



PANEL AGREEMENT

**City of Gosnells
AND
Contractors Name**

PANEL AGREEMENT

REFERENCE SCHEDULE

Commencement Date	Enter Start Date Here - If unknown, the date of signing by the last party
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Term	Number months / years*			
	--- OR ---			
	Starting on the Commencement Date and ending on		Enter Date Here	
Further Terms	Number	further period(s) of	Number	months / years* each

Principal (and addresses for service of notices)	Name:	City of Gosnells (ABN 18 374 412 891)
	Address:	2120 Albany Highway, GOSNELLS WA 6110
	Email:	info@gosnells.wa.gov.au
	Phone:	08 9397 3000

Panellist (and addresses for service of notices)	Name:	
	ACN/ABN:	
	Address:	
	Email:	
	Phone:	

Principal's Technical Representative	Name:	
	Address:	
	Email:	
	Phone:	

Principal's Contract Representative	Name:	
	Address:	
	Email:	
	Phone:	

Panellist's Representative	Name:	
	Address:	
	Email:	
	Phone:	

Goods and/or Services	Please refer to the attached specifications --- OR --- Add Details of the Required Service
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Special Conditions	None --- OR --- Add Details of the Required Special Conditions
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PANEL AGREEMENT

PARTIES

PARTIES

CITY OF GOSNELLS (ABN 18 374 412 891) (**Principal**)

AND

The Person specified in the Reference Schedule as the Panellist (**Panellist**)

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PANEL AGREEMENT

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Panel Agreement except where the context otherwise requires:

Authority means but is not limited to any:

- (a) federal, state, or local government;
- (b) governmental or quasi-governmental administrative, fiscal, or judicial body; or
- (c) ministry, department, court, commission, tribunal, board, statutory body, agency, institution or similar entity of any such government.

Business Day means a day not being a Saturday, Sunday or a public holiday in the location where the Goods and/or Services are being provided, or if no such location is specified, in Perth, Western Australia.

Commencement Date means the date specified as such in the Reference Schedule, or if no date is specified, the date the last of the parties signs this Panel Agreement.

Confidential Information in relation to a party means information of a confidential nature including, but not limited to, information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

Conflict of Interest means any matter, circumstance, interest, or activity affecting the Panellist, its Personnel or Subcontractors which may or may appear to impair the ability of the Panellist to provide the Goods and/or Services to the Principal fairly and independently and includes a conflict between a duty owed by the Panellist to a third party and a duty owed by the Panellist to the Principal.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss of goodwill, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Contract means a contract for the provision of Goods and/or Services formed between the Panellist and the Principal (which also includes the terms of this Panel Agreement) by the Principal issuing a Purchase Order with attached or incorporated contractual terms and conditions, or issuing a separate contract document containing terms and conditions (or such other document or documents as the Principal may determine to form the terms and conditions of the contractual arrangement between the parties) to the Panellist and the Panellist accepting the Contract in accordance with clause 8. Where the context permits, a reference to a Contract includes a Purchase Order where the Purchase Order is the primary document containing the contractual terms and conditions for the provision of the Goods and/or Services.

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

Eligible Data Breach has the meaning given in the Privacy Act.

Existing IP Material means:

- (a) any pre-existing Intellectual Property Rights of a party, including any improvements, modifications or enhancements to such pre-existing Intellectual Property Rights; and
- (b) any other Intellectual Property of a party, created independently after the Commencement Date,

which is made available to the other party for the purpose of this Panel Agreement or a Contract, on or following the Commencement Date, including but not limited to a party's tools, methodologies and object libraries and any improvements, enhancements, alterations and modifications to such Intellectual Property.

Goods and/or Services mean:

- (a) for the purposes of this Panel Agreement, any part of the goods and/or services specified in the Reference Schedule for which the Panellist is approved to supply; and/or
- (b) for the purposes of a Contract, the Goods and/or Services the subject of that Contract to be provided, by the Panellist.

Further Term means the extension period to the Term (if any) specified in the Reference Schedule and referred to in clause 3.2.

Information Commissioner means the Office of the Australian Information Commissioner (OAIC) established under the *Australian Information Commissioner Act 2010* (Cth).

Insolvency Event means the following:

- (a) being a company:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
 - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
 - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
 - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - (v) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
 - (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
 - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; and

- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors; or

the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

Intellectual Property includes all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

Intellectual Property Rights means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Panel Agreement, and whether in Australia or otherwise.

Law means law, equity, judgment, legislation, orders, regulations, Statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).

Other Panellists mean the other members of the Panel, as appointed by the Principal from time to time.

