



# **General Conditions of Contract**

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## **Version:**

January 2025

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## RECITALS

- A. These General Conditions of Contract apply to a Contract formed using the Department of Finance's Template Redevelopment Project goods and services procurement templates.
- B. The General Conditions of Contract describe terms and conditions for the supply of the Goods and/or Services.
- C. The version (month and year) of these General Conditions of Contract is as stated on the front page of this document.

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

In the Contract, unless the context otherwise requires:

**Acceptance Period** means the period of 10 Business Days commencing on the later of delivery or installation (including configuration if required) of the Goods and/or Services by the Contractor.

**ACSC Essential Eight** means the essential cyber threat mitigation strategies developed by the Australian Cyber Security Centre (available at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/essential-eight>).

**Addendum** means any addendum issued by the Requesting Agency in relation to the Request Documents.

**Adjustment** has the meaning given to that term in the GST Act.

**Adjustment Note** has the meaning given to that term in the GST Act.

**Authorisation** means any approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver or compliance report by any Government Agency required under any Law, and includes any renewal of, or variation to, any of them, but does not include any act or omission by the Customer under the Contract.

**Authorised Body** has the meaning given to that term in the Procurement Act.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

**Business Hours** means the hours specified in the Contract or, if none are specified, the hours between 8.00 am and 5.00 pm, in Western Australia, on a Business Day.

**Claim** includes any claim, demand, action, proceeding, cause of action or suit of any nature, made under, arising out of, or in any way in connection with, the Contract or any Law.

**Commonwealth** means the Commonwealth of Australia.

**Confidential Information** means information in respect of, related to or arising from the Contract or the Customer or both that:

- (a) is by its nature confidential;
- (b) is specified by the Customer to be confidential, including any information specified to be confidential in the Contract; or
- (c) the Contractor knows or ought to know is confidential.

**Contract** means the contract between the Customer and the Contractor for the supply of Goods and/or Services by the Contractor, the terms and conditions of which are contained in the Contract Documents.

**Contract Commencement Date** means the commencement date of the Contract specified in the Contract Details.

**Contract Details** means the relevant part of the Request describing specific conditions and requirements of the Customer in respect of the Contract and the Goods and/or Services.

**Contract Documents** means:

- (a) the Letter or, when buying off a Standing Offer, a Standing Offer Order;
- (b) when buying off a Standing Offer:
  - (i) the price list in the Standing Offer; and
  - (ii) the Letter of Appointment;
- (c) the Contract Details;
- (d) the Offer;
- (e) the Request excluding the Contract Details; and
- (f) these General Conditions.

**Contractor** means the person specified as the contractor in the Letter or Standing Offer Order.

**Contractor Personnel** means all officers, employees, agents and subcontractors of the Contractor, and all officers, employees and agents of subcontractors engaged in relation to the Contract or the supply of the Goods and/or Services or both.



**Contractor Systems** means the hardware, software, systems, and communications and network infrastructure and services used by the Contractor (or by the Contractor Personnel or the Contractor's System Service Providers) in connection with the Contract, but does not include the Customer ICT Environment.

**Contractor's Representative** means a person appointed by the Contractor whose functions and powers are set out in clause 23.2 (*Contractor's Representative*).

**Copyright Act** means the *Copyright Act 1968* (Cth).

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

**Covered Procurement Rules** mean the covered procurement rules under the Western Australian Procurement Rules (General Procurement Direction 2024/01).

**Customer** means the person specified as the Customer in the Contract Details or, when buying off a Standing Offer, the Standing Offer Order.

**Customer Data** means all data (including metadata) and information, including Personal Information, relating to the Customer or any State Agency, or to the operations, facilities, customers, clients, personnel, assets, systems, programs, services and transactions of the Customer or any State Agency:

- (a) that is captured, collected, entered or uploaded, created, generated, produced or processed, stored, controlled, managed, accessed, retrieved, transferred, transmitted, printed, amended or processed as part of carrying out the Contractor's obligations under the Contract; or
- (b) to which the Contractor (or the Contractor Personnel or the Contractor's System Service Providers) otherwise has access in connection with the Contract,

in whatever form the information exists, and includes any:

- (c) Records related to such data or information;
- (d) products or data generated by, or resulting from, the use, processing, transmission or manipulation of such data or information; and
- (e) copies of any of the above,

but does not include any information that the Customer or any State Agency makes generally available to the public.

**Customer ICT Environment** means the hardware, software, systems, cloud-based platforms and services, and communications and network infrastructure and services used by the Customer (or the Customer Personnel, or by the Customer's System Service Providers) at any location from time to time.

**Customer Personnel** means the Customer's officers, employees and agents.

**Customer's Representative** means a person appointed by the Customer whose functions and powers are set out in clause 23.1 (*Customer's Representative*).

**Defect** and **Defective**, in respect of the Goods and/or Services, means any one or more of the following:

- (a) any error, deficiency, omission, non-conformity, fault, flaw, failure, degradation, malfunction or other defect; or
- (b) any aspect that does not comply with the Contract, including any failure to meet or perform at expected level, range of capacity or operation.

**Delivery Date** means the date for delivery of the Goods, and/or for performance of the Services, referred to in the Contract Details.

**Delivery Place** means the place for delivery of the Goods, and/or for performance of the Services, referred to in the Contract Details.

**Delivery Time** means the time for delivery of the Goods, and/or for performance of the Services, referred to in the Contract Details.

**Department CEO** has the meaning given to that term in section 4(1) of the *Procurement Act 2020* (WA).

**Discount** means any discount in respect of the Price specified in the Contract.

**Draft Approval Document** means a document that the Contractor is required to prepare under the Contract and submit to the Customer in draft prior to approval by the Customer, to which the requirements of clause 23.5 (*Draft Approval Documents*) applies.

**Employment Related Information** means Records pertaining to the employees, payroll and the terms and conditions of employment, or any thereof.

**Event of Default** means the occurrence of any one of the following events:

- (a) the Contractor repudiates the Contract or breaches an obligation under the Contract that cannot be remedied;
- (b) the Contractor breaches any other obligation under the Contract and that breach is not remedied within 10 Business Days after the Customer gives a notice to the Contractor requiring the breach to be remedied;
- (c) the Contractor commits three breaches of its obligations under the Contract over any 12 month period, whether or not the Customer has given the Contractor notice of any such breaches and whether or not the Contractor has rectified such breaches;
- (d) a representation or warranty made by the Contractor under the Contract becomes untrue or is breached;
- (e) an Insolvency Event occurs in respect of the Contractor;

- (f) the Contractor ceases, or threatens to cease, to carry on all or a material part of its business;
- (g) the Contractor, any Senior Officer of the Contractor, or any Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention;
- (h) the Contractor, any Senior Officer of the Contractor, or any Specified Personnel is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000;
- (i) the Contractor becomes a debarred supplier as defined in section 32 of the Procurement Act;
- (j) in the reasonable opinion of the Customer, the reputation of the Customer, the State or the Government of Western Australia is, or is likely to be, damaged by any act or omission of, or other circumstances relating to or affecting, the Contractor;
- (k) a Probity Event; or
- (l) if the Contract is formed under a Standing Offer, the Standing Offer is terminated for an "Event of Default" as that term is defined in the Standing Offer,

on the basis, and provided, that none of the above events limits the operation of any other.

**Existing Material** means a work or other subject matter (as those terms are defined and used in the Copyright Act), a product or any other material:

- (a) which was created prior to the commencement of the Term or which is to be created during the Term outside the scope of the Contract, including any subsequent modifications to such work, product or other material;
- (b) in which Intellectual Property Rights are not owned by the Crown in right of the State or the Customer; and
- (c) which is required specifically for, or in connection with, any of the Goods and/or Services or Records.

**General Conditions** means these general conditions of contract.

**Good Industry Practice** means:

- (a) the exercise of the degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person with obligations similar to the Contractor's obligations under the Contract and under conditions comparable to those applicable to such obligations;
- (b) compliance with applicable standards and codes, being the standards and codes specified in the Contract and any other standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with applicable Law and Authorisations.

**Goods** means the goods, deliverables (documentary or otherwise), software or systems, or other products described, or referred to, and in the quantity specified, in the Contract.

**Goods and/or Services** means:

- (a) Goods, if the Contract is for the supply of Goods only; or
- (b) Services, if the Contract is for the supply of Services only; or
- (c) Goods and Services, if the Contract is for the supply of Goods and Services.

**Government Agency** means any Australian government or any governmental, semi-governmental, administrative, regulatory, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in Western Australia.

**Insolvency Event** means the happening of any of these events in relation to any person:

- (a) if the person is a body corporate:
  - (i) an order is made, or an application is made to a court for an order, that it be wound up;
  - (ii) except to reconstruct or amalgamate while solvent, it is wound up or dissolved or resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
  - (iii) except to reconstruct or amalgamate while solvent, it enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors;
  - (iv) a liquidator or provisional liquidator is appointed (whether or not under an order), to it, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of it;
  - (v) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer is appointed to it, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of it or any of its assets or undertakings;

- (vi) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any of its assets or undertakings;
  - (vii) the process of any court or authority is invoked against it, or any of its assets or undertakings, to enforce any judgment or order for the payment of money or the recovery of any property;
  - (viii) it is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
  - (ix) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act; or
  - (x) it becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (b) the person:
- (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation;
  - (ii) stops or suspends payment of all, or a class of, its debts;
  - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is insolvent or unable to pay its debts when they fall due;
- (c) the person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (d) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means:

- (a) patents, copyright, rights in circuit and other eligible layouts, designs, trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights, anywhere in the world, but does not include Moral Rights.

**Law** means all applicable present and future laws in any relevant jurisdiction including:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State, the Commonwealth, any other Australian state or territory, or a local authority;
- (b) Authorisations;
- (c) principles of common law or equity;

- (d) standards and codes; and
  - (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) of this definition,
- whether or not existing at the Contract Commencement Date.

**Letter** means the letter or other instrument issued by the Customer that accepts the Offer and which may also specify:

- (a) amendments to any of the documents specified in paragraphs (c) to (f) of the definition of Contract Documents; and
  - (b) any other terms and conditions which are to form part of the Contract,
- which the Customer and Contractor have agreed.

**Letter of Appointment** means the letter or other instrument issued by the Requesting Agency to the Contractor that establishes a Standing Offer.

**Loss** includes any liability of any kind whatsoever, cost (including all legal and other professional costs on a full indemnity basis), expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit.

**Material** means Existing Material and New Material.

**Malicious Code** means:

- (a) any virus, bomb, Trojan horse or computer programming code which would have the effect of impairing, denying or otherwise adversely affecting authorised access to all or any portion of the Customer ICT Environment or Customer Data; or
- (b) any attacks or other code that assists in or enables unauthorised access to, or theft or alteration of, any software, hardware, platform, system, infrastructure, information or data.

**Moral Rights** has the meaning given to that term in the Copyright Act.

**National Police Certificate** means a national police certificate issued by the Western Australia Police Force or the police force of another Australian jurisdiction.

**New Material** means anything created by the Contractor under the Contract in which Intellectual Property Rights subsist.

**Non-Public Access**, in reference to the Customer ICT Environment, means access to the Customer ICT Environment other than Public Access.

**Offer** means the offer and, if relevant, an alternative proposal, submitted by the Contractor in response to the Request.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPS Law** means the PPSA and any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

**Premises** means any premises other than the Contractor's premises, which:

- (a) are identified in the Contract; or
- (b) are premises on which the Goods and/or Services are to be supplied or to which the Contractor has access in order to supply the Goods and/or Services,

and includes anything on those premises.

**Price** means the price that is specified in, or determined by applying any formula or method that is specified in, the Contract.

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

**Probity Event** includes any event, circumstance or thing which occurs or subsists before or after the Contract Commencement Date which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor, any Related Body Corporate of the Contractor or any Contractor Personnel;
- (b) relates to the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel, and has or may have a material adverse effect on the public interest, or public confidence, in the Goods and/or Services and other activities of the Contractor in connection with the Contract;
- (c) involves a breach by the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel of any:
  - (i) Law; and/or
  - (ii) any equivalent of a Law in a foreign jurisdiction, in relation to bribery, anti-corruption, dishonesty offences or trust in public office offences;
- (d) involves a material failure of the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;
  - (ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Contractor or any Contractor



Personnel to carry out and observe its obligations in connection with the Contract; or

- (iii) other standards of conduct that would otherwise be expected of a party involved in, or associated with, a State procurement or project;
- (e) involves adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor, a related Body Corporate of the Contractor or any Contractor Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (f) involves the commencement of legal, regulatory or disciplinary action involving the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel that may adversely impact on compliance with government policy, the Law or the reputation of any State Agency, the State or the Government of Western Australia.

**Probity Requirements** means full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics.

**Procurement Act** means the *Procurement Act 2020* (WA).

**Public Access**, in reference to the Customer ICT Environment, means access:

- (a) to those parts of the Customer ICT Environment that the Customer has, for the purposes of its business or functions, made available for access by the general public;
- (b) using means that are made available by the Customer or a State Agency to the general public,

but does not include access to the Customer ICT Environment that is available through Malicious Code or through a lack of security of the Customer ICT Environment.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the Contract or the supply of the Goods and/or Services or both, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Request** means the request issued by the Requesting Agency for the supply of the Goods and/or Services, the details of which are contained in the Request Documents.

**Request Documents** means the RFO and Response Form.

**Requesting Agency** means the State Agency that issued the Request, as noted on the front page of the RFO.



**Response Form** means:

- (a) the response form document issued by the Requesting Agency in connection with the Request;
- (b) any other document incorporated in the Response Form pursuant to the approach to market document referred to in paragraph (a) of the definition of RFO; and
- (c) any Addendum thereto.

**Restricted Premises** means:

- (a) any school; or
- (b) any other Premises where children are likely to be present.

**RFO / Request for Offer** means:

- (a) the approach to market document issued by the Requesting Agency in connection with the Request;
- (b) any other document incorporated in the RFO pursuant to the approach to market document referred to in paragraph (a) of this definition; and
- (c) any Addendum thereto.

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

- (a) any actual, apparent or reasonably suspected impairment, compromise or damage to the confidentiality, reliability, integrity, value, availability or assurance (by way of Malicious Code or otherwise) of the Customer Data, of the Customer ICT Environment or of the Goods and/or Services, or the Contractor Systems, or any actual or apparent misuse or loss of Customer Data; or
- (b) a breach by the Contractor of (or a failure by the Contractor Personnel or any System Service Provider of the Contractor to comply with) any of the Contractor's obligations in the Contract relating to confidentiality, privacy or information security.

**Security Certification** means an independent certification of the Contractor Systems for compliance with:

- (a) ISO27001;
- (b) the ACSC Essential Eight (or demonstrated equivalent); and/or
- (c) any other certification specified by the Customer,

conducted, in accordance with generally applicable industry practice and applicable laws and standards, by a reputable third party experienced in information security management systems certifications and reasonably acceptable to the Customer.

