assignee under the Contract.

- 38.2 To avoid doubt, a Party’s approval to sub-contract does not discharge or release the other Party from any liability or obligation under the Contract.

39. NOTICES

- 39.1 Any notice under the Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:
- (a) hand delivery or prepaid post to the address of the receiving Party specified in the Purchase Order or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or
 - (b) email to the email address of the receiving Party specified in the Purchase Order or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.
- 39.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:
- (a) if by delivery in person, when delivered to the address of the receiving Party;
 - (b) if by post, 5 Business Days from and including the date of postage; and
 - (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),
- but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving Party’s time), it is regarded as received at 9.00am on the following Business Day.

40. NO DISPARAGEMENT

Subject to Law and each Party’s rights in connection with the enforcement of the Contract, neither Party shall at any time:

- (a) disparage, permit or authorise the disparagement of the other Party, any of its Personnel, clients or suppliers, or of their related entities; or
- (b) otherwise make, permit or authorise the making of any statement in any way relating to or connected with any dispute which is calculated or is reasonably likely to cause damage to the other Party, any of its Personnel, clients or suppliers, or of their related entities (including damage to their respective reputations).

41. GENERAL

41.1 Relationship of the Parties

- (a) The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise.
- (b) Nothing in the Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated in these General Conditions.

41.2 Severability

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

- (a) read down, if possible, so as to be valid and enforceable; or
- (b) if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,

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

41.3 Variation to Contract terms

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

41.4 Waiver

- (a) A Party may only waive a right or power it has under the Contract by written notice to the other Party.
- (b) No forbearance, delay or indulgence by a Party in enforcing a provision of the Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

41.5 Entire agreement

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

41.6 Time of the essence

Time is of the essence in the Contract.

41.7 Rights are cumulative

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

41.8 Governing law

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

41.9 Non exclusivity

Nothing in the Contract is intended nor shall be construed as creating any exclusive agreement with the Contractor. The Contract shall not restrict the Principal from acquiring similar, equal or like goods and/or services from other entities or sources.

41.10 Set-off

The Principal may set off against any amount owing to the Contractor any amount owing, or claimed by the Principal to be owing, by the Contractor to the Principal, whether under the Contract or otherwise.

41.11 Reliance

Neither Party has entered into any agreement under the Contract in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in the Contract.

41.12 Further assurance

Each Party must promptly do anything (including executing any document) and must ensure that its Personnel do anything (including executing any document) that the other Party may reasonably require to give full effect to the Contract and to perform its obligations under the Contract.

41.13 Conflict of provisions

Where any conflict occurs between the provisions contained in the Contract, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the Contract without otherwise diminishing the enforceability of the remaining provisions of the Contract.

41.14 Inconsistency and precedence

In the event of any inconsistency between:

- (a) the Purchase Order;
- (b) these General Conditions; and
- (c) any other schedules, annexures or attachments,

the document listed first in this clause 41.14 will prevail to the extent of the inconsistency.

41.15 Survival

The following clauses survive termination of the Contract: 1 (Definitions), 2 (Interpretation), 3.2 (Quality of Goods, sources of supply and substitution: manufacturer's warranties), 6.2 (Property and risk in the Goods: warranty regarding ownership in Goods), 7.2 (Quality of Services: warranties regarding personnel), 13 (Receipt and acceptance of Goods and/or Services), 14 (Rejection and removal of defective Goods and/or defective Services), 21 (Term), 29 (Confidentiality), 30 (Data security), 31 (Intellectual Property Rights), 32 (Indemnity), 36 (Settlement of disputes), 37.2, 37.3 and 37.4 (Termination), 39 (Notices), 41.1 (Relationship of the Parties) and 41.8 (Governing law).

41.16 Liability of Parties

If a Party consists of more than one person:

- (a) an obligation of that Party is a joint obligation of all of those persons and a several obligation of each of them; a right given to that Party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (b) a representation, warranty or undertaking made by that Party is made by each of those persons.

41.17 Public announcements

- (a) Except as required by any applicable Law or as otherwise permitted by the Contract, the Contractor must not make any public announcements or disclosures concerning any matter the subject of this Contract without the Principal's prior written consent.
- (b) If the Principal consents to the making of a public announcement or disclosure under this clause, then the Principal must in writing first approve the wording and the manner or publication of such announcement or disclosure.

41.18 **Ipsa Facto Laws**

In the event the Ipsa Facto Laws apply, the Principal may withhold or deny any advance payment or other form of credit the Contractor would otherwise be entitled to.

41.19 **If the Contractor is a trustee**

- (a) If the Contractor enters into the Contract as the trustee of a trust, the Contractor is bound both personally and as trustee of the trust.
- (b) In respect of any trust of which the Contractor (solely or jointly) is acting or in the future acts as trustee of ("**Relevant Trust**") the Contractor covenants and warrants that:
 - (i) it has full power and authority pursuant to its constitution (if any) and the deed of trust ("**Relevant Trust Deed**") to act when entering into the Contract and the Contractor has obtained the consents and approvals of all persons necessary to bind the property of the Relevant Trust;
 - (ii) the Relevant Trust is lawfully and validly constituted and the Relevant Trust Deed has been properly executed;
 - (iii) the Relevant Trust and the Relevant Trust Deed will not be revoked or varied other than with the prior written consent of the Principal which may not be unreasonably withheld or delayed;
 - (iv) the assets of the Relevant Trust and the assets of the Contractor will at all times be and remain available to satisfy the Contractor's covenants under the Contract;
 - (v) no action has been taken or proposed to remove it as trustee of the Relevant Trust or alter the powers it has as trustee of the Relevant Trust; and
 - (vi) no action has been taken or threatened to wind up or terminate the Relevant Trust.

41.20 **Counterparts**

The Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

42. DISABILITY ACCESS INCLUSION PLAN

42.1 The Principal's Access Inclusion Plan is available for download from the Principal's website at:

https://www.gosnells.wa.gov.au/About_us/Strategies/Disability_access_and_inclusion.

42.2 If the Contractor is supplying services to the public as part of Contract, the Contractor must:

- (a) to the extent practicable, comply with the Disability Access and Inclusion Plan; and
- (b) within 30 days of a request from the Principal, provide a report to the Principal, reporting on the extent to which the Contractor has implemented the Disability Access Inclusion Plan.