Panel the Principal's panel to which the Panellist has been invited, as updated by the Principal from time to time.

Panel Agreement means this Panel Agreement made between the Principal and the Panellist.

Panellist means the person or entity named as such in the Reference Schedule

Panellist's Representative means the Panellist's representative specified in the Reference Schedule or as otherwise specified in a Quotation.

Personnel means in relation to:

- (a) the Panellist or any Subcontractor, any person who is a partner, officer, director, principal, employee, secondee, delegate, consultant, agent, representative, professional advisor or other personnel of the Panellist or Subcontractor; and
- (b) the Principal, any person who is a past or present officer, employee, secondee, delegate, consultant, agent, representative, professional advisor, contractor, subcontractor or other personnel of the Principal.

Personal Information has the meaning given in the Privacy Act.

Principal means City of Gosnells (ABN 18 374 412 891) of 2120 Albany Highway, Gosnells WA 6110.

Principal's Representative means either or both (as the context provides) the Principal's Technical Representative and/or the Principal's Contract Representative as specified in the Reference Schedule.

Privacy Act means the *Privacy Act 1988* (Cth).

Purchase Order means a purchase order issued by the Principal (whether or not it contains addition contractual terms and conditions or such is subject to a separate document or documents) to the Panellist for the provision of Goods and/or Services. Where the context permits, a reference to a Purchase Order includes a Contract and vice versa.

Quotation means a submission made by the Panellist in response to a Quotation Request.

Quotation Request means a request by the Principal to the Panellist to provide a quotation for the supply of Goods and/or Services.

Reference Schedule means the schedule at the front of this Panel Agreement.

Special Conditions mean the special conditions (if any) to this Panel Agreement as shown in the Reference Schedule and referred to in clause 22.

Subcontractor means a subcontractor engaged by the Panellist to perform any part of the Goods and/or Services under a Contract and includes their Personnel (as relevant).

Term means the period specified in the Reference Schedule and referred to in clause 3.2 and includes any Further Term.

1.2 Interpretation

In this Panel Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) Headings are for convenience only and do not affect the interpretation of this Panel Agreement.
- (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) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Panel Agreement;
 - (vi) this Panel Agreement includes all schedules and attachments to it;
 - (vii) an agreement other than this Panel Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (viii) any Act of Parliament includes any amendments or re-enactments of the same or any Regulations made under that Act; and
 - (ix) a monetary amount is to Australian dollars (\$AUD).
- (f) To the extent permitted by law, if either party consists of one or more persons, this Panel Agreement 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 this Panel Agreement or any part of it.

2. SCOPE OF THE GOODS AND/OR SERVICES

2.1 Overview

- (a) The Goods and/or Services (which may include Goods where specified) required from the Panellist or Other Panellists are specified in the Reference Schedule and detailed in any applicable Contract.
- (b) The Principal may at any time during the Panel Agreement Period engage the Panellist, through the processes set out in clause 8 of this Panel Agreement, to provide the Goods and/or Services.

3. STRUCTURE OF THIS PANEL AGREEMENT

3.1 Order of precedence

If there is inconsistency between any of the documents forming part of this Panel Agreement, those documents will be interpreted in the following (descending) order of priority to the extent of any inconsistency:

- (a) the terms of this Panel Agreement;
- (b) the Reference Schedule;
- (c) the other Schedules;
- (d) any attachments; and
- (e) documents incorporated by reference.

3.2 Term

- (a) This Panel Agreement begins on the Commencement Date and continues for the Term, unless terminated earlier in accordance with clause 21.
- (b) Before the end of the Term and each subsequent Further Term, the Parties may agree in writing to extend this Panel Agreement for a Further Term.

4. PANEL STRUCTURE

4.1 Objectives of the Panel

The objectives of the Panel are to:

- (a) provide the Principal with consistent and efficient processes to engage Panellists;
- (b) deliver high quality Goods and/or Services that represent value for money; and
- (c) provide increased transparency through improved data and reporting.

5. SCOPE OF THIS PANEL AGREEMENT

5.1 Overview

This Panel Agreement is, subject to its terms, a standing offer between the Principal and the Panellist under which, on an as-required basis, the Principal may offer to enter into a Contract with the Panellist.

5.2 Role of the Principal

- (a) The Principal will manage the Panel and this Panel Agreement.
- (b) The Principal's role is to do each of the following:
 - (i) administer this Panel Agreement;
 - (ii) approve any change to this Panel Agreement; and
 - (iii) monitor and report on the operation of the Panel, including its operation, viability and expenditure.