**Senior Officer** has the meaning given to that term in regulation 3(1) of the *Procurement (Debarment of Suppliers) Regulations 2021* (WA).

**Services** means the services (if any) which are described in the Contract and all incidental and ancillary services required in order to provide the described services.

**Services Commencement Date** means that date referred to in the Contract Details for commencement of the Services.

**Specified Personnel** means the Contractor Personnel named as specified personnel in respect of the Contract.

**Standing Offer** means the agreement (if any) between the Requesting Agency and the Contractor which led to the formation of the Contract.

**Standing Offer Order** means the purchase order issued by the Customer to the Contractor under the Standing Offer, whether or not the purchase order is identified as a "Standing Offer Order".

**State** means the State of Western Australia.

**State Agency** has the meaning given to that term in the Procurement Act.

**State Records Act** means the *State Records Act 2000* (WA).

**System Service Providers** means:

- (a) with respect to the Customer, contractors and service providers (other than the Contractor) who provide services in connection with the Customer ICT Environment;
- (b) with respect to the Contractor, contractors and service providers (other than the Contractor Personnel) engaged by the Contractor in respect of the Contractor Systems or in connection with the Contract.

**Term** means the initial term of the Contract specified in the Contract Details and includes any extension of that initial term.

**WA Government Cyber Security Policy** means the cyber security policy published by the Department of Premier and Cabinet's Office of Digital Government (available at <https://www.wa.gov.au/government/publications/2024-wa-government-cyber-security-policy>).

**WHS Laws** means all laws (including the *Work Health and Safety Act 2020* (WA), the *Work Health and Safety Regulations 2022* (WA) and mandatory codes of practice or guidelines) relating to work health and safety that are applicable to the Contract or the Goods and/or Services or both.

**WHS Notification Requirement** means any requirement to notify WorkSafe WA or any other regulator about an incident or event under WHS Law.

**Working Papers** means all working papers, notes, reports, documents and other works (whether in paper, electronic or other forms) brought into existence by the Contractor for the purposes of performing the Contractor's obligations under the Contract.

## 1.2 Interpretation

In these General Conditions, the Letter and any other document issued in connection with the Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them, but is not to be taken as implying that performance of part of an obligation constitutes performance of the whole;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes:
  - (i) a natural person, a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;
  - (ii) a reference to the person's executors, administrators, successors, substitutes (including a person taking by novation) and permitted assigns;
- (e) a reference to a body, other than a party (including an institute, association or authority), whether statutory or not, which ceases to exist, or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (f) if the Contractor consists of more than one person, then:
  - (i) an obligation imposed on the Contractor under the Contract binds each person who comprises the Contractor jointly and severally;
  - (ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under the Contract to be undertaken;
  - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and
  - (iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;
- (g) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to a document or another instrument includes all variations and replacements of them despite any change of, or any change in the identity of, the Customer or the Contractor;

- (i) a reference to a subclause, clause, part, section (other than a section in legislation or a policy document), schedule, annexure, appendix, attachment or exhibit is a reference to a subclause or clause, part or section in, or a schedule, annexure, appendix, exhibit or attachment to, the relevant Contract Document;
- (j) a document includes all schedules, annexures, appendices, attachments, and exhibits (however described) to that document;
- (k) headings are included for convenience and do not affect interpretation;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (m) no rule of interpretation is to be applied to disadvantage the Customer on the basis that it was responsible for issuing these General Conditions or any Contract Document or both;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word “including”, “includes”, “particularly”, “such as” or a similar expression is used, the words “without limitation” are taken to immediately follow;
- (p) a provision of the Contract which says that the Customer or the Customer's Representative "may" do or not do something is not to be construed as imposing an obligation on the Customer or the Customer's Representative to do or not do that thing;
- (q) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means;
- (r) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (s) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
- (t) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (u) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (v) a reference to time means Australian Western Standard Time;
- (w) a reference to a monetary amount means that amount in Australian currency;
- (x) reference to the Contractor includes the Contractor Personnel;
- (y) reference to the Customer includes the Customer Personnel;
- (z) a reference to a contractor or subcontractor means a contractor or subcontractor at any tier; and

(aa) a reference to a party is a reference to a party to the Contract.

## **2. CONTRACT FORMATION AND ORDER OF PRECEDENCE**

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### **2.1 Formation of Contract**

- (a) A Contract comes into existence:
  - (i) if the Contract is formed under or on account of a Standing Offer, when the Customer issues a Standing Offer Order to the Contractor; or
  - (ii) otherwise, when the Customer issues a Letter to the Contractor.
- (b) The terms and conditions of the Contract are contained in the Contract Documents.

### **2.2 Standing Offer Orders**

- (a) If the Contract is formed under or on account of a Standing Offer, the Customer and the Contractor agree that any Standing Offer Order:
  - (i) must be for the supply of the Goods and/or Services described in the Standing Offer; and
  - (ii) must be within the scope of the Standing Offer and not erode, undermine or conflict with the Standing Offer.
- (b) A Standing Offer Order must specify:
  - (i) the Goods and/or Services;
  - (ii) the quantity of the Goods and/or the scope of the Services (as applicable);
  - (iii) the Services Commencement Date (if applicable); and
  - (iv) the Delivery Date, Delivery Time and/or Delivery Place (as applicable).

### **2.3 Order of Precedence – Contract Documents**

- (a) The Contract Documents shall be read in descending order of precedence as each document is listed in the definition of Contract Documents in clause 1.1 (Definitions).
- (b) If there is any inconsistency between the documents making up the Contract Documents, the Contract Document listed higher in the order of precedence prevails to the extent of the inconsistency. If the inconsistency remains incapable of resolution, the inconsistent provisions shall be severed from the Contract Document lower in the order of precedence without diminishing the enforceability of the remaining provisions. Silence shall not constitute or form the basis of any inconsistency.

### 3. CONTRACT TERM AND EXTENSION OPTIONS

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#### 3.1 Term

The Contract commences on the Contract Commencement Date and, subject to earlier termination under clause 26 (*Expiration or Termination*), continues for the Term.

#### 3.2 Extension Options

- (a) The Customer has the option or options (exercisable in its absolute discretion) to extend the Term for the period or periods (as applicable) specified in the Contract Details.
- (b) The Customer may exercise an option (and extend the Term) by giving the Contractor a notice of extension:
  - (i) by the date or dates specified in the Contract Details; or
  - (ii) if no period is specified in the Contract Details, at least 20 Business Days before the then current expiry date of the Term.
- (c) If the Customer issues a notice of extension under clause 3.2(b), the notice will specify the period of extension by reference to the period specified in the Contract Details.

### 4. SUPPLY OF GOODS AND/OR SERVICES

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#### 4.1 Goods and/or Services

- (a) The Contract is for the Goods and/or Services specified in the Contract Documents.
- (b) The Contractor must supply the Goods and/or Services during the Term in a timely and efficient manner, and in accordance with the timeframes, specifications and requirements of the Contract.

#### 4.2 Standards and Codes

- (a) The Contractor must supply the Goods and/or Services in accordance with the Contract and Good Industry Practice. If there is a conflict between standards under the Contract and Good Industry Practice, the higher standard (as determined by the Customer) shall apply.
- (b) All Goods and/or Services delivered by the Contractor must conform:
  - (i) with all samples provided by the Contractor:
    - (A) to the Customer; or
    - (B) if the Contract is formed under a Standing Offer, to the Requesting Agency; and

- (ii) if no standards for the Goods and/or Services are specified in the Contract:
  - (A) to all relevant and current standards published by the Standards Association of Australia ; or
  - (B) if the Request specifies that the Covered Procurement Rules apply to the Request, to all relevant and current international standards.

### **4.3 Customer Directions**

The Contractor must perform its obligations under the Contract in compliance with any reasonable directions of the Customer with regard to:

- (a) work health and safety, confidentiality or information security; or
- (b) any other matter so long as the directions in respect of that matter are consistent with the scope of the Contract.

### **4.4 Sources of Supply**

If the Customer requests, the Contractor must use reasonable endeavours to promptly provide full details, including:

- (a) the method and place of manufacture or production;
- (b) the materials used in manufacture or production;
- (c) the source of supply; and
- (d) everything else reasonably required by the Customer,

in connection with any of the Goods and/or Services or any equipment provided or used by the Contractor in relation to the manufacture, production or supply of the Goods and/or Services.

### **4.5 Inspection and Testing of Goods at Contractor's Premises**

- (a) Subject to the Customer:
  - (i) giving reasonable prior notice to the Contractor; and
  - (ii) complying with all reasonable directions and procedures of the Contractor relating to work health, safety, security and confidentiality in connection with the Contractor's premises,

the Customer may inspect and test any Goods at the Contractor's premises at any time during the Term.

- (b) The Contractor must do everything reasonably necessary to enable the Customer to carry out the inspection and testing.

### **4.6 Packing of Goods**

All Goods must be properly and securely packaged and accurately labelled for identification and safety before delivery to the Customer.

#### 4.7 Delivery of Goods

- (a) The Contractor must deliver the Goods to the Delivery Place on the Delivery Date at the Delivery Time.
- (b) If a period of days is specified as the Delivery Time, then the Contractor must deliver the Goods within Business Hours on any day in that period.
- (c) The Contractor must comply with all reasonable directions from the Customer or any other person who has control of the Delivery Place.

#### 4.8 Sale of Goods Act

The parties acknowledge that:

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

#### 4.9 Performance of Services

- (a) The Contractor must commence performance of the Services on the Services Commencement Date.
- (b) The Contractor must perform the Services at the Delivery Place, on or by the Delivery Date and within the Delivery Time.

#### 4.10 Variation of Services Commencement Date or Delivery

- (a) The Customer may at any time vary any of:
  - (i) the Services Commencement Date; and
  - (ii) the Delivery Place, the Delivery Date and the Delivery Time, including at the time of actual delivery.
- (b) When possible, the Customer will use reasonable endeavours to inform the Contractor of the variation a reasonable time before commencement or delivery is due.
- (c) The Customer must reimburse the Contractor for the Contractor's reasonable costs and expenses resulting from a variation under this clause 4.10 (unless the variation arose from breach, negligence, delay or other fault on the part of the Contractor).

#### 4.11 Change Orders

- (a) For the purposes of this clause 4.11 a **Change Order** is a change order approved by the Customer pursuant to clause 4.11(h).



- (b) The parties may:
- (i) vary aspects of the Goods and/or Services, or the manner of their delivery or performance and/or the Price; or
  - (ii) (subject to clause 2.2(a) (*Standing Offer Orders*) if the Contract is formed under a Standing Offer), include goods and/or services that are in addition to the Goods and/or Services,
- by following the process set out in this clause 4.11.
- (c) The Contractor:
- (i) may provide a draft change order to the Customer at any time during the Term; and
  - (ii) if the Customer requests, must, as soon as practicable and in any event within 15 Business Days (or such other period as agreed by the parties in writing), prepare and provide the Customer with a draft change order.
- (d) Each draft change order is a Draft Approval Document and the Contractor must prepare and submit the draft change order in accordance with clause 23.5 (*Draft Approval Documents*).
- (e) The Contractor must ensure each draft change order:
- (i) is prepared in accordance with clause 23.5 (*Draft Approval Documents*) and the template required by the Customer and provides (as applicable) all information requested in that template;
  - (ii) sets out (as applicable) any amendments required to the Goods and/or Services, any amendments to the manner of their delivery or performance, and the proposed timing of their delivery or performance, with a detailed explanation as to why the amendments are necessary;
  - (iii) sets out the details and proposed timing of any additional work, including the resources and personnel required to perform the additional work;
  - (iv) subject to clause 4.11(f), specifies all changes to Price (if applicable) and the method of calculation and the basis for the change in accordance with clause 4.11(g);
  - (v) contains any other information reasonably required by the Customer; and
  - (vi) is signed by the Contractor.
- (f) The Contractor may only request, in a draft change order, a change to the Price if:
- (i) in respect of any new or additional amounts to be included in the Price, implementing a Change Order as described in the draft change order will result in increased costs to the Contractor; and
  - (ii) the proposed change to the Price set out in a draft change order is consistent with any rate or calculation method set out in the Contract, and any other relevant existing agreement between the parties, in respect of the draft change

order or if no rate or calculation method is set out in the Contract or otherwise agreed between the parties in respect of the draft change order, the proposed change to the Price is:

- (A) reasonable having regard to the proposed variation;
  - (B) commensurate with the increased or decreased Contractor Personnel and other resources required to carry out the variation;
  - (C) calculated by reference to applicable rates and pricing set out in the Contract; and
  - (D) unless it is unreasonable to be calculated in such a way, calculated in the same manner the Price was originally calculated.
- (g) The Contractor must demonstrate to the Customer's reasonable satisfaction that any change to the Price specified in the draft change order has been calculated in accordance with clause 4.11(f), and must explain the basis for the change in Price if required.
- (h) The Customer is not obliged to accept a draft change order. No draft change order has any effect on the Contract until such time as the draft change order is approved by the Customer in writing and is signed in accordance with the Customer's approved delegation authorities.
- (i) Upon taking effect in accordance with clause 4.11(h), the Change Order becomes a variation of the Contract and, among other things:
- (i) the Goods and/or Services, the Price, the Delivery Place, and any relevant Delivery Dates and/or Delivery Times are adjusted in the manner set out in the Change Order; and
  - (ii) the Contractor must implement the Change Order.
- (j) The parties agree that a Change Order may only relate to the items specified in clause 4.11(b).
- (k) The Contractor's rights in relation to Change Orders under this clause 4.11 are the Contractor's sole remedy in respect of any change agreed by the parties under this clause.

#### **4.12 Delay in Delivery – Contractor Caused**

- (a) If delivery of the Goods and/or performance of the Services is likely to be delayed until after the Delivery Date due to an act or omission of the Contractor, then the Contractor must notify the Customer of the likely delay as soon as the Contractor becomes aware of it.
- (b) A notice from the Contractor under this clause does not release the Contractor from its obligations relating to delivery of the Goods and/or performance of the Services or from any other obligation or liability under the Contract.

- (c) The Contractor must take reasonable steps, including any steps reasonably requested by the Customer, to mitigate the delay and effects of the delay.
- (d) If:
  - (i) the Customer receives a notice under this clause or the Goods are not delivered or the Services are not performed by the Delivery Date due to an act or omission of the Contractor; and
  - (ii) the Customer requires the Goods and/or Services by the Delivery Date,then the Customer:
  - (iii) must give notice to the Contractor under this clause if it intends to purchase substitute goods and/or services from another supplier no later than five Business Days before the purchase of the substitute goods and/or services; and
  - (iv) may purchase from another supplier substitute goods and/or services which in the opinion of the Customer are most suitable, even though such goods and/or services may be of a different kind, quantity and quality from the Goods and/or Services.
- (e) If the Customer purchases substitute goods and/or services:
  - (i) the Customer does not have to take delivery of, or pay the Price for, the substituted Goods and/or Services; and
  - (ii) the Contractor must reimburse the Customer for:
    - (A) any amount by which the cost of the substitute goods and/or services exceeds the Price for the substituted Goods and/or Services; and
    - (B) the Customer's reasonable costs and expenses resulting from having to purchase substitute goods and/or services,within 10 Business Days from the date on which the Customer gives the Contractor an invoice for those costs.