5.3 No guarantee

The Panellist acknowledges and agrees that:

- (a) there is no guarantee that the Panellist will be offered a Contract with the Panellist for Goods and/or Services; and
- (b) the Principal may, at their absolute discretion (and during the term of this Panel Agreement) enter into a Contract with, and obtain the Goods and/or Services, or services similar to the Goods and/or Services, from any other person or source they choose on any other terms.

5.4 Panel review and refresh

- (a) The Principal reserves the right to, at any time during the Panel Agreement Period, review the operation of the Panel and do any one or more of the following:
 - (i) add to or remove Goods and/or Service categories or subcategories over the Term of this Panel Agreement;
 - (ii) suspend or remove the Panellist or Other Panellists from the Panel for noncompliance with this Panel Agreement as further described in clause 16;
 - (iii) approach the market to:
 - (A) add suppliers to the Panel in one or more Goods and/or Services categories; or
 - (B) add additional Goods and/or Services categories or subcategories to the Panel (for which the Panellist and other suppliers may tender to provide).

6. PARTY REPRESENTATIVES

6.1 Principal's Representative

- (a) The Principal's Representatives will represent the Principal and will administer this Panel Agreement on behalf of the Principal (the Technical Representative administering technical matters and the Contract Representative administering contractual matters, as the case may be).
- (b) The Principal's Representatives have authority to deal with the Panellist in relation to the Panellist's responsibilities under this Panel Agreement.

6.2 Panellist's Representative

The Panellist's Representative:

- (a) will represent the Panellist and is the primary contact for the Principal under this Panel Agreement; and
- (b) has authority to deal with the Principal in relation to important or significant matters (as determined by the Principal including, for example, the resolution of disputes) and any other matters requested by the Principal in relation to this Panel Agreement.
- (c) will be the key point of contact and recipient for the Principal to issue any Quotation Requests and/or Purchase Orders.

6.3 Panellist Personnel contact details

The Panellist is responsible for ensuring that the contact details in the Reference Schedule for the Panellist are correct and current.

6.4 Panellist's Personnel

- (a) The Panellist must use suitably qualified Personnel as are necessary to enable it to fulfil its obligations under this Panel Agreement.
- (b) The Panellist must:

- (i) provide such information as can be lawfully provided and which is reasonably requested by the Principal concerning the Personnel the Panellist is using, or proposes to use, in performing its obligations under this Panel Agreement; and
- (ii) ensure its Personnel comply with the Panellist's obligations in this Panel Agreement.

(c) Contract and any additional service levels

7. RELATIONSHIPS

7.1 General obligations of the parties

Each party must:

- (a) diligently perform its obligations under this Panel Agreement and any Contract; and
- (b) work together in a collaborative manner in good faith.

7.2 Panellist obligations

- (a) The Panellist must:
 - (i) comply with any reasonable written directions given by the Principal in respect of this Panel Agreement; and
 - (ii) provide all reasonable assistance required by the Principal provided that the assistance requested is consistent with the Panellist's obligations under this Panel Agreement.
- (b) If requested by the Principal, the Panellist must participate in any meetings (which may be by virtual attendance), in relation to the operation of this Panel Agreement at the Panellist's own expense.

8. QUOTATION REQUESTS AND PURCHASE ORDERS

8.1 Overview

The Principal may at any time during the Panel Agreement Period, issue the Panellist's Representative and/or any Other Panellists appointed to the Panel with:

- (a) a Quotation Request; and/or
- (b) a Purchase Order.

8.2 Quotation Requests

- (a) The Principal may issue a Quotation Request to the Panellist's Representative in any format approved by the Principal at any time during the Panel Agreement Period.
- (b) The Quotation Request will describe the scope of the Goods and/or Services required by the Principal and may set out other criteria concerning fees, any additional requirements and service levels.
- (c) Upon receipt of a Quotation Request, the Panellist must:
 - (i) prepare and submit a Quotation by the date specified in the Quotation Request or otherwise requested by the Principal with:
 - (A) details of the Goods and/or Services proposed to be provided in response to the Quotation Request;
 - (B) the applicable fees to provide the Goods and/or Services;
 - (C) the names of any key Personnel proposed to deliver the Goods and/or Services (if applicable); and
 - (D) any other information requested by the Principal in the Quotation Request; or
 - (ii) advise the Principal in writing, as soon as possible (and, in any event, before any stipulated closing date), that the Panellist is not submitting a Quotation in response to that Quotation Request.

(d) When responding to a Quotation Request the Panellist may:

- (i) offer fees that are lower than the fees set out in a Quotation Request; and
- (ii) set out charges for any additional requirements and, where such charges are in addition to the Fees, providing an explanation for the difference, noting that the Principal will assess whether there is a reasonable basis for any such additional charges.

(e) Quotations must remain open for acceptance by the Principal for a minimum of 20 Business Days after any stipulated closing date, or for such time as specified by the Principal in a Quotation Request.

(f) The Principal is not obliged to issue a Contract or Purchase Order following any issue of a Quotation Request.

8.3 Purchase Orders and Contracts

- (a) The Principal may issue a Purchase Order to the Panellist's Representative in any format approved by the Principal at any time during the Panel Agreement Period.
- (b) The Principal may offer a Contract to the Panellist at any time during the Panel Agreement Period.

8.4 Forming a Contract

- (a) A separate Contract will be formed between the Panellist and the Principal when the Principal issues a:
 - (i) Purchase Order; and/or
 - (ii) Contract,
- (b) (as the case may be) to the Panellist and the Purchase Order and/or Contract (as the case may be) comes into or is deemed to come into force and effect according to its terms and the terms of any supply of Goods and/or Services under that Purchase Order and/or Contract will be governed by that Purchase Order and/or Contract.

9. RELATIONSHIP OF PARTIES

9.1 The Panellist is not the Principal's Personnel by virtue of this Panel Agreement or a Contract, nor does the Panellist have any power or authority to bind or represent the Principal, unless specifically authorised in writing by the Principal.

9.2 The Panellist or any of its Personnel must not:

- (a) misrepresent their relationship with the Principal;
- (b) engage in any misleading or deceptive conduct in relation to the Goods and/or Services; or
- (c) represent themselves as the Principal's Personnel.

10. LAWS AND POLICY REQUIREMENTS

10.1 Compliance with Laws

The Panellist must comply with, and ensure its Personnel comply with all Laws applicable to this Panel Agreement.

10.2 Panellist's obligations

- (a) In this clause 10, "Fraud" means dishonestly obtaining a benefit from the Principal or any Authority, or causing a loss to the Principal or any Authority, by deception or other means.
- (b) The Panellist must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Panel Agreement. The Panellist acknowledges the occurrence of Fraud by the Panellist or its Personnel or Subcontractors will constitute a breach of this Panel Agreement and any relevant Contract.
- (c) If the Panellist or its Personnel have committed Fraud, or the Panellist has failed to take reasonable steps to

prevent Fraud by its Personnel, the Panellist must reimburse the Principal for the reasonable costs it incurs as a result of the Fraud.

11. PANELLIST'S WARRANTIES

11.1 The Panellist warrants on the Commencement Date that:

- (a) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements or Personnel payments in respect of which it has not paid the judgment amount;
- (b) it is financially viable and is not the subject or an Insolvency Event; and
- (c) it has all necessary licences and authorisations required to operate and provide the Goods and/or Services to the Principal under a Contract.

11.2 The Panellist warrants that it will promptly notify and fully disclose to the Principal any event or occurrence actual or threatened during the Panel Agreement Period that would materially affect the Panellist's ability to perform any of its obligations under this Panel Agreement or any Contract.

12. LIABILITY

12.1 Consequential Loss

- (a) To the extent permitted by Law, but subject to clause 12.1(b), neither party is liable to the other for breach of contract, in tort (including negligence), or for any other common law, equitable or statutory cause of action arising out of, or in connection with, the operation of this Panel Agreement (including under an indemnity) for any Consequential Loss.
- (b) Unless otherwise specified, any limitation of liability under clause 12.1(a) for any Consequential Loss does not apply to any loss arising out of:
 - (i) personal injury (including sickness or death of a person);
 - (ii) loss of, or damage to, tangible property;
 - (iii) any breach of confidentiality or privacy obligations in this Panel Agreement or at Law; or
 - (iv) any breach of any Law, fraud or any unlawful act or omission.

12.2 Indemnity

- (a) Subject to clause 12.3(a), in performing their obligations under this Panel Agreement, each party ("**Indemnifying Party**"), indemnifies the other party ("**Indemnified Party**") from and against any:
 - (i) cost or liability incurred by the Indemnifying Party;
 - (ii) loss of or damage to the Indemnified Party's property; or
 - (iii) loss or expense incurred by the Indemnified Party in dealing with any claim against it including reasonable legal costs and expenses and the cost of time spent, resources used, or disbursements paid by the Indemnified Party,arising from either:
 - (iv) a breach by the Indemnifying Party or its Personnel of an obligation of confidentiality, privacy or security under this Panel Agreement;
 - (v) an unlawful or negligent act or omission of the Indemnifying Party or its Personnel in connection with this Panel Agreement.
- (b) The right of the Indemnified Party to be indemnified under this clause 12.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law,

but the Indemnified Party is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

- (c) This clause 12.2 survives the expiration or termination of this Panel Agreement or a Contract.