#### **4.13 Delay in Delivery – Customer Caused**

- (a) If delivery of the Goods and/or performance of the Services is likely to be delayed until after the Delivery Date due to:
  - (i) the Customer's breach of the Contract;
  - (ii) the Customer's failure to supply or make available items or facilities in accordance with the requirements of clause 6.1 (*Customer Supplied Items*) and clause 6.2 (*Customer Supplied Facilities*); or
  - (iii) any other unreasonable act or omission of the Customer that justifies an extension of the Delivery Date,

then the Contractor must, within 10 Business Days of becoming aware of the breach, failure or other act or omission of the Customer giving rise to the delay, notify the Customer in writing of:

- (iv) the strategies that the Contractor has developed and will implement to avoid, minimise or manage the consequences of the delay;
  - (v) the period, or likely period, of delay;
  - (vi) the likely effect of the delay on the delivery of the Goods and/or performance of the Services;
  - (vii) the additional costs which the Contractor will reasonably incur, together with sufficient supporting evidence to substantiate the calculation of those additional costs; and
  - (viii) an extension of time request that is reasonable in the circumstances, together with the basis for calculating the requested period of extension.
- (b) After receiving a request for an extension of time under this clause, the Customer must:
- (i) promptly consent to a reasonable extension of time; and
  - (ii) (if consent is given) pay all reasonable additional costs incurred by the Contractor within 20 Business Days of receiving the request,
- unless there are reasonable grounds for refusing to consent.

#### **4.14 Delay – Other Causes**

- (a) If delivery of the Goods and/or performance of the Services is likely to be delayed until after the Delivery Date, for a reason other than described in clause 4.12(a) (*Delay in Delivery – Contractor Caused*) or clause 4.13(a) (*Delay in Delivery – Customer Caused*), then the Contractor must notify the Customer of the likely delay as soon as the Contractor becomes aware of it.
- (b) A notice issued by the Contractor under clause 4.14(a) must specify:
  - (i) the cause of the delay;
  - (ii) the period, or likely period, of delay;
  - (iii) the strategies that the Contractor will implement to avoid, minimise or manage the consequences of the delay; and
  - (iv) the likely effect of the delay on the delivery of the Goods and/or performance of the Services.
- (c) A notice from the Contractor under this clause does not release the Contractor from its obligations relating to delivery of the Goods and/or performance of the Services or from any other obligation or liability under the Contract.
- (d) The Contractor must take reasonable steps, including any steps reasonably requested by the Customer, to mitigate the delay and effects of the delay.

- (e) Compliance with this clause 4.14 is a precondition to the Customer considering any request by the Contractor for an extension of time.

## **5. ACCEPTANCE OF GOODS AND/OR SERVICES**

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### **5.1 Payment Before Acceptance**

Despite anything expressed or implied to the contrary in the Contract, if the Customer pays the Price for Goods and/or Services before the Customer has accepted the Goods and/or Services, then the Contractor will hold that payment on trust for the Customer until:

- (a) the Customer accepts the Goods and/or Services under clause 5.2 (*Acceptance or Rejection*); or
- (b) the Customer rejects the Goods and/or Services, in which case the Contractor will immediately refund the Price for the rejected Goods and/or Services to the Customer.

### **5.2 Acceptance of Rejection**

- (a) None of the delivery or installation of the Goods and/or performance of the Services by the Contractor nor the payment of the Price by the Customer to the Contractor constitutes acceptance of the Goods and/or Services by the Customer.
- (b) The Customer may reject the Goods and/or Services by giving a notice of rejection to the Contractor within the Acceptance Period if:
  - (i) the Goods and/or Services are Defective;
  - (ii) the Goods and/or Services are not supplied in full; or
  - (iii) in respect of Goods, the Customer is entitled to reject the Goods under the Sale of Goods Act.
- (c) The Customer is taken to have accepted the Goods and/or Services only if the Customer:
  - (i) notifies the Contractor that the Goods and/or Services have been accepted; or
  - (ii) does not reject the Goods and/or Services under clause 5.2(b).

### **5.3 Title, Delivery and Risk in Goods**

- (a) Risk in the Goods passes to the Customer on delivery of the Goods to the Customer in accordance with the Contract.
- (b) Title in the Goods is transferred to the Customer on acceptance of the Goods by the Customer under clause 5.2 (*Acceptance or Rejection*).
- (c) Title and risk in any Goods removed by the Contractor or returned to the Contractor is transferred back to the Contractor at the time the Goods are removed or returned.

## 5.4 Defective Goods and/or Services

- (a) The Contractor must immediately notify the Customer if the Contractor discovers that any Goods and/or Services are Defective.
- (b) If, before or after acceptance of the Goods and/or Services under clause 5.2 (*Acceptance or Rejection*), the Customer finds that any Goods and/or Services are Defective, then without limiting any other remedy available to the Customer, the Customer may by notice to the Contractor:
  - (i) subject to the Customer first considering whether replacement, repair, rectification or re-performance may be acceptable to it (in its discretion), reject the Defective Goods and/or Services, in which case:
    - (A) the Customer must provide a reason or reasons for rejection, if requested by the Contractor;
    - (B) the Contractor must immediately remove the Defective Goods and/or rectify the Defective Services at the Contractor's cost;
    - (C) the Contractor must immediately refund the Price for the Defective Goods and/or Services if already paid; and
    - (D) the Customer may purchase from another supplier substitute goods and/or services which in the opinion of the Customer are most suitable, even though such goods and/or services may be of a different kind, quantity and quality from the Goods and/or Services, in which case clause 5.7 (*Substitute Goods and/or Services*) applies; or
  - (ii) require the Contractor to replace the Defective Goods and/or Services with goods and/or services of the same kind and quality as the Goods and/or Services; or
  - (iii) require the Contractor to repair, rectify or re-perform the Defective Goods and/or Services; or
  - (iv) retain the Defective Goods and/or Services subject to a reduction in fees agreed by the parties within 10 Business Days of identification of a Defect, and otherwise on terms acceptable to the Customer.
- (c) If the Customer requires the Contractor to replace, repair, rectify or re-perform the Defective Goods and/or Services under clause 5.4(b)(ii) or 5.4(b)(iii), then the Contractor must:
  - (i) do so within any reasonable time stipulated by the Customer and at no cost to the Customer; and
  - (ii) reimburse the Customer for the Customer's reasonable costs and expenses resulting from not having the use of the Goods and/or Services while the Defective Goods and/or Services are being replaced, repaired, rectified and/or re-performed.

## 5.5 Remedies for Defective Goods

- (a) If the Contractor fails to comply with the Customer's notice under clause 5.4(b)(ii) or 5.4(b)(iii) (*Defective Goods and/or Services*) with respect to Defective Goods, then the Customer may do any one or more of the following:
- (i) return the Defective Goods to the Contractor at the Contractor's cost;
  - (ii) hold the Defective Goods as security for the performance of the Contractor's obligations under clause 5.4 (*Defective Goods and/or Services*);
  - (iii) require the Contractor to submit a draft performance remediation plan pursuant to clause 5.8 (*Performance Remediation Plan*);
  - (iv) sell the Defective Goods (without being liable to the Contractor in any way for the amount of the sale proceeds) and:
    - (A) keep so much of the net sale proceeds as is necessary to recover the Customer's Losses resulting from the Contractor's breach of the Contract;
    - (B) pay the balance of the net sale proceeds to the Contractor; and
    - (C) purchase from another supplier substitute goods which in the opinion of the Customer are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods, in which case clause 5.7 (*Substitute Goods and/or Services*) applies.
- (b) The Customer is not liable to the Contractor for any loss of or damage to Defective Goods resulting from the exercise of any right under this clause 5.5.

## 5.6 Remedies for Defective Services

If the Contractor fails to comply with the Customer's notice under clause 5.4(b)(ii) or 5.4(b)(iii) (*Defective Goods and/or Services*) with respect to Defective Services, then the Customer may do one or more of the following:

- (a) purchase from another supplier substitute services which in the opinion of the Customer are most suitable, even though such services may be of a different kind, quantity and quality from the Services, in which case clause 5.7 (*Substitute Goods and/or Services*) applies; and/or
- (b) require the Contractor to submit a draft performance remediation plan pursuant to clause 5.8 (*Performance Remediation Plan*).

## 5.7 Substitute Goods and/or Services

If the Customer purchases substitute goods and/or services under clause 5.4(b)(i) (*Defective Goods and/or Services*), clause 5.5 (*Remedies for Defective Goods*) or clause 5.6 (*Remedies for Defective Services*), then:

- (a) the Customer does not have to take delivery of or accept the Defective Goods and/or Services;



- (b) the Customer does not have to pay the Price for the Defective Goods and/or Services and the Contractor must reimburse the Customer for any Price paid for the Defective Goods and/or Services; and
- (c) the Contractor must reimburse the Customer for:
  - (i) any amount by which the cost of substitute goods and/or services exceeds the Price for the Defective Goods and/or Services; and
  - (ii) the Customer's reasonable costs and expenses resulting from having to purchase substitute goods and/or services,within 10 Business Days from the date that the Customer gives the Contractor an invoice for those costs and expenses.

## 5.8 Performance Remediation Plan

- (a) For the purposes of this clause 5.8, a **Performance Remediation Plan** is a performance remediation plan approved by the Customer pursuant to clause 5.8(f).
- (b) If:
  - (i) there is a delay of more than 10 Business Days in achieving any Delivery Date; or
  - (ii) there are Defects in the Goods and/or Services,the Customer may provide the Contractor a written notice requiring the Contractor to submit a draft performance remediation plan to the Customer in respect of the delay or Defects.
- (c) Within the time period specified by the Customer, or if no period is specified, within 10 Business Days of the Customer issuing notice under clause 5.8(b), the Contractor must prepare and submit a draft performance remediation plan to the Customer for approval.
- (d) Each draft performance remediation plan is a Draft Approval Document and the Contractor must prepare and submit the draft document in accordance with clause 23.5 (*Draft Approval Documents*).
- (e) The draft performance remediation plan must set out, among other things:
  - (i) the nature and cause of the delay or Defects;
  - (ii) the steps the Contractor will take to remedy the delay or Defects;
  - (iii) the actions that are required (and that the Contractor will take) to avoid the recurrence of the event or events that led to the delay or Defects; and
  - (iv) any other matters that the Customer reasonably requested to be included.
- (f) The Customer is not obliged to accept a draft performance remediation plan. No draft performance remediation plan has any effect on the Contract until such time as the draft is approved by the Customer in writing, and signed in accordance with the Customer's approved delegation authorities.



- (g) Upon taking effect in accordance with clause 5.8(f), the Contractor must implement the Performance Remediation Plan.

## **6. CUSTOMER ITEMS AND FACILITIES**

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### **6.1 Customer Supplied Items**

The Customer will provide the items specified in the Contract as items to be supplied by the Customer. Such items will, to the Customer's reasonable knowledge and belief, be fit for any purpose stated in the Contract.

### **6.2 Customer Supplied Facilities**

- (a) The Customer warrants that any facilities (including equipment and software ) which it makes available to the Contractor in connection with the Contract:
  - (i) will comply with the standards set out in the Contract; and
  - (ii) will be maintained in the manner expressly contemplated (if at all) in the Contract.
- (b) Should a facility made available by the Customer to the Contractor under this clause 6.2 fail at any time to meet the requirements of the Contract, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.

### **6.3 Customer Failure to Supply Items or Facilities**

A failure by the Customer to supply or make available items or facilities in accordance with the requirements of clause 6.1 (*Customer Supplied Items*) and clause 6.2 (*Customer Supplied Facilities*) will not be a breach of the Contract by the Customer, but the Contractor may be entitled, under clause 4.13 (*Delay in Delivery– Customer Caused*), to an extension of the Delivery Date in respect of any such failure.

### **6.4 Contractor to Provide Resources**

Other than the items or facilities to be supplied or made available by the Customer under clause 6.1 (*Customer Supplied Items*) and clause 6.2 (*Customer Supplied Facilities*), the Contractor must provide all necessary materials and resources to carry out the Contractor's obligations under the Contract.

## **7. RECORDS AND AUDIT COSTS**

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### **7.1 Contractor's Records**

- (a) The Contractor must keep accurate, complete and current written Records in respect of the Contract, including:
  - (i) if the Contract includes the supply of Goods:
    - (A) the type and quantity of the Goods supplied to the Customer;
    - (B) the date and time on which the Contractor supplied the Goods to the Customer; and
    - (C) the place to which the Contractor delivered the Goods to the Customer; and
  - (ii) if the Contract includes the supply of Services:
    - (A) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;
    - (B) the time that the Contractor spent providing the Services on each day during the Term; and
    - (C) the name and title of all Contractor Personnel who provided the Services or were responsible for supervising the provision of the Services.
- (b) The Contractor must comply with the directions of the Customer in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.
- (c) The Contractor must keep all Records for at least seven years after the expiry or termination of the Term.
- (d) The Contractor must do everything necessary to obtain and keep current any third party consents which are required to enable the Customer to have access to Records under this clause 7.

### **7.2 Access to Contractor's Records**

- (a) Subject to the Customer:
    - (i) giving reasonable prior notice to the Contractor; and
    - (ii) complying with all reasonable directions and procedures of the Contractor relating to work health, safety, security and confidentiality in connection with the Contractor's premises,
- the Contractor must allow the Customer to:
- (iii) have reasonable access to any premises used or occupied by the Contractor;
  - (iv) have reasonable access to all Records in the custody or control of the Contractor;

- (v) examine, audit, copy and use any Records in the custody or control of the Contractor; and
- (vi) photograph, film or otherwise record anything done by the Contractor in relation to the Contract or in supplying the Goods and/or Services or both, if reasonably required by the Customer.

### **7.3 Audit Identifies Breach**

Where any audit performed in accordance with the Contract shows that the Contractor has breached the Contract, then, without limiting the Customer's rights under the Contract or under any Law in respect of a breach:

- (a) the Contractor must promptly remedy the breach and provide the Customer with any evidence or assistance requested by the Customer in order to verify that the breach has been remedied; and
- (b) any reasonable costs incurred by the Customer in performing such audit will be a debt due from the Contractor to the Customer and will be payable on the Customer's demand.

## **8. CUSTOMER PREMISES AND COOPERATION**

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### **8.1 Granting Access to Premises**

- (a) The Customer will provide the Contractor with access to the Premises specified in the Contract, or specified by the Customer from time to time, to enable the Contractor to fulfil its obligations under the Contract.
- (b) Access to the Premises may be temporarily denied or suspended by the Customer, at its sole discretion, in which case:
  - (i) the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access unless access is denied or suspended due to an act or omission, breach or investigation into the conduct, of the Contractor or the Contractor Personnel; and
  - (ii) the Customer will permit a resumption of access as soon as practicable.

### **8.2 Premises**

The Contractor must:

- (a) comply with all reasonable access requirements of the Customer and the owner or occupier of the Premises;
- (b) ensure that all Contractor Personnel, when accessing the Premises or when on the Premises, comply with all reasonable directions, requirements and procedures of the

Customer and the owner or occupier of the Premises (including those relating to work health, safety, security and confidentiality) in connection with the Premises;

- (c) keep the Premises in the same state that the Premises were in before the Contractor commenced supply of the Goods and/or Services and regularly remove all rubbish and excess materials resulting from the supply of the Goods and/or Services;
- (d) leave the Premises in the same state that the Premises were in before the Contractor commenced supply of the Goods and/or Services;
- (e) do everything reasonably necessary to protect people and property on the Premises;
- (f) avoid unnecessary interference with the passage of people and vehicles, and with the operations of the Customer and the owner or occupier of the Premises and their employees, agents and contractors;
- (g) prevent any nuisance or disturbance being caused at the Premises resulting from the supply of the Goods and/or Services; and
- (h) remove any Contractor Personnel from the Premises if the Customer or the owner or lawful occupier of the Premises requires by notice in writing to the Contractor that those Contractor Personnel be removed.

### **8.3 Premises Site Preparation**

To the extent specified in the Contract, the Customer will be responsible for site preparation of the Premises to enable delivery of Goods and/or the performance of the Services.

### **8.4 Cooperation with Other Service Providers**

- (a) The Contractor must carry out its obligations under the Contract in a manner that minimises disruption or delay to the operations of the Customer and the work of the Customer's other service providers.
- (b) Subject to clause 8.4(c), the Contractor must cooperate with any third party service provider appointed by the Customer to the extent required to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for reasonable costs incurred as a direct result of providing such cooperation.
- (c) Nothing in clause 8.4(b) will require the Contractor to disclose its confidential information to a third party service provider.

## **9. CUSTOMER DATA AND SYSTEMS SECURITY**

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### **9.1 Importance of Customer Data and Customer ICT Environment**

- (a) The Contractor acknowledges that the security and integrity of Customer Data and the Customer ICT Environment is fundamental to the Customer's operations and that, without limitation, any Security Breach may directly affect the Customer's relationship with its stakeholders, personnel or the public and the Customer's compliance with its legal obligations.
- (b) If there is a conflict between any information security requirements in the Contract, the Contractor must comply with the obligation which imposes the highest standard.

### **9.2 Compliance by Other Parties**

- (a) The Contractor must ensure that:
  - (i) the Contractor Personnel comply with the Contractor's obligations and restrictions under this clause 9; and
  - (ii) each of the Contractor's System Service Providers that has access to or holds Customer Data or has access to the Customer's ICT Environment (granted pursuant to or in connection with the Contract) is engaged under a written agreement that requires the System Service Provider to comply with the Contractor's obligations and restrictions under this clause 9,in each case, as if references to the Contractor referred instead to the Contractor Personnel or the Contractor's System Service Provider (as applicable).
- (b) The Contractor must ensure that each other person who is authorised by the Contractor to have access to the Customer Data or Non-Public Access to the Customer ICT Environment complies with the Contractor's obligations and restrictions under the Contract in respect of the use and security of the Customer Data and the Customer ICT Environment.

### **9.3 Contractor's Handling of Customer Data**

- (a) The Contractor must not itself, and must not permit any other person to:
  - (i) access, use, copy, modify, adapt or retain Customer Data except as required for the performance of the Contractor's obligations under the Contract, and in the manner permitted under the Contract;
  - (ii) copy, modify or use any Customer Data for the purpose of product development, or for training, fine-tuning, developing, or retrieval-augmented generation or prompting of, any artificial intelligence technologies;
  - (iii) arrange for the storage of Customer Data in any manner other than as set out in the Contract; or

- (iv) take any steps to re-personalise or re-identify any de-identified or aggregated Customer Data (or in any other way seek to associate any of the de-identified or aggregated Customer Data with a reasonably identifiable person),  
except as expressly permitted by notice in writing by the Customer.
- (b) The Contractor must not itself, and must not permit any other person to, transfer, store or process any Customer Data outside Australia (including by way of a cloud storage arrangement which is hosted overseas) except where:
  - (i) specifically permitted under the Contract; or
  - (ii) the Customer gives its prior written approval to such transfer, storage or processing, and to the each specific country where the Customer Data will be transferred, stored or processed,and at all times the Customer Data continues to be dealt with in accordance with the Contract.
- (c) To the extent that the Contractor holds any Customer Data, the Contractor must:
  - (i) hold the Customer Data in accordance with Good Industry Practice;
  - (ii) apply the multi-factor authentication and patching controls set out in ACSC Essential Eight (Maturity Level One or demonstrated equivalent) to the storage and modification of, and access to, the Customer Data;
  - (iii) provide the Customer with access to the Customer Data (and to information about the Customer Data) on request; and
  - (iv) comply with the Customer's information management, data retention and destruction requirements specified in clause 7.2 (*Access to Contractor's Records*) and as notified to the Contractor from time to time.
- (d) The Contractor must ensure that each other person (other than the Customer) to whom Customer Data is transferred by or on behalf of the Contractor:
  - (i) holds the Customer Data in accordance with this clause 9 and clause 18 (*Privacy*), notwithstanding that privacy legislation may not have otherwise applied to that person;
  - (ii) complies with the requirements of this clause 9.3; and
  - (iii) promptly returns or destroys the Customer Data upon request from the Customer or, subject to the Customer's approval, upon such person no longer requiring the Customer Data in respect of the Contractor's obligations under the Contract.

## 9.4 Integrity of Customer Data

- (a) To the extent that the Contractor, Contractor Personnel or any of the Contractor's System Service Providers holds, accesses or uses Customer Data, if any Customer Data is corrupted, lost or degraded, the Contractor must:

- (i) if the Customer requests, provide the Customer with all reasonable assistance requested by the Customer to restore the affected Customer Data; or
  - (ii) otherwise, carry out such remedial action as is necessary or desirable, in accordance with Good Industry Practice, to restore the affected Customer Data.
- (b) To the extent that any corruption, loss or degradation to Customer Data has been directly caused or contributed to by the Contractor, or would have been avoided or mitigated by the Contractor's compliance with the Contract, the Contractor must reimburse the Customer any costs and expenses that the Customer incurs in restoring Customer Data.

## 9.5 Customer's Access to Customer Data

The Contractor must:

- (a) ensure that the Customer, and each of its authorised users, is able, at any time, to access, modify and use the Customer Data held, stored or managed by the Contractor;
- (b) not possess or assert any lien or other right against or to Customer Data, or otherwise sell, licence, transfer, assign, dispose of, commercialise, lease, rent, convert, grant an option over, allot, declare a trust over or otherwise deal with Customer Data;
- (c) not take steps that prevent the Customer, or its authorised users, from accessing, modifying, developing or using the Customer Data, or that suspend, limit or terminate the Customer's access to the Customer Data;
- (d) not delete the Customer Data except as specified in the Contract or with the Customer's prior written approval;
- (e) maintain at all times up-to-date backup copies of all Customer Data stored by the Contractor in accordance with the Contract;
- (f) at the Customer's request, provide:
  - (i) a full data export, together with all required access information, of; or
  - (ii) all assistance required by the Customer to enable the Customer to extract and use,  
  
Customer Data stored or managed by the Contractor or the Contractor Personnel, in the format reasonably required by the Customer; and
- (g) if and to the extent requested by the Customer, promptly:
  - (i) return Customer Data to the Customer in the format and on the media, paper or other form requested by the Customer;
  - (ii) assist the Customer to extract the Customer Data; and
  - (iii) erase or destroy Customer Data in the Contractor's possession.



## 9.6 Limited Licence to Customer Data

- (a) Subject to the Contractor's compliance with its obligations under the Contract, the Customer grants to the Contractor a non-exclusive, non-assignable, non-transferrable, non-sublicensable and royalty-free licence for the duration of the Term to use any Customer Data solely for the purpose of enabling the Contractor to perform its obligations under the Contract.
- (b) Except for the licence set out in clause 9.6(a) above, nothing in the Contract is intended to give the Contractor, any Contractor Personnel or any System Service Provider of the Contractor, any Intellectual Property Rights in, or other rights in respect of, Customer Data.
- (c) The Contractor does not, and will not, have or claim any rights in the Customer Data other than the limited licence in clause 9.6(a). All Intellectual Property Rights in the Customer Data, or created in respect of Customer Data in the course of or in connection with the Contract, are (or will on creation be) owned by the State unless the Contract provides that they will be owned by the Customer or a State Agency.
- (d) The Contractor must not possess or assert any lien or other right against or to Customer Data, or otherwise sell, transfer, assign, dispose of, commercialise, lease, rent, convert, grant an option over, allot, declare a trust over or otherwise deal with Customer Data.
- (e) Subject to clause 17.3 (*Return of Confidential Information*) , the Contractor must delete or destroy the Customer Data:
  - (i) at the end of the Term; and
  - (ii) otherwise, immediately upon the written instruction of the Customer in respect of any Customer Data specified by the Customer in the written instruction,so that the Customer Data is unreadable and unrecoverable, and must notify the Customer immediately upon completion of such deletion or destruction.

## 9.7 Customer ICT Environment

- (a) The Contractor must not, and must ensure that the Contractor Personnel do not, access the Customer ICT Environment unless:
  - (i) access is required in order to provide the Goods and/or Services perform the Contract, or both: or
  - (ii) the access is Public Access; or
  - (iii) the access is otherwise approved in advance in writing by the Customer.
- (b) The Contractor must ensure that neither it nor the Contractor Personnel, by act or omission, without the Customer's prior written approval:
  - (i) adversely affect the operation, functionality, technical environment or resource efficiency of the Customer ICT Environment; or



- (ii) make any change to the Customer ICT Environment that affects the way in which the Customer conducts its operations in a manner that the Customer considers to be adverse.

## 9.8 Security Practices and Processes

The Contractor must:

- (a) comply with the Customer's policies, procedures and directions with respect to systems and information security requirements governing access to and use of the Customer ICT Environment, the Customer Data and other information as set out in the WA Government Cyber Security Policy and as specified in the Contract;
- (b) prohibit and prevent any Contractor Personnel or the Contractor's System Service Providers who do not have the appropriate level of security clearance from gaining access to Customer Data or Non-Public Access to the Customer ICT Environment;
- (c) ensure that:
  - (i) access granted by the Contractor is restricted on a strict need to know basis; and
  - (ii) all persons who are granted access by the Contractor have completed appropriate cyber security training that is sufficient to ensure the Contractor's compliance with its obligations (including the Customer's cyber security training as required by the Customer);
- (d) without limiting clauses 9.8(b) and 9.8(c) above, implement appropriate security measures to, and take all other reasonable steps to, ensure that no unauthorised person obtains physical or electronic access to any Customer Data held by or on behalf of the Contractor, or to the Customer ICT Environment or the Contract Systems, including:
  - (i) using reputable, commercially available, up-to-date anti-virus software, intrusion detection software and software to prevent unauthorised access;
  - (ii) maintaining and enforcing robust physical security of locations where Customer Data is stored, accessed or processed by or on behalf of the Contractor;
  - (iii) applying the multi-factor authentication and patching controls set out in the ACSC Essential Eight (Maturity Level One or demonstrated equivalent) to the Contractor Systems; and
  - (iv) implementing any other security measures set out in the Contract, or agreed in writing with the Customer from time to time;
- (e) take all reasonable steps to ensure that no unauthorised party prevents the Contractor from performing its obligations under the Contract:
  - (i) that relate to the Customer Data and/or the Customer ICT Environment; or
  - (ii) that rely on use of the Contractor Systems;

- (f) implement appropriate security measures to, and take all other reasonable steps to:
  - (i) protect the Customer Data against loss, corruption or degradation, re-identification of de-identified data or other breach of privacy, or misuse, fraud or other unlawful practices (in each case, whether intentional or accidental);
  - (ii) otherwise protect the integrity of any Customer Data held by or on behalf of the Contractor, including ensuring information non-repudiation and authenticity; and
  - (iii) ensure the continued availability of the Customer Data held by or on behalf of the Contractor on a timely and reliable basis;
- (g) implement a systematic testing and monitoring program, in accordance with Good Industry Practice, to test the continued effectiveness of the security measures of the Contractor; and
- (h) implement all other security measures which are appropriate in the context of the Contractor's obligations under the Contract, in accordance with Good Industry Practice.t

## **9.9 Malicious Code and Unauthorised Access**

- (a) The Contractor must not at any time (including after the Contract expires or is terminated) insert or activate Malicious Code into, or permit any third party to insert or activate Malicious Code into;
  - (i) the Contractor Systems, Customer ICT Environment or the Customer Data; or
  - (ii) any other data or system or device used in connection with or otherwise linked to the Contractor Systems, the Customer ICT Environment or the Customer Data.
- (b) The Contractor must:
  - (i) take all reasonably prudent steps (having regard to the scope of the Contractor's obligations under the Contract) to check for and remove Malicious Code from; and
  - (ii) not do or omit to do anything that would lead to any adverse effect on, the Customer ICT Environment, the Customer Data, or any other data, system or device used in connection with or otherwise linked to the Customer ICT Environment or the Customer Data.

## **9.10 Security Breaches**

- (a) If the Contractor becomes aware of a Security Breach, the Contractor must immediately (and in any case within 24 hours of the Security Breach) notify the

Customer (providing full details) and must (within the context of the Goods and/or Services being provided by the Contractor):

- (i) immediately take all steps required to limit any further access to or compromise of the Customer ICT Environment or Customer Data (as applicable), or any further distribution of Customer Data;
  - (ii) do all things within its power to remedy the Security Breach and its consequences, including (for clarity) the restoration of lost or corrupted data;
  - (iii) exercise reasonable endeavours to ensure that any potential breach does not become an actual breach;
  - (iv) promptly disclose to the Customer all information and documents relevant to the Security Breach, including a written report detailing the cause of, and procedure for correcting, the Security Breach and its consequences;
  - (v) cooperate with the Customer and its nominated third parties in investigating the Security Breach, its causes, effects and surrounding circumstances and resolving the Security Breach;
  - (vi) give the Customer all access requested by the Customer to any premises, processes and systems of the Contractor (and procure the Contractor Personnel and the Contractor's System Service Providers (as applicable) give the Customer such access) for the purpose of carrying out an investigation into the Security Breach;
  - (vii) assist in identifying compromised Customer Data and/or parts of the Customer ICT Environment (as applicable);
  - (viii) use, and certify to the Customer that the Contractor has used, all reasonable endeavours, in accordance with Good Industry Practice, to prevent any recurrence of such Security Breach or potential Security Breach; and
  - (ix) provide all other assistance reasonably required by the Customer arising out of the Security Breach or the circumstances surrounding the Security Breach.
- (b) To the extent lawful, the Contractor must not disclose to any third party, or make any public statement concerning, the existence of or circumstances surrounding any Security Breach without the Customer's prior written approval.
- (c) To the extent that the Security Breach has been caused or contributed to by the Contractor (or by the Contractor Personnel or any System Service Provider of the Contractor), or would have been avoided or mitigated by the Contractor's (or such other party's) compliance with the Contract, the Contractor must perform its obligations in respect of the Security Breach at its own cost and must reimburse the Customer any costs and expenses that the Customer incurs in dealing with the Security Breach.