12.3 Contribution and mitigation

- (a) The Indemnified Party's liability under or in connection with this Panel Agreement (including under the indemnity in clause 12.2(a)) will be reduced:
 - (i) proportionately to the extent that any act or omission of the Indemnified Party or its Personnel contributed to the relevant cost, liability, loss, damage or expense; and
 - (ii) in accordance with any applicable legislative proportionate liability provision.
- (b) Each party must use all reasonable endeavours to mitigate its losses and expenses arising under or in connection with a breach of this Panel Agreement.

13. INTELLECTUAL PROPERTY

13.1 No change in ownership of the Intellectual Property Rights in any Existing IP Material of either party is affected by this Agreement.

13.2 Each party expressly agrees and acknowledges that:

- (a) any Intellectual Property of the other party (whether unregistered, registered or registrable) is the property of that other party; and
- (b) nothing in this Panel Agreement is intended to provide a party with any interest in the Intellectual Property of the other party.

13.3 Each party agrees that it must not copy, alter, modify or in any other way interfere with (including but not limited to reverse engineering) the Intellectual Property of the other party. Each party must not do anything that may infringe on the other party's Intellectual Property Rights.

14. CONFIDENTIALITY

14.1 Disclosure of Confidential Information

- (a) Subject to clause 14.2, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

14.2 Exceptions to obligations

- (a) The obligations of each party under this clause 14.2 will not be taken to have been breached to the extent that Confidential Information:
 - (i) is disclosed by a party to:
 - (A) its Personnel solely in order to comply with obligations, or to exercise rights, under this Panel Agreement, or to enable effective management or auditing of Panel Agreement-related activities;
 - (B) its advisers for advice in connection with this Panel Agreement;
 - (C) its insurers and their advisers in connection with any claim or apprehended claim against a party;

- (ii) is shared by a party within its organisation to the extent reasonable for a party to comply with its obligations under this Panel Agreement;
- (iii) is disclosed by a party in response to a lawful request;
- (iv) is disclosed in circumstances where disclosure is authorised or required by Law; or
- (v) is in the public domain otherwise than due to a breach of this clause 14.

14.3 Obligations on disclosure

Where a party discloses Confidential Information to another person pursuant to clauses 14.2(a)(i) to 14.2(a)(ii), the party will notify the receiving person that the information is confidential.

14.4 No reduction in privacy obligations

Nothing in this clause 14 limits any obligation which either party may have under Law including the Privacy Act, any applicable State or Territory privacy legislation, in relation to the protection of Personal Information.

15. PRIVACY

15.1 Personal Information

- (a) This clause 15 applies where the Panellist deals with Personal Information for the purpose of or in accordance with this Panel Agreement, a Quotation Request, a Quotation, a Purchase Order and/or a Contract (each, a “**Relevant Document**”).
- (b) The Panellist acknowledges that it is or may be considered to be a “contracted service provider” within the meaning of section 6 of the Privacy Act, and agrees in respect of any Personal Information obtained as a result of any Relevant Document and/or during the course of performing the Goods and/or Services under a Contract:
 - (i) to use or disclose that Personal Information only for the purposes of this Panel Agreement or that Relevant Document;
 - (ii) to comply with the obligations contained in the Australian Privacy Principles (APPs) as if it were an “agency” under the Privacy Act;
 - (iii) not to do any act, or engage in any practice that would breach an Australian Privacy Principle, or which if done or engaged in by the Principal would be a breach of that APP by the Principal; and
 - (iv) to ensure that any Panellist’s Personnel and Subcontractors who are required to deal with Personal Information for the purposes of a Relevant Document, are made aware of the obligations of the Panellist as set out in this clause 15.
- (c) If the Panellist becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information obtained by the Panellist as a result of a Relevant Document and/or during the course of performing the Goods and/or Services under a Contract, the Panellist must:
 - (i) notify the Principal in writing as soon as possible, no later than 2 days of becoming aware; and
 - (ii) unless otherwise directed by the Principal, carry out an assessment in accordance with the requirements of the Privacy Act.
- (d) Where the Principal notifies the Panellist that there has been, an Eligible Data Breach in relation to any Personal

Information obtained as a result of a Relevant Document and/or during the course of performing the Goods and/or Services under a Contract, the Panellist must:

- (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
 - (ii) unless otherwise directed by the Principal, take all other action necessary to comply with the requirements of the Privacy Act; and
 - (iii) take any other action as reasonably directed by the Principal.
- (e) The Panellist must promptly notify the Principal’s Contract Representative in respect of a Relevant Document, and the Information Commissioner where required, if the Panellist:
 - (i) becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 15, whether by the Panellist or a Subcontractor;
 - (ii) becomes aware that a disclosure of Personal Information may be required by Law; or
 - (iii) receives a request or an inquiry from the Information Commissioner, or from any individual to whom any Personal Information held by the Panellist or a Subcontractor relates, in respect of Personal Information.
 - (f) The Panellist’s obligations in this clause 15 are in addition to, and do not restrict, any obligations it may have under:
 - (i) the Privacy Act or the APPs including any privacy codes or principles that would apply to the Panellist but for the application of the other provisions of this clause 15; or
 - (ii) any Relevant Document.
 - (g) Nothing in this clause 15 detracts from clause 14.

16. SUSPENSION FROM PANEL

16.1 Suspension due to non-compliance

- (a) The Principal may suspend the Panellist from the Panel by written notice to the Panellist, if:
 - (i) the Panellist has materially breached this Panel Agreement (including a breach of a provision referenced in clauses 21.1(a)(i) and (ii)) or the Principal has a right to terminate this Panel Agreement;
 - (ii) The Principal has received substantiated evidence of continuous or substantial negative feedback from its Personnel or advisors in respect of the performance of the Panellist in connection with the Panel;
 - (iii) The Principal reasonably considers that the Panellist is not providing the Offered Goods and/or Services to the Principal in accordance with this Panel Agreement.
- (b) Any suspension of the Panellist may apply to any one or more Purchase Order or Quotation Request, or Goods and/or Services categories and/or subcategories and may be for any period of time.
- (c) Before the Principal suspends the Panellist, the Principal will:
 - (i) provide the Panellist with the reasons for any proposed suspension;

- (ii) consider any feedback provided by the Panellist within the timeframes reasonably required by the Principal; and
 - (iii) allow the Panellist a reasonable opportunity to rectify the issues that would entitle the Principal to suspend the Panellist, within the timeframes reasonably required by the Principal.
- (d) If the Panellist is suspended:
- (i) the Panellist must not enter into any Contract in respect of any Goods and/or Services categories or subcategories;
 - (ii) the Panellist must promptly notify the Principal if it receives any request to enter into a Purchase Order or Quotation Request in respect of any Goods and/or Services categories or subcategories;
 - (iii) the Panellist must not respond to the request to enter into a Contract or Quotation Request (other than to inform the requesting party that the Panellist is not able to respond to that request); and
 - (iv) all other provisions of this Panel Agreement and any existing Contracts not affected by the suspension continue.
- (e) The Principal may at any time lift a suspension by notifying the Panellist. The Principal must lift the suspension promptly after the Panellist demonstrates to the Principal's reasonable satisfaction that the Panellist has rectified the issues that caused the suspension.

17. DISPUTE RESOLUTION

17.1 Terms used

In this clause 17, "ADC" means the Australian Disputes Centre (ABN 87 003 042 840) or any successor dispute resolution organisation having similar objects that succeeds it.

17.2 Procedure for dispute resolution

- (a) If any dispute arises out of or in connection with this Panel Agreement or the interpretation of its terms (a "Dispute"), a party may not commence any court proceedings relating to the Dispute unless this clause 17 has first been complied with, except where that party seeks urgent interlocutory relief.
- (b) The parties must attempt to resolve any Dispute as follows:
 - (i) 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.
 - (ii) On receipt of the notice specified in clause 17.2(b)(i), the parties must use their reasonable efforts to expeditiously resolve the Dispute.
 - (iii) If the parties cannot resolve the Dispute within 10 Business Days after the first meeting between the parties specified in clause 17.2(b)(i), or any further period as the parties may agree to in writing, the Dispute must (at the instigation of any party) go to mediation.
 - (iv) The mediation is to be conducted in accordance with the ADC's Mediation Guidelines with a mediator as agreed by the parties or, failing agreement, as appointed by the ADC or its nominee.

- (v) 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.
- (vi) 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 17.2(b)(v), and either party may commence legal proceedings.

17.3 Performance of obligations

The parties must continue to perform their obligations (including supply of any Goods and/or Services) under this Panel Agreement while any Dispute is being resolved in accordance with this clause 17.