- (d) To the extent that clause 9.10(c) above does not apply, the Contractor will be reimbursed for the work it carries out in performing its obligations under this clause 9.10 at rates that are consistent with those set out in the Contract.

### **9.11 No Limitation on Other Obligations**

Nothing in this clause 9 (*Customer Data and Information Security*) limits the Contractor's obligations under the Contract including under clause 16 (*Intellectual Property Rights*), clause 17 (*Confidentiality*) and clause 18 (*Privacy*).

## **10. CONTRACTOR PERSONNEL**

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### **10.1 Contractor Personnel Generally**

The Contractor must ensure that all Contractor Personnel:

- (a) are properly qualified and suitable for the tasks that they are to do;
- (b) hold all necessary permits, licences and authorities required by Law; and
- (c) act, in all circumstances and at all times, in compliance with Law, in a fit and proper manner and in accordance with Probity Requirements.

### **10.2 Specified Personnel**

- (a) If the Customer requires, or the Contract specifies, Specified Personnel, then the Contractor must:
  - (i) ensure that all Specified Personnel are available to carry out, and do carry out, the roles and tasks required of them under the Contract; and
  - (ii) not allow the roles and tasks required of those Specified Personnel under the Contract to be carried out by any other person without the prior written consent of the Customer.
- (b) If the Contractor is unable to comply with clause 10.2(a) because a specified individual is unavailable, the Contractor will, as soon as practicable (and in any event within two Business Days following the date the individual becomes unavailable), notify the Customer specifying:
  - (i) the reason for the unavailability and expected length of absence or unavailability; and
  - (ii) the proposed substitute who must have at least equivalent skills, experience and knowledge as the unavailable individual, for the Customer's approval,and in such circumstances the Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary.

- (c) The Contractor must promptly replace any unavailable specified individual pursuant to the Customer's approval under clause 10.2(b), and must ensure that any and all conditions specified by the Customer under clause 10.2(b) are complied with.
- (d) If an individual is replaced under this clause, then references to Specified Personnel are taken to include the replacement personnel.

### 10.3 Subcontracting

- (a) The Contractor must not subcontract any of its obligations under the Contract without the prior written consent of the Customer.
- (b) Any consent given under clause 10.3(a) is, unless otherwise stated in the consent, conditional on the subcontract document containing provisions:
  - (i) consistent with:
    - (A) clause 7 (*Records and Audit Costs*);
    - (B) clause 9 (*Customer Data and Information Security*);
    - (C) clause 10 (*Contractor Personnel*);
    - (D) clause 16 (*Intellectual Property Rights*);
    - (E) clause 17 (*Confidentiality*);
    - (F) clause 18 (*Privacy*);
    - (G) clause 19 (*Insurance*);
    - (H) clause 22 (*Conflicts, Probity, Modern Slavery and Anti-Competitive Behaviour*); and
    - (I) clause 25 (*Suspension of Contract*),as if references in those clauses to the Contractor referred instead to the subcontractor; and
  - (ii) requiring that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the subcontract will, for the duration of the subcontract, be consistent with the remuneration and terms of employment that comply with the Law and reflect industry standards.
- (c) The Contractor's obligations under the Contract are not lessened or otherwise affected by it subcontracting the performance of its obligations.
- (d) The Contractor must ensure that each of its subcontractors comply with all of the terms of the Contract to the extent that they are relevant to the subcontractor.
- (e) The Contractor must, if requested by the Customer, supply to the Customer a copy of any subcontract, which copy may exclude commercially sensitive information but must nonetheless contain sufficient detail to allow the Customer to determine whether the subcontract complies with the requirements of this clause 10.3.

- (f) An act or omission of a subcontractor in connection with the Contract is deemed to be an act or omission of the Contractor.

#### **10.4 Removal of Contractor Personnel**

- (a) The Customer may, acting reasonably and without prejudice to its other rights under the Contract, direct the Contractor to remove from any activity connected with the Contract any individual Contractor Personnel including any Specified Personnel (which direction may be via any medium, including orally or by email).
- (b) On receipt of a direction under clause 10.4(a), the Contractor must, at its cost, remove the individual as directed:
  - (i) promptly and, in any event, within any reasonable timeframe included in the Customer's direction; and
  - (ii) appoint a replacement with at least equivalent experience, skills and knowledge who is acceptable to the Customer.
- (c) An individual removed under this clause 10.4 must not be employed or engaged in respect of the Contract without the Customer's prior written approval.
- (d) The Customer must give the Contractor the reason for the required removal of an individual under clause 10.4(a), if requested by the Contractor.
- (e) In complying with this clause, the Contractor must avoid any interruption to the Contractor's obligations under the Contract.

#### **10.5 Awards and Workplace Agreements**

- (a) The Contractor will comply with, and ensure that the Contractor Personnel will comply with, all Laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)).
- (b) The Contractor must ensure that the remuneration and terms of employment of all Contractor Personnel for the duration of the Contract will be consistent with all Laws and remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

#### **10.6 Audit of Employment and Industrial Relations Practices**

- (a) The Customer or an agent or representative of the State may commission an audit of the Contractor's or any of its subcontractor's (at any tier) employment or industrial relations practices (including terms of employment) in connection with the Contract, including Goods provided and/or Services performed under or in connection with the Contract.
- (b) Upon the commissioning of an audit under clause 10.6(a), the Contractor shall, and shall ensure that its subcontractors, fully cooperate with the commissioning entity and any auditor appointed by them in any audit including to:

- (i) allow access to all Employment Related Information in the Contractor's or subcontractor's (as the case may be) ownership, possession or control;
  - (ii) allow the audit of all employment and payroll records in the Contractor's or subcontractor's (as the case may be) ownership, possession or control;
  - (iii) allow auditors to communicate directly with Contractor Personnel, and to have access to sites and premises in the ownership, possession or control of the Contractor or relevant subcontractor (as the case may be) for the purposes of the audit;
  - (iv) ensure that all Employment Related Information (including access to such Records), in the Contractor's or relevant subcontractor's ownership, possession or control, is promptly provided to the commissioning entity or auditor on request;
  - (v) allow the commission entity or auditor to communicate with (including providing Records to) the Contractor Personnel; and
  - (vi) promptly rectify any problem or wrong identified by the auditor and notified to the Contractor or relevant subcontractor (as the case may be).
- (c) The Contractor acknowledges and agrees, and shall ensure that each of its subcontractors acknowledge and agree, that an entity that commissions an audit under this clause may refer any problem or wrong identified by the auditor to any Government Agency having an oversight role in respect to employment or industrial relations matters.

## **11. SECURITY SCREENING AND ACCESS TO RESTRICTED PREMISES**

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### **11.1 Screening and National Police Certificates**

- (a) The Customer may direct the Contractor, at any time and from time to time, to provide it with a National Police Certificate in respect of any Contractor Personnel, any supplier and any other person engaged by the Contractor in connection with the performance of the Contract, and the Contractor must comply with that direction within 15 Business Days of such direction.
- (b) The issue date of each National Police Certificate produced by the Contractor under clause 11.1(a) must be no more than two years prior to the date of production.
- (c) The Contractor must not permit any Contractor Personnel, any suppliers or any other persons engaged by it in relation to the performance of the Contract to access Premises or any part of the Customer ICT Environment where that person's National Police Certificate discloses criminal convictions that relate to:
  - (i) crimes of a violent or sexual nature;
  - (ii) dealing or trafficking in illegal drugs;
  - (iii) fraud or dishonesty; or



- (iv) other criminal convictions that are punishable by a term of imprisonment or by a fine or penalty of \$10,000 or more,

unless, on disclosure of such convictions, the Customer has approved their access in writing.

- (d) If any National Police Certificate evidences that any Contractor Personnel, any supplier or any other person engaged by the Contractor in connection with the performance of the Contract has committed a criminal or statutory offence of the type described in clause 11.1(c), then the Contractor must promptly notify the Customer and:
  - (i) the Customer may, without prejudice to its other rights under the Contract, direct the Contractor to remove that person from any activity connected with the Contract (which direction may be via any medium, including orally or by email); and
  - (ii) the Contractor must, at its own cost, remove that person as directed under clause 11.1(d)(i):
    - (A) promptly and, in any event, within any reasonable timeframe included in the Customer's direction; and
    - (B) appoint a replacement with at least equivalent experience, skills and knowledge who is acceptable to the Customer.
- (e) In complying with this clause 11.1, the Contractor must avoid any interruption to the Contractor's obligations under the Contract.
- (f) An individual removed under this clause 11.1 must not be employed or engaged in respect of the Contract without the Customer's prior written approval.
- (g) A breach of clause 11.1(c), 11.1(d)(ii)(A) or 11.1(f) will be deemed an Event of Default which cannot be remedied.

## 11.2 Restricted Premises Clearance

- (a) In relation to Restricted Premises, the Contractor must:
  - (i) obtain and maintain a current police clearance in the form of a National Police Certificate for any Contractor Personnel, any suppliers and any other persons engaged by it in connection with the performance of the Contract prior to such persons attending the Restricted Premises; and
  - (ii) complete the Customer's "Confidential Declaration" form for each Restricted Premises to be attended (a copy of which can be obtained from the Customer), and
  - (iii) promptly provide evidence to the Customer as requested by the Customer from time to time.



- (b) If a National Police Certificate required under clause 11.2(a) discloses any convictions of the type described in clause 11.1(c)(i) to (iv) (*Screening and National Police Certificates*), the Contractor must:
  - (i) promptly notify the Customer; and
  - (ii) ensure that the relevant Contractor Personnel is removed from and does not enter the Restricted Premises without the prior written consent of the Customer.
- (c) The Contractor must maintain the currency of each National Police Certificate required under clause 11.2(a) in accordance with the requirements specified in the Contract, or as otherwise prescribed by the Customer by notice to the Contractor.
- (d) The confidential declaration referred to in clause 11.2(a)(ii) will be deemed to have been re-made by each such person on each and every occasion they enter Restricted Premises.
- (e) If the Contract involves attendance at Restricted Premises, the Contractor must cooperate with the Customer's nominated representative to maintain effective control of access to Restricted Premises.

### 11.3 Working with Children

- (a) If the Contract involves "child-related work" (as that term is defined in section 6 of the *Working with Children (Screening) Act 2004* (WA)) (the **Act**) then:
  - (i) all Contractor Personnel who will undertake "child-related work" must provide to the Customer an assessment notice under section 12 of the Act before they commence work under the Contract; and
  - (ii) the Contractor must otherwise at all times comply, and ensure that all Contractor Personnel comply, with the provisions of the Act.
- (b) The Contractor must immediately remove any Contractor Personnel from Premises who do not have a current assessment notice.
- (c) A breach of this clause will be deemed an Event of Default which cannot be remedied.

## 12. WARRANTIES, OBLIGATIONS AND UNDERTAKINGS

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### 12.1 Contractor's General Warranties

The Contractor warrants in favour of the Customer, on the Contract Commencement Date and at all times during the Term, that:

- (a) neither the Contractor nor any Senior Officer of the Contractor, nor any Specified Personnel
  - (i) have a conflict of interest arising out of or in connection with the Contract;

- (ii) have been convicted of a criminal offence that is punishable by imprisonment or detention; or
- (iii) have been convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000;
- (b) the Contractor is properly authorised and has the power to enter into the Contract and perform the Contractor's obligations under the Contract;
- (c) the Contractor's obligations under the Contract are valid and binding and are enforceable against the Contractor;
- (d) all information provided, and representations made, by or on behalf of the Contractor to the Customer under, in anticipation of, preparatory to or otherwise in connection with, the Contract is and shall remain comprehensive, true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Contractor which could have a materially adverse effect on the Contractor's ability to supply the Goods and/or Services in accordance with the Contract;
- (f) except where lawfully excused under the Contract, there is nothing that prevents the Contractor from complying with any obligation under the Contract; and
- (g) none of the Goods have been imported from overseas at less than their normal commercial value,

unless, and to the extent, that the Customer has given its prior written consent to the matters disclosed by the Contractor.

## 12.2 Contractor's General Undertakings

The Contractor must:

- (a) properly provide for the care, safety, security and protection of:
  - (i) the Goods, if the Contract includes the supply of Goods, until risk in the Goods passes to the Customer under clause 5.3 (*Title, Delivery and Risk in Goods*);
  - (ii) all Records (whether created by the Customer, the Contractor or any other person) that are in the custody or control of the Contractor; and
  - (iii) all property supplied by the Customer to the Contractor for or in connection with the Contract;
- (b) promptly notify the Customer if any warranty under clause 12.1 is breached or becomes untrue;
- (c) always act ethically in connection with the Contract and in accordance with Good Industry Practice and good corporate governance practices;
- (d) comply with all Laws relevant to the Contract;
- (e) not do or omit to do anything in connection with the performance of its obligations under the Contract that is likely to cause the Customer to contravene any Laws;

- (f) obtain and maintain (and ensure that the Contractor Personnel obtain and maintain) all Authorisations necessary to perform its obligations under the Contract;
- (g) comply with (and ensure the Contractor Personnel comply with) all such Authorisations (including in respect of the payment of all fees and charges in connection with those Authorisations);
- (h) if the Contractor has custody or control of State records, within the meaning of the State Records Act, comply with the Customer's record keeping plan to the extent necessary under the State Records Act;
- (i) cooperate fully with the Customer in respect of the administration of the Contract;
- (j) use its best endeavours to ensure that no Contractor Personnel cause the Contractor to breach the Contract;
- (k) not directly or indirectly offer (or cause or suffer to be offered) a bribe, gift or inducement to any officer or employee of the Customer in connection with the Contract; and
- (l) in supplying the Goods and/or Services :
  - (i) identify and exercise all necessary precautions to eliminate, so far as is reasonably practicable, all risks to the health, safety and welfare of the Contractor Personnel, the Customer Personnel and other contractors, and the general public, to the extent that those people may be affected by the supply or purported supply; and
  - (ii) cooperate fully with the Customer to ensure integrated and efficient conduct of the Customer's operations and provide reasonable assistance as requested from time to time.