18. CONFLICT OF INTEREST

- (a) The Panellist warrants that, to the best of its knowledge after making diligent inquiry at the Commencement Date, no Conflict of Interest except as disclosed in writing to the Principal, exists or is likely to arise in the performance of or in relation to this Panel Agreement.
- (b) The Panellist must use its best endeavours (including making all appropriate enquiries) to ensure that:
 - (i) a situation does not arise which may result in a Conflict of Interest; and
 - (ii) any Personnel and Subcontractors of the Panellist do not engage in any activity or obtain any interests likely to conflict with or restrict the Panellist in the fair and independent performance of or in relation to this Panel Agreement.
- (c) If, a Conflict of Interest arises, or appears likely to arise, the Panellist agrees:
 - (i) to notify the Principal immediately;
 - (ii) to the extent possible, make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (iii) to take any steps the Principal reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- (d) If the Panellist fails to notify the Principal in accordance with clause 18(c)(i) or does not comply with the Principal's reasonable requirements to resolve or otherwise deal with the Conflict of Interest, the Principal may immediately:
 - (i) terminate this Panel Agreement in accordance with clause 21.1(a)(v); and/or
 - (ii) cancel or terminate any Contract.

19. NO DISPARAGEMENT

Subject to Law and the parties' rights in connection with the enforcement of this Panel Agreement, no 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).

20. NOTICES AND OTHER COMMUNICATIONS

20.1 Service of notices

Any communication under or in connection with this Panel Agreement:

- (a) must be to the addresses as specified in the Reference Schedule, or to such other addresses as the parties may subsequently nominate in writing to the other party from time to time;
- (b) must be in writing; and
- (c) must be:
 - (i) sent by email to the email address of the addressee, or
 - (ii) delivered or posted by prepaid post to the address of the addressee;
 - (iii) in accordance with clause 20.2.

20.2 Timing of notices

If a notice is sent or delivered in the manner provided in 20.1(c), it must be treated as given to or received by the addressee in the case of:

- (a) delivery by email, at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place;
- (b) delivery in person, when delivered; or
- (c) delivery by post, on the fifth Business Day after posting.

21. TERMINATION

21.1 Termination for default

- (a) A party ("**Non-Defaulting Party**") may terminate this Panel Agreement with immediate effect by written notice to the other party ("**Defaulting Party**") if the Defaulting Party:
 - (i) commits a material breach of a provision of this Panel Agreement which is not capable of remedy;
 - (ii) commits a material breach of a provision of this Panel Agreement, which is capable of remedy, but where the Defaulting Party fails to remedy the breach within 7 days, unless otherwise agreed by the Non-Defaulting Party, after being given written notice by the Non-Defaulting Party to remedy the breach;
 - (iii) commits a breach of a provision of this Panel Agreement, which is capable of remedy, but where the Defaulting Party fails to remedy the breach within 20 Business Days after being given written notice by the Non-Defaulting Party to remedy the breach;
 - (iv) is found to have provided false or misleading information to the Non-Defaulting Party in respect of any aspect of this Agreement or on the Panel;
 - (v) does not comply with the provisions of clause 18(d);
 - (vi) is subject to an Insolvency Event; or
 - (vii) in the Non-Defaulting Party's reasonable opinion, no longer has the capacity and capability to perform their obligations under this Panel Agreement or a Contract.
- (b) For the purposes of clause 21.1(a), a breach of the following clauses will constitute a material breach not capable of remedy:
 - (i) clause 10 (Laws and policy requirements);

- (ii) a warranty provided for in clause 11 (Panellist's Warranties);
 - (iii) clause 13 (Confidentiality); and
 - (iv) clause 15 (Privacy).
- (c) If this Panel Agreement is terminated for default where the Panellist is the Defaulting Party:
 - (i) the Panellist may no longer participate, from the date of the termination, in the Panel with respect to entering any new Contract to provide Goods and/or Services to the Principal; and
 - (ii) the Principal may, at its discretion, terminate some, all or any Contracts between it and the Panellist for default as well.

21.2 Effect of expiration or termination

- (a) Subject to clause 21.1(c)(ii), the expiration or termination of this Panel Agreement does not automatically terminate or otherwise affect the operation of any Contract entered into between the Panellist and the Principal prior to the date of such expiration or termination.
- (b) Where this Panel Agreement has been terminated or has expired in accordance with this clause 21, the Panellist must not accept a new Contract, or an extension of an existing Contract entered into with the Principal prior to the date of termination or expiration, unless otherwise agreed between the parties in writing.
- (c) Upon termination of this Panel Agreement, the Panellist will no longer be a member of the Panel.