### **12.3 Contractor's Expenses and Equipment**

Unless the Customer agrees otherwise in writing, the Contractor must:

- (a) pay all out-of-pocket expenses incurred by the Contractor in connection with the Contract including travel expenses, accommodation and subsistence expenses; and
- (b) provide everything necessary to enable it to fully comply with all of its obligations under the Contract, subject to the Customer doing everything that is expressly required under the Contract to enable the Contractor to so comply.

### **12.4 Warranties**

- (a) The Contractor must give, or must ensure that the Customer has the benefit of, any warranties specified in the Contract.
- (b) The Contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties that are obtained by any subcontractor, and must ensure that the Customer has the benefit of those warranties.

- (c) The Contractor warrants that the Goods and/or Services:
  - (i) are fit for the purpose or purposes for which goods and/or services of that kind would be reasonably expected to be applied by the Customer; and
  - (ii) at the time of and continually after delivery, are free from any material Defects in relation to their form and content; and
  - (iii) as delivered, will comply with the Contract and Good Industry Practice.
- (d) The above warranties shall survive the expiry or termination of the Contract.

## **12.5 Use of Chlorofluorocarbons**

The Contractor must not, in the provision of the Goods and/or Services, use goods, materials or substances which contain, or were manufactured with, chlorofluorocarbons.

## **12.6 Government Policy**

If any obligations relating to Government policies are specified in the Contract, then those obligations form part of the Contract and the Contractor must comply with them.

## **12.7 Performance Guarantees and Financial Undertakings**

The parties acknowledge their respective rights and obligations in relation to any performance guarantee or financial undertaking referred to in the Contract.

## **12.8 Work Health and Safety**

- (a) The Contractor must at all times discharge its responsibilities under all statutory requirements relating to work health and safety, including the WHS Laws, that are applicable to the provision of the Goods and/or Services including identifying and exercising all necessary precautions for the safety and health of all persons including:
  - (i) the Contractor Personnel;
  - (ii) the Customer Personnel; and
  - (iii) any other person,who may be affected directly or indirectly by or as a result of activities related to the Contract or the provision of the Goods and/or Services or both.
- (b) Without limiting the Contractor's obligations under the Contract, the Contractor must:
  - (i) comply with its WHS Notification Requirements and notify the Customer as soon as practicable after any incident which necessitates such notification being made; and
  - (ii) consult, co-operate and co-ordinate with the Customer in respect of the discharge of the parties' obligations in connection with the provision of the Goods and/or Services under WHS Laws and provide all information and

documents to the Customer that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.

## **13. PAYMENT AND INVOICING**

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### **13.1 Payment of Price**

- (a) The Customer must pay to the Contractor the Price in accordance with this clause 13.
- (b) Except as expressly provided under the Contract, the Price includes all amounts payable by the Customer in respect of the Goods and/or Services, and the Contractor is not entitled to charge the Customer for any fees, charges, costs or expenses in addition to the Price.

### **13.2 Adjustment to Price**

- (a) If a formula or method for adjustment of the Price is specified in the Contract, then unless the parties agree in writing to vary the Contract, the Price may only be adjusted in accordance with that formula or method.
- (b) If no formula or method for adjustment of the Price is specified in the Contract, then unless the parties agree in writing to vary the Contract, the Price is fixed for the Term and cannot be varied.

### **13.3 Time Based Services**

Where Services are to be charged on a time basis, the Contractor:

- (a) must perform the Services in a reasonable number of person hours; and
- (b) must provide the Customer on a weekly basis, or at such other interval as the parties agree in writing, reasonable details of the work performed by Contractor Personnel (including their position, the number of hours of work performed and the particular component of the Services (if any) to which the work relates), as well as the total Price accrued to date; and
- (c) must promptly provide any additional information reasonably requested by the Customer from time to time.

### **13.4 Timing of Invoice and Progress Payments**

- (a) If the Contract specifies:
  - (i) the time or times at which the Contractor must submit invoices to the Customer, the Contractor must submit invoices at that time or those times; or
  - (ii) that the Contractor is entitled to progress payments, then:
    - (A) the Contractor must submit progress claims monthly (or at such other times specified in the Contract) for the value of the Goods and/or Services

provided as a percentage of the total Price (or such other progress measure as specified in the Contract); and

- (B) the Contractor may submit an invoice for the amount of a progress claim approved by the Customer not less than eight Business Days after receipt of the approval.
- (b) If clause 13.4(a) does not apply, then the Contractor must submit invoices to the Customer at a time or times agreed in writing between the parties, provided that the Contractor must not submit any invoice later than 20 Business Days after the expiration or termination of the Contract.

### 13.5 Invoices and Supporting Documents

- (a) An invoice given by the Contractor to the Customer must:
  - (i) clearly identify which Goods and/or Services the invoice covers and the amount of the Price payable for those Goods and/or Services, minus any Discount; and
  - (ii) comply with the Customer's reasonable requirements in relation to format and content.
- (b) If the Customer requests, the Contractor must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Contract.

### 13.6 Payment of Invoice

- (a) Subject to clause 13.8 (*No Obligation to Pay*) and the Contractor's compliance with clause 13.5 (*Invoices and Supporting Documents*), the Customer must pay the amount specified in an invoice that has been submitted or otherwise issued in compliance with this clause 13 within the payment term specified in clause 13.6(b) if the amount claimed in the invoice is:
  - (i) properly payable; and
  - (ii) correctly calculated in accordance with the Contract.
- (b) The payment term is:
  - (i) 20 days commencing the day after the date the invoice is received, for any invoice where the amount payable is under \$1 million (GST inclusive); or
  - (ii) 30 days commencing the day after the date the invoice is received, for any invoice where the amount payable is \$1 million (GST inclusive) or greater.

### 13.7 Method of Payment

- (a) The Customer may pay the amount specified in an invoice:
  - (i) by cheque;
  - (ii) by electronic funds transfer to the account with a financial institution nominated by the Contractor; or
  - (iii) by credit card.
- (b) The Contractor must not impose or pass on a surcharge to the Customer for payment by credit card.

### 13.8 No Obligation to Pay

The Customer has no obligation to make any payment to the Contractor unless and until:

- (a) the Goods and/or Services have been supplied in accordance with the Contract and the Customer has accepted the Goods and/or Services under clause 5.2(c) (*Acceptance or Rejection*); and
- (b) the Customer is satisfied that no Event of Default has occurred and continues unremedied.

### 13.9 Incorrect Invoice before Payment

If, before payment of an invoice, the Customer or the Contractor finds that the invoice does not comply with clause 13.5 (*Invoices and Supporting Documents*) or clause 13.6 (*Payment of Invoice*) and:

- (a) an Adjustment arises, then the Contractor must immediately issue an Adjustment Note; and
- (b) no Adjustment arises, then the Contractor must immediately issue a correct invoice.

### 13.10 Incorrect Invoice after Payment

If, after payment of an invoice, the Customer or the Contractor finds that the invoice did not comply with clause 13.5 (*Invoices and Supporting Documents*) or clause 13.6 (*Payment of Invoice*) and the Customer has paid:

- (a) less than the amount that should have been paid and an Adjustment arises, then:
  - (i) the Contractor must immediately issue an Adjustment Note; and
  - (ii) the Customer must pay the difference to the Contractor within 20 Business Days after the date that the Adjustment Note is received; or
- (b) less than the amount that should have been paid and no Adjustment arises, then:
  - (i) the Contractor must immediately issue a correct invoice; and
  - (ii) the Customer must pay the difference to the Contractor within 20 Business Days after the date that the correct invoice is received; or



- (c) more than the amount that should have been paid and an Adjustment arises, then the Contractor must:
  - (i) immediately issue an Adjustment Note; and
  - (ii) pay the difference to the Customer (including any interest paid under clause 13.12 (*Failure to Pay*) in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor; or
- (d) more than the amount that should have been paid and no Adjustment arises, then the Contractor must:
  - (i) immediately issue a correct invoice; and
  - (ii) pay the difference to the Customer (including any interest paid under clause 13.12 (*Failure to Pay*) in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor.

### 13.11 Timing of Payment

For the purpose of determining the date of payment under clause 13.12 (*Failure to Pay*) and for the purpose of calculating any Discount applicable under the Contract for settlement of accounts:

- (a) if payment is by cheque – payment is taken to be made on the date on which the cheque is received by the Contractor;
- (b) if payment is by electronic funds transfer – payment is taken to be made at the time the funds are sent electronically; or
- (c) if payment is by credit card – payment is taken to be made on the date on which the payment is authorised by the credit provider.

### 13.12 Failure to Pay

- (a) If demanded by the Contractor, the Customer must pay interest on any payment not made by the Customer by the date required by clause 13.6 (*Payment of Invoice*) or any later date for payment agreed by the Contractor.
- (b) Interest under this clause is to be:
  - (i) calculated from the due date for payment determined under this clause until (but not including) the date of payment (as determined under clause 13.11 (*Timing of Payment*)); and



- (ii) at the rate specified in the Contract or, if no rate is specified in the Contract, at the rate payable under the Rules of the Supreme Court on unpaid judgments.

## 14. PPSA

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### 14.1 Generally

In this clause 14:

- (a) **Customer's Personal Property** means all personal property the subject of a security interest granted to or held by the Customer under the Contract; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

### 14.2 Further Assurance

If the Customer determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Customer asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Customer to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Customer has the priority required by it; and/or
- (c) enabling the Customer to exercise rights in connection with the security interest.

### 14.3 No Requirement for PPSA Notices

The Customer need not give any notice under the PPSA (including notice of a verification statement) unless the giving of such notice is required by the PPSA and cannot be excluded.

### 14.4 Priority of the Customer's Interest

Nothing in the Contract shall be taken or construed as an agreement or consent by the Customer to:

- (a) subordinate the Customer's interest in the Customer's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Customer's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Contract attaches to the relevant collateral.

## 14.5 Enforcement

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Customer of any security interest in the Customer's Personal Property, the following provisions of the PPSA do not apply to the extent the PPSA allows them to be excluded:

- (a) **(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- (b) **(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

## 14.6 Negative Undertakings

The Contractor must not:

- (a) create any security interest or lien over any of the Customer's Personal Property whatsoever (other than security interests granted in favour of the Customer under the Contract);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Customer's Personal Property;
- (c) give possession of the Customer's Personal Property to another person other than the Customer or where the Customer expressly authorises it to do so;
- (d) permit any of the Customer's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Customer of the new name not less than 15 Business Days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Customer's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Customer's Personal Property at any time.

## 14.7 Customer's Interest Remains Unaffected

The Customer's interest in the Customer's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Customer's Personal Property at any time.

## 14.8 Notices to the Customer

The Contractor must notify the Customer as soon as the Contractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Customer's Personal Property becomes an accession to the Customer's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Customer's Personal Property is located or situated outside Australia; and
- (c) upon request by the Customer, of the present location or situation of any of the Customer's Personal Property.

## 14.9 Costs and Expenses Relating to the PPSA and Registration

- (a) Everything the Contractor is required to do under this clause 14 (*PPSA*) is at the Contractor's expense.
- (b) The Contractor agrees to pay or reimburse, upon demand, all costs and expenses of the Customer in connection with anything the Customer is required to do under this clause 14 (*PPSA*), including preparing, registering and maintaining any financing statement or financing change statement.

## 15. TAXES

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- (a) In this clause 15, the expressions "consideration", "recipient", "recipient created adjustment note", "recipient created tax invoice", "supplier", "supply", "tax invoice" and "taxable supply" have the meanings given to those expressions in the GST Act.
- (b) All sums payable, or consideration to be provided, under the Contract are expressed inclusive of GST unless expressly stated that the sum is exclusive of GST.
- (c) If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 15(c) must be paid at the same time as payment for the taxable supply is required to be made under the Contract.

- (e) If a GST-inclusive price is charged or varied under the Contract or if GST is imposed under clause 15(c), the supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- (g) The recipient of a supply may choose in its absolute discretion, by notice to the supplier, to issue recipient created tax invoices or recipient created adjustment notes in accordance with the GST Act for taxable supplies made by the supplier to the recipient of the supply under the GST Act. The supplier will not issue tax invoices or adjustment notes in respect of the same supplies.
- (h) The recipient of a supply may issue recipient created tax invoices or recipient created adjustment notes in electronic form.
- (i) The supplier warrants that it is registered for GST and will notify the recipient of the supply if it ceases to be registered or if it ceases to satisfy the requirements of Australian Tax Office Ruling GSTR 2000/10.
- (j) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Goods and/or Services are payable by the Contractor.

## **16. INTELLECTUAL PROPERTY RIGHTS**

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### **16.1 Intellectual Property Rights – Owned by State or Customer**

- (a) Unless the Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 16.1 forms part of the Contract.
- (b) The Intellectual Property Rights in the New Material will be owned by the State unless the Contract provides that they will be owned by the Customer.
- (c) The Contractor automatically assigns the entire future Intellectual Property Rights in all New Material to the State or the Customer as the case requires upon their creation.
- (d) The State or the Customer grants to the Contractor a revocable, royalty-free, non-exclusive licence to use the New Material to the extent necessary to deliver the Goods and/or perform the Services. The licence will terminate on the expiration or termination of the Term.
- (e) Unless specified to the contrary in the Contract, copyright and property in all Working Papers vest in the State or the Customer as the case requires.

- (f) The Contractor warrants that all Contractor Personnel:
  - (i) who are employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights in any New Material vest in the State or the Customer on the creation of that New Material; and
  - (ii) who are not employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights in any work and other subject matter (as those terms are defined and used in the Copyright Act), product or other material created by the Contractor Personnel vest in the Contractor on the creation of that work, product or other material.

## **16.2 Intellectual Property Rights – Owned by Contractor**

- (a) Where the Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 16.2 forms part of the Contract.
- (b) The Customer acknowledges that the entire future Intellectual Property Rights in all New Material are to be owned by the Contractor upon their creation.
- (c) The Contractor:
  - (i) grants to the Customer an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the New Material during the remainder of the duration of the Intellectual Property Rights in that New Material; and
  - (ii) must, if a third party owns Moral Rights in any New Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Customer to use the New Material without regard to the third party's Moral Rights.
- (d) The licence granted under clause 16.2(c) extends to all Working Papers.

## **16.3 Existing Material – Licence**

- (a) Nothing in clause 16.1 (*Intellectual Property Rights – Owned by State or Customer*) or clause 16.2 (*Intellectual Property Rights – Owned by Contractor*), as applicable, affects the ownership of any Intellectual Property Rights in any Existing Material.
- (b) The Contractor:
  - (i) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to the State or the Customer in writing, an irrevocable, perpetual, royalty-free, sub-licensable and non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material for any purpose during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and

- (ii) must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Existing Material without regard to the third party's Moral Rights.