22. SPECIAL CONDITIONS

- (a) The parties agree that they will be bound by any Special Conditions set out in the Reference Schedule.
- (b) In the event of any inconsistency or conflict in the interpretation of the Special Conditions and any part of this Panel Agreement, the Special Conditions will prevail to the extent of any inconsistency or conflict.

23. GENERAL

23.1 Reliance

Neither party has entered into this Panel Agreement relying on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Panel Agreement.

23.2 Survival of Termination

The following clauses survive the expiry or termination of this Panel Agreement or any Contract:

- (a) any clause expressly stated to survive, or which by its nature or operation survives, the expiry or termination of this Panel Agreement or any Contract, in accordance with that clause;
- (b) any provision relating to liability or indemnity;
- (c) 13 (Confidentiality);
- (d) 15 (Privacy);
- (e) 17 (Dispute resolution);
- (f) 21 (Termination);
- (g) 23 (General); and
- (h) any other provision which expressly or by implication from its nature is intended to continue.

23.3 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 this Panel Agreement and to perform its obligations under this Panel Agreement.

23.4 Conflict of Provisions

Where any conflict occurs between the provisions contained in this Panel Agreement, 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 this Panel Agreement without otherwise diminishing the enforceability of the remaining provisions of this Panel Agreement.

23.5 Precedence

In the event of any inconsistency or conflict between the provisions of this Panel Agreement and a Contract, the provisions of the Contract will prevail to the extent of any inconsistency or conflict.

23.6 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;
- (b) 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
- (c) a representation, warranty or undertaking made by that party is made by each of those persons.

23.7 Public Announcements

The Panellist must, before making a public announcement in connection with this Panel Agreement or any Contract, or any transaction contemplated by this Panel Agreement or any Contract, obtain the Principal's written agreement to the public announcement.

23.8 Severability

If any provision of this Panel Agreement at any time is or becomes void or voidable or unenforceable:

- (a) the remaining provisions, if any, will continue in full force and effect; and
- (b) any such void, voidable or unenforceable provision will be replaced by a lawful and enforceable provision which, so far as possible, achieves the same economic and other benefits for the Principal and the Panellist, as the void, unlawful or unenforceable provision was intended to achieve.

23.9 Waiver

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

23.10 Variations

- (a) Either party can propose a variation to this Panel Agreement in writing ("**Written Variation**").
- (b) No variation to this Panel Agreement will be effective unless the Written Variation is signed by a Principal's Representative and the Panellist's Representative.
- (c) Variations to this Panel Agreement will become effective on the date the last party signs the Written Variation.

- (d) A Contract may only be varied as specified in that Contract.

23.11 Governing Law and jurisdiction

This Panel Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the laws of Western Australia.

23.12 Approvals and consents

Except where this Panel Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally, or withhold, any approval or consent under this Panel Agreement.

23.13 Assignment and novation

Neither party must assign or novate its rights or obligations under this Panel Agreement without the prior written consent of the other party.

23.14 Costs, duties and taxes

Each party must pay its own costs of negotiating, preparing and executing this Panel Agreement and any Contract.

23.15 Counterparts

This Panel Agreement may be executed in counterparts. All executed counterparts constitute one document.

23.16 Agreement is a Deed

Each of the parties to this Panel Agreement intends it to be a Deed and confirms that this Panel Agreement is executed as a Deed.

SIGNATURES / EXECUTION

This Panel Agreement binds each of the signatories to the full extent provided under this Panel Agreement, notwithstanding that one or more of the persons named as a party have not executed or may never execute this Panel Agreement or that the execution of this Panel Agreement by any one or more of such persons (other than the person sought to be made liable) is or may become void or voidable.

Panellists who are companies executing this Panel Agreement must, and will be deemed to, do so in accordance with s127 of the *Corporations Act 2001* (Cth) e.g. a sole director signing, any 2 directors signing, or any director and a secretary signing.

Executed as a Deed by the Panellist:

if an individual, by:

Signature(s)	
Name	(PLEASE PRINT)
ABN	
Date	
Witness Signature	
Witness Name	(PLEASE PRINT)
Witness Address	

if a company, executed in accordance with s127 of the Corporations Act 2001, by:

Company Name		
ACN/ABN		
Signature(s)		
	Sole Director / Director / Secretary*	Director
Signatories' Names	(PLEASE PRINT)	(PLEASE PRINT)
Date		

* delete as applicable

Details of Trust (if applicable)

Name of Trust	
ABN	
Signature(s)	
Name	(PLEASE PRINT)

Executed as a Deed by the Principal:

Signed by an authorised person(s) on behalf of the City of Gosnells:

Signature of authorised person	
Name	(PLEASE PRINT)
Title	(PLEASE PRINT)
Date	