## 16.4 Intellectual Property Rights Warranty

The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted under clause 16.3(b)(i) (*Existing Material – Licence*);
- (b) no Intellectual Property Rights or Moral Rights in any Material is or will be owned by any third party unless:
  - (i) if a third party owns any Intellectual Property Rights in the Material, the Contractor has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 16.3(b); and
  - (ii) if a third party owns Moral Rights in the Material, the Contractor has obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Material without regard to the third party's Moral Rights;
- (c) the Material will not infringe the Intellectual Property Rights or Moral Rights of any third party.

## 16.5 Intellectual Property Rights Indemnity

The Contractor indemnifies and will keep indemnified the Customer, the State and all their respective officers, employees and agents from and against all Loss and Claims resulting from the Contractor's failure to comply with this clause 16 (*Intellectual Property Rights*), including any breach of warranty under clause 16.1 (*Intellectual Property Rights – Owned by State or Customer*) if applicable, and clause 16.4 (*Intellectual Property Rights Warranty*), or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Contractor.

## 17. CONFIDENTIALITY

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### 17.1 Contract Disclosure

- (a) The Customer may publicly disclose:
  - (i) the identity of the Contractor;
  - (ii) the value of the Contract and a general description of the Goods and/or Services supplied under the Contract.

- (b) In relation to the Contract and any information held or compiled by the Customer or the State in relation to the Contract or the Goods and/or Services supplied under the Contract, the Contractor acknowledges that:
- (i) each is subject to the *Freedom of Information Act 1992* (WA);
  - (ii) any or all of them may be disclosed by the Customer or the State in response to a request made under section 275 of the *Personal Property Securities Act 2009* (Cth), or otherwise as required by that Act;
  - (iii) any or all of them may be disclosed to satisfy the requirements of Law, Parliamentary accountability or any other reporting or recognised public obligations of the Customer or the State; and
  - (iv) any or all of them may be disclosed by the Customer to another Government Agency.

## 17.2 Confidential Information

The Contractor must keep the Customer's Confidential Information confidential and not use or disclose such information to any person except:

- (a) as authorised in writing by the Customer;
- (b) to the extent that the Confidential Information is public knowledge (other than because of a breach of the Contract or any Law by the Contractor);
- (c) as required by any Law or Government Agency;
- (d) where necessary for the purpose of supplying the Goods and/or Services; or
- (e) when required (and only to the extent required) to the Contractor's professional advisers, provided that the Contractor ensures that such advisers are bound by the confidentiality obligations imposed on the Contractor under this clause 17.2.

## 17.3 Return of Confidential Information

Except to the extent that the Contractor is required by Law to retain any Records, the Contractor must return all Records containing the Customer's Confidential Information immediately at the expiration or termination of the Contract.

## 17.4 Publicity

- (a) The Contractor must not, unless required to do so by Law or if it has the Customer's prior written consent, in any publication (including on social media), advertisement or media release:
  - (i) use the Contract, the Customer's name or logo or the name or logo of any State Agency specified in the Contract;
  - (ii) refer to the Contractor's association with the Customer, State or Government of Western Australia which results from the Contract; or
  - (iii) make any statement concerning the Contract.



- (b) The Customer may use the Contract or the Contractor's name or logo for reasonable promotional or publicity purposes and will acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

## 18. PRIVACY

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- (a) The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act to the extent relevant to the Contract.
- (b) The Contractor also agrees to comply with:
  - (i) such other Law related to privacy which is relevant to the Contract;
  - (ii) any directions made by a Privacy Commissioner relevant to the Contract;
  - (iii) any privacy procedures stated in the Contract or specified by the Customer from time to time; and
  - (iv) any other reasonable request or direction relating to privacy which is given by the Customer.
- (c) Whether or not the Contractor is an organisation which is bound by the Privacy Act or other privacy laws, the Contractor must comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation.
- (d) The Contractor must, in relation to any Personal Information which it collects or has access to in the course of performing its obligations under the Contract or otherwise in connection with the Contract:
  - (i) not modify or disclose the Personal Information except with the Customer's prior written approval;
  - (ii) use or disclose the Personal Information only for the purposes of performing its obligations under the Contract;
  - (iii) take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure;
  - (iv) ensure that the Personal Information is returned to the Customer (or is permanently destroyed if the Customer so elects) when it is no longer required for the performance of the Contractor's obligations under the Contract;
  - (v) where any breach of privacy occurs due to the Contractor's failure to comply with any obligation under this clause 18 (*Privacy*), do all things necessary to mitigate the consequences of that breach; and
  - (vi) co-operate fully with the Customer to resolve any complaint alleging a breach by any party of their respective privacy obligations.



- (e) The Contractor must immediately notify the Customer (providing full details) if it:
  - (i) receives any complaints concerning its or the Customer's compliance with privacy obligations, including full details of how the Contractor intends to resolve the complaint;
  - (ii) becomes aware that a disclosure of Personal Information may be required by Law; or
  - (iii) is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.
- (f) The Contractor must co-operate fully with the Customer to resolve:
  - (i) any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or
  - (ii) any complaint alleging a breach by any party of their respective privacy obligations in connection with,the Contract.

## **19. INSURANCE**

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### **19.1 Insurance Policies**

The Contractor must effect and maintain the insurances specified in the Contract:

- (a) with an insurer acceptable to the Customer which is:
  - (i) an Australian Prudential Regulatory Authority authorised insurer; or
  - (ii) an overseas insurer with a Standard and Poor's, or other internationally recognised financial rating agency, credit rating of at least A minus (A-); or
  - (iii) a self-insurer approved under the Laws of the State, Commonwealth or any other Australian state or territory; or
  - (iv) a State, Commonwealth or any other Australian state or territory self-insurance arrangement, established under Law;
- (b) on the terms and for the amounts specified in the Contract; and
- (c) for the period of time specified in the Contract or, if no period of time is specified:
  - (i) the professional indemnity insurance required (if any) is to be maintained throughout the Term and for a period of six years after the expiration or termination of the Term; and
  - (ii) all other insurances are to be maintained throughout the Term.

## 19.2 Insurance Obligations

The Contractor must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under this clause 19 (*Insurance*);
- (b) not vary or cancel any insurance required under the Contract, or allow it to lapse during the Term, or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse an insurance claim;
- (c) without limiting clause 19.2(b), promptly reinstate any insurance required under the Contract if it lapses or if cover is exhausted; and
- (d) provide the Customer with sufficient evidence of the insurances required under this clause 19 (*Insurance*) (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Customer at any time.

## 19.3 Failure to Prove Insurance

If the Contractor does not comply with clause 19.1 (*Insurance Policies*) and clause 19.2 (*Insurance Obligations*) then, without limiting any other remedy available to the Customer, the Customer may withhold payment of any money due under the Contract to the Contractor until the Contractor has complied.

## 19.4 Incidents and Claims

- (a) If the Customer or the Contractor becomes aware of any event, circumstance, or incident which has or could materially erode, reduce or exhaust the available limits under the insurances required under this clause 19 (*Insurance*) or which may involve the Contractor or Customer in any action or litigation in connection with the Contract, it must as soon as reasonably practicable notify the other party in writing of that event, circumstance or incident.
- (b) Failure to comply with clause 19.4(a) will not invalidate or otherwise affect any indemnities, liabilities and releases of the Contract.

## 19.5 No Limitation of Other Liabilities

Nothing in this clause 19 (*Insurance*) limits the Contractor's other liabilities under the Contract or restricts the Contractor from insuring for sums or risks greater than those required under the Contract.

## 20. LIABILITY

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- (a) The liability of either party for breach of the Contract or for any other common law or statutory cause of action arising out of the operation of the Contract will be determined under the relevant Law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time.
- (b) Other than where the Customer has repudiated the Contract or damages are not an appropriate remedy, if the Customer breaches the Contract, then the remedies of the Contractor are limited to damages.

## 21. INDEMNITY

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- (a) The Contractor indemnifies the Customer, the State and all their respective officers, employees and agents (**Indemnified Party**) against all Loss and Claims (including, legal costs and expenses) as a result of any Claim taken or made against any Indemnified Party by any third party arising from or in connection with:
  - (i) any breach of the Contract by the Contractor;
  - (ii) any wilful, tortious or unlawful act or omission of the Contractor or any Contractor Personnel;
  - (iii) any breach of Law relevant to the Contract by the Contractor or any Contractor Personnel;
  - (iv) any breach of equitable duty, including breach of confidentiality or breach of fiduciary duty by the Contractor or any Contractor Personnel;
  - (v) any illness, personal injury or death occurring in relation to the Contract that is caused or contributed to by any act or omission of the Contractor or any Contractor Personnel; or
  - (vi) any infringement or alleged infringement in respect of a third party's Confidential Information, where the infringement or alleged infringement arises out of the receipt, use, reproduction, communication or exploitation of the Goods and/or Services by or on behalf of the Customer in the manner contemplated by the Contract.
- (b) The Customer will use its reasonable commercial endeavours to cooperate with the Contractor, at the Contractor's cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party Claim subject of the indemnity under this clause 21 (*Indemnity*).
- (c) The Contractor's liability to indemnify an Indemnified Party under this clause 21 (*Indemnity*) will be reduced proportionally to the extent that any Claim or Loss results from the negligence of an Indemnified Party.

## **22. CONFLICTS, PROBITY, MODERN SLAVERY AND ANTI-COMPETITIVE BEHAVIOUR**

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### **22.1 Conflict of Interest**

Without limiting clause 22.2 (*Probity Allegations and Investigations*) or clause 22.3 (*Probity Events*), if an actual or perceived conflict of interest arises or looks likely to arise in respect of the Contractor, the Contractor must:

- (a) promptly notify the Customer of the conflict and provide full details; and
- (b) take reasonable steps in consultation with the Customer to avoid or manage the conflict.

### **22.2 Probity Allegations and Investigations**

- (a) The Contractor must immediately notify the Customer on becoming aware of any allegation that a Probity Event has occurred or is likely to occur.
- (b) The Contractor agrees that the Customer may, or may require the Contractor at any time to, conduct an investigation, at the Contractor's cost, into any allegation a Probity Event has occurred in respect of the Contractor, any Related Body Corporate of the Contractor, any Contractor Personnel or any person who is proposed to become Contractor Personnel.
- (c) The Contractor must obtain all relevant consents from any person in connection with an investigation in respect of an alleged or actual Probity Event.
- (d) Where the Customer requires the Contractor to conduct an investigation in accordance with clause 22.2(b), the Contractor must promptly:
  - (i) conduct the investigation;
  - (ii) communicate the findings of that investigation to the Customer in the form required by the Customer; and
  - (iii) provide the Customer with any additional information regarding the Probity Event within three Business Days of any request unless a different timeframe is agreed in writing by the Customer.
- (e) The Contractor must bear all costs incurred by the Customer in connection with a Probity Event or any investigation that finds a Probity Event has occurred.
- (f) The Customer's rights under this clause 22.2 are in addition to and do not otherwise limit any other rights the Customer may have under the Contract.

### **22.3 Probity Events**

- (a) The Contractor must immediately notify the Customer on becoming aware that a Probity Event has occurred or is likely to occur.

- (b) The notice issued under clause 22.3(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, the persons involved and the circumstances giving rise to the Probity Event.
- (c) The Customer may notify the Contractor in writing that an event is to be considered a Probity Event for the purposes of this clause, and where this occurs, the Contractor must issue a notice (containing the content described in clause 22.3(b)) in relation to the event within three Business Days of being notified by the Customer unless a different timeframe is agreed in writing by the Customer.
- (d) Where reasonably requested by the Customer, the Contractor must provide the Customer with any additional information regarding a Probity Event within three Business Days of the request unless a different timeframe is agreed in writing by the Customer.

## 22.4 Probity Remediation Plan

- (a) For the purposes of this clause 22.4, a **Probity Remediation Plan** is a probity remediation plan approved by the Customer pursuant to clause 22.4(f).
- (b) If requested by the Customer, the Contractor must prepare a draft probity remediation plan and submit that draft plan to the Customer's Representative for approval within 10 Business Days of the request unless a different timeframe is agreed in writing by the Customer.
- (c) Each draft probity remediation plan is a Draft Approval Document and the Contractor must prepare and submit the draft document in accordance with clause 23.5 (*Draft Approval Documents*).
- (d) A draft probity remediation plan prepared by the Contractor under this clause must include the following information:
  - (i) how the Contractor will address the Probity Event including confirmation that the implementation of the probity remediation plan will not in any way impact on the delivery of the Goods and/or performance of the Services or compliance by the Contractor with its other obligations under the Contract;
  - (ii) how the Contractor will ensure events similar to the Probity Event do not occur again; and
  - (iii) any other matter reasonably requested by the Customer.
- (e) The Contractor must make any changes to the draft probity remediation plan requested by the Customer and resubmit the draft remediation plan to the Customer for approval within three Business Days of the request unless a different timeframe is agreed in writing by the Customer. This clause 22.4(e) will apply to any resubmitted draft probity remediation plan.
- (f) The Customer is not obliged to accept a draft probity remediation plan. No draft probity remediation plan has any effect on the Contract until such time as the draft

is approved by the Customer in writing, and signed in accordance with the Customer's approved delegation authorities.

- (g) Without limiting its other obligations under the Contract, the Contractor must comply with the Probity Remediation Plan. The Contractor agrees to promptly provide reports and other information about the Contractor's progress in implementing the Probity Remediation Plan as reasonably requested by the Customer.
- (h) The Customer's rights under this clause 22.4 are in addition to and do not otherwise limit any other rights the Customer may have under the Contract.
- (i) The performance by the Contractor of its obligations under this clause 22.4 will be at no additional cost to the Customer.

## 22.5 Modern Slavery

- (a) For the purposes of this clause 22.5:
  - (i) Modern Slavery has the meaning given to that term in the *Modern Slavery Act 2018* (Cth) and any analogous conduct prohibited by any other Law which applies to the Customer, the Contractor or a subcontractor; and
  - (ii) Modern Slavery Laws mean any of the following:
    - (A) *Modern Slavery Act 2018* (Cth);
    - (B) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
    - (C) any Law relating to Modern Slavery; and
    - (D) any other law relating to Modern Slavery which applies to the Customer, the Contractor or a subcontractor.
- (b) The Contractor represents, warrants and undertakes that, as at the Contract Commencement Date, neither the Contractor, nor any entity that it owns or controls or, to the best of its knowledge, any of the Contractor Personnel, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.
- (c) The Contractor must:
  - (i) comply with the Modern Slavery Laws; and
  - (ii) not do anything that would constitute Modern Slavery or put the Customer in breach of the Modern Slavery Laws (applicable to State Government Agencies).
- (d) Before any subcontractor or supplier is engaged by the Contractor in the operations and supply chains used in the provision of the Goods and/or Services, the Contractor must carry out reasonable due diligence on the subcontractor's historical compliance, and ability to comply, with the Modern Slavery Laws.
- (e) The Contractor must implement and maintain throughout the Term appropriate procedures and processes to identify, assess and address risks of Modern Slavery

practices in the operations and supply chains used in the provision of the Goods and/or Services.

- (f) The Contractor must notify the Customer in writing as soon as possible after it becomes aware of any actual or potential breach of this clause 22.5. The notice must set out full details of the actual or potential breach.
- (g) The Contractor must provide the Customer with all information and assistance reasonably requested by the Customer in connection with:
  - (i) the Contractor's compliance with clause 22.5(c), (d), (e) and (f); and
  - (ii) any reporting obligations of the Customer under the Modern Slavery Laws (or associated regulatory requirements of the Commonwealth or the State) in relation to the Goods and/or Services.

## **22.6 Anti-Competitive Behaviour**

- (a) The Customer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by the Contractor or any of the Contractor Personnel to a Government Agency and to provide the Government Agency with any relevant information about the Contractor and the Contractor Personnel.
- (b) Any obligation to keep information confidential will not be breached if the information is disclosed by the Customer to the Government Agency because of suspected collusive or anti-competitive behaviour.
- (c) The Contractor must promptly notify the Customer if, at any time during the Term, the Contractor or any of the Contractor Personnel are, or have been, subject to proceedings related to anti-competitive conduct in Australia or overseas.
- (d) Notification given by the Contractor under clause 22.6(c) must include:
  - (i) the names of the parties to the proceedings;
  - (ii) the case number;
  - (iii) the general nature of the proceedings; and
  - (iv) the outcome or current status of the proceedings.

## **23. CONTRACT ADMINISTRATION**

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### **23.1 Customer's Representative**

- (a) Any person described in the Contract as the Customer's Representative may act as the representative of the Customer in relation to the Contract.
- (b) The Contractor agrees and acknowledges that the Customer's Representative may administer the Contract and any such administration by the Customer's Representative will be deemed to be administration by the Customer for the purposes of the Contract.



- (c) Any direction, permission, consent or approval of the Customer has effect only if provided in writing by the Customer or a person properly appointed by the Customer (or by that person's delegate or nominee).
- (d) The Customer may by notice to the Contractor at any time:
  - (i) vary or terminate the appointment of the Customer's Representative; and
  - (ii) appoint any other person to act as the Customer's Representative in relation to the Contract.

## **23.2 Contractor's Representative**

- (a) Any person described in the Contract as the Contractor's Representative may act as the representative of the Contractor in relation to the Contract.
- (b) The Contractor Representative has authority from the Contractor to make and give, or accept, on the Contractor's behalf, any approvals, acceptances, directions, notices and other decisions that the Contractor may make, give or accept under the Contract.
- (c) Where a matter is known by the Contractors' Representative that matter will be deemed to be known by the Contractor.
- (d) The Customer agrees and acknowledges that the Contractor's Representative may administer the Contract and any such administration by the Contractor's Representative will be deemed to be administration by the Contractor for the purposes of the Contract.
- (e) The Contractor may by notice to the Customer at any time:
  - (i) vary or terminate the appointment of the Contractor's Representative; and
  - (ii) appoint any other person to act as the Contractor's Representative in relation to the Contract.

## **23.3 Performance Management**

The Contractor will duly and punctually comply with any performance management requirements in the Contract.

## **23.4 Provision of Information and Notification of Issues**

- (a) The Contractor must promptly provide to the Customer on request any information requested by the Customer, acting reasonably, from time to time in connection with the Goods and/or Services, or in connection with the Contractor's compliance with its obligations under the Contract.
- (b) If the Contractor becomes aware of any issue that, if not resolved, would result:
  - (i) in the Goods and/or Services no longer meeting the Customer's requirements;
  - or



- (ii) a degradation in performance, functionality, security or quality of the Goods and/or Services,

then the Contractor must promptly (and in any event within five Business Days) give notice to the Customer of its opinion, the reasons for that opinion, and the available options for resolving the issue.

## **23.5 Draft Approval Documents**

- (a) The Contractor must:
  - (i) prepare (in accordance with the Contract, Good Industry Practice and to a standard that will facilitate approval by the Customer) each Draft Approval Document in the format reasonably requested by the Customer from time to time; and
  - (ii) submit the Draft Approval Document in the manner specified in the Contract or, if not specified, in the manner reasonably required by the Customer from time to time.
- (b) The Customer is not required to check any Draft Approval Document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract.
- (c) The Customer will communicate to the Contractor its approval or rejection of, or required amendments to, each Draft Approval Document.
- (d) If the Customer rejects or communicates required amendments to any Draft Approval Document pursuant to clause 23.5(c), the Contractor must promptly (and in any event within the timeframe specified in the Contract, or if no timeframe is specified, within 10 Business Days after the Customer communicates feedback to the Contractor) amend and resubmit the relevant Draft Approval Document to the Customer for further review in accordance with this clause 23.5, and must continue this process until the Customer communicates its approval (such approval not to be unreasonably withheld).
- (e) Review, approval or rejection of a Draft Approval Document does not:
  - (i) waive, limit or prejudice any right the Customer has under the Contract or at Law (including in relation to the remediation of Defects); or
  - (ii) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or at Law.
- (f) The Contractor remains responsible for the delivery of the Goods and/or the performance of the Services in accordance with the requirements of the Contract notwithstanding any review, acceptance or approval of, comments upon, rejection of, or failure to review or comment upon any Draft Approval Document.

## 23.6 Notices

- (a) Each notice or other communication (in each case, a **notice**) that may or must be made or given under or in connection with the Contract, if given or made, to be valid and effective, must be:
  - (i) in writing; and
  - (ii) signed by the party making it or (on that party's behalf) by an authorised officer, attorney, solicitor or authorised agent of, that party.
- (b) All notices must be:
  - (i) delivered or posted by prepaid post to the address; or
  - (ii) sent by email attaching the notice in the form of a PDF file (containing a letter or such other document format agreed by the Customer) to the email address, of the addressee stated in the Contract or as notified by a party to each other party from time to time.
- (c) Subject to clause 23.6(d), a notice is taken to be received by the addressee:
  - (i) in the case of prepaid post, on the fifth Business Day after the date of posting from and to an address within Australia, and on the fifteenth Business Day after the date of posting by airmail to or from an address outside Australia;
  - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic delivery notification received by the party sending the email (or, if there is no delivery notification, then the time and date of the dispatch of the email will be prima facie evidence of its receipt by the addressee); and
  - (iii) in the case of delivery by hand, on delivery.
- (d) If the notice is taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.
- (e) In connection with notices sent by email:
  - (i) only the PDF file attached to the email and any attachments which are referred to in the PDF file and attached to the email, will form part of the notice in accordance with this clause 23.6 and the text in the body of the email or the subject line will not form part of the notice ; and
  - (ii) each party must ensure that its firewall and/or mail server (as applicable):
    - (A) allows messages of up to 14 MB to be received;
    - (B) does not trap any messages in the spam filter which have been sent from the State or other relevant domain;
    - (C) automatically sends a receipt notification to the sender upon receipt of a message; and

- (iii) each party must ensure that its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## 24. DISPUTE RESOLUTION

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### 24.1 No Litigation Pending Dispute Resolution

The parties agree that unless and until a party has complied with the requirements of this clause 24, a party may not commence any court proceedings in respect of any dispute except if:

- (a) a party seeks an urgent interlocutory, injunctive or declaratory relief; or
- (b) the Customer considers that an Event of Default has occurred under the Contract.

### 24.2 Referral to Contract Representatives

If at any time a dispute exists:

- (a) either party may refer the dispute to the other party's representative appointed under clause 23.1 (*Customer's Representative*) or clause 23.2 (*Contractor's Representative*) for resolution; and
- (b) the relevant representative will consider the dispute referred to them and in doing so, give due consideration to submissions by the parties in connection with the dispute.

### 24.3 Further Referral

- (a) If a dispute remains unresolved 10 Business Days after the referral of the dispute under clause 24.2 (*Referral to Contract Representatives*), a party may give notice to the other party (**Dispute Notice**) which must:
  - (i) state that the notice is given under this clause 24.3;
  - (ii) describe the nature of the dispute; and
  - (iii) nominate the party's authorised officer for resolution of the dispute (**Authorised Officer**).
- (b) Within two Business Days after receipt of a Dispute Notice, the recipient party must give notice to the other party nominating its Authorised Officer.
- (c) The parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the dispute within seven Business Days after the receipt of the Dispute Notice.
- (d) If the parties' Authorised Officers fail to resolve the dispute within 10 Business Days after receipt of the Dispute Notice, the parties' Authorised Officers may agree a

dispute resolution process for the resolution of the dispute, in which case the dispute will be resolved in accordance with such process.

- (e) Either party may commence litigation if:
  - (i) the parties fail to resolve the dispute in accordance with clause 24.3(c) and fail to agree a dispute resolution process in accordance with clause 24.3(d) within 10 Business Days after the receipt of the Dispute Notice;
  - (ii) either party fails to comply with any of the requirements of this clause 24.3; or
  - (iii) either party fails to comply with any dispute resolution process agreed in accordance with clause 24.3(d).

## 24.4 Continue to Perform Obligations

The parties must continue to perform their obligations under the Contract despite the existence of any dispute between the parties.

## 25. SUSPENSION OF CONTRACT

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- (a) The Customer may at any time by notice to the Contractor temporarily suspend the Contract (except for clauses listed in clause 25(b)) for a period not exceeding three months per suspension, except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.
- (b) Suspension of the Contract under clause 25(a) shall suspend the Contract except for the following clauses:
  - (i) clause 1 (*Definitions and Interpretation*)
  - (ii) clause 7 (*Records and Audit Costs*)
  - (iii) clause 9 (*Customer Data and Information Security*)
  - (iv) clause 10.3 (*Subcontracting*)
  - (v) clause 12 (*Warranties, Undertakings and Obligations*)
  - (vi) clause 13 (*Payment and Invoicing*)
  - (vii) clause 14 (*PPSA*)
  - (viii) clause 16 (*Intellectual Property Rights*)
  - (ix) clause 17 (*Confidentiality*)
  - (x) clause 18 (*Privacy*)
  - (xi) clause 19 (*Insurance*)
  - (xii) clause 20 (*Liability*)
  - (xiii) clause 21 (*Indemnity*)
  - (xiv) clause 22.1 (*Conflict of Interest*)

- (xv) clause 23 (*Contract Administration*)
  - (xvi) clause 25 (*Suspension of Contract*)
  - (xvii) clause 26 (*Expiration or Termination*)
  - (xviii) clause 27 (*General*)
- (c) The Customer:
- (i) does not need to give a reason for temporary suspension of the Contract (for the suspension to be valid); and
  - (ii) may end the suspension at any time by notice to the Contractor and, at the end of the suspension, all the rights and obligations of the parties under the Contract shall recommence.
- (d) If the Customer suspends the Contract under this clause and the Contractor is not in default under the Contract, then:
- (i) the Customer must pay to the Contractor the Contractor's reasonable, actual costs and expenses directly resulting from the suspension (excluding loss of profits and revenue);
  - (ii) the Contractor must give the Customer an invoice for the amount payable together with sufficient evidence to support the invoice; and
  - (iii) the Customer must pay any amount under clause 25(d)(i) within 20 Business Days after receiving an invoice under clause 25(d)(ii).

## **26. EXPIRATION OR TERMINATION**

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### **26.1 Termination**

The Customer may terminate the Contract, or reduce its scope by notice to the Contractor at any time after an Event of Default occurs (except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act) effective from the time stated in the Customer's notice, or if no such time is stated, at the time the notice is given to the Contractor.

### **26.2 Consequences of Expiration or Termination**

- (a) The expiration or termination of the Contract does not affect any rights, liabilities or obligations of the Customer or the Contractor as a result of anything occurring before the expiration or termination.
- (b) On expiration or termination of the Contract (or, if applicable, on completion of transition-out), the Contractor must:
  - (i) complete as soon as practicable, or cease to fulfil, any outstanding supply of Goods and/or Services as the Customer directs;

- (ii) deliver to the Customer all Records and Working Papers (or copies thereof if clause 16.2 (*Intellectual Property Rights – Owned by Contractor*) applies) as required by the Customer as soon as practicable after the later of the completion of all supply under clause 26.2(b)(i) or the date of expiration or termination of the Contract; and
  - (iii) vacate the Premises as soon as practicable after the later of the completion of all outstanding supply under clause 26.2(b)(i) or the date of expiration or termination of the Contract.
- (c) Without limiting clause 26.2(b), on termination of the Contract, the Contractor must:
- (i) allow the Customer to use at the Customer's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Premises if required in connection with the Contract; and
  - (ii) in every other respect cooperate with the Customer as reasonably required by the Customer in order to minimise any Loss or inconvenience to the Customer resulting from the expiration or termination of the Contract.
- (d) The Customer must pay to the Contractor:
- (i) the Price for Goods and/or Services supplied as a result of the Customer directing the completion of an outstanding supply under clause 26.2(b)(i); and
  - (ii) a reasonable price for the materials or consumables used by the Customer as a result of using property referred to in clause 26.2(c)(i);
- subject to the Contractor submitting a correctly rendered invoice, together with any required supporting documents, pursuant to clause 13.5 (*Invoices and Supporting Documents*).
- (e) If the Customer exercises its right to reduce the scope of the Contract pursuant to clause 26.1 (*Termination*), the parties agree that the Price will be reduced proportionately and in accordance with any methodology specified in the Contract.

## 26.3 Limited Liability

The Customer's sole liability in respect of any termination of the Contract, or any reduction in scope, pursuant to clause 26.1 (*Termination*) will be to pay the Contractor the amount due under clause 26.2 (*Consequences of Expiration or Termination*).

## 27. GENERAL

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### 27.1 Relationship

- (a) The Contractor is an independent contractor, and nothing in the Contract may be construed to make the Contractor a partner, agent, employee or joint venturer of the Customer.

- (b) The Contractor must not represent that the Contractor or any of its Contractor Personnel are the employees, agents, partners or joint venturers of the Customer.

## 27.2 Contract Variations

- (a) Without limiting clause 4.10 (*Variation of Services Commencement Date or Delivery*), clause 4.11 (*Change Orders*), clause 26.1 (*Termination*) or clause 27.2(b) of this clause, the Contract may only be varied in writing signed by the Customer and Contractor.
- (b) If the Contract is formed under a Standing Offer and the Standing Offer is varied in accordance with its terms in a way that, if applied to a Contract, would vary the terms of the Contract:
  - (i) the variation to the Standing Offer does not vary the terms of the Contract unless the Customer, in its discretion, notifies the Contractor that the variation is to be incorporated into the Contract; and
  - (ii) if the Customer gives notice under clause 27.2(b)(i), the variation to the Contract will take effect from the later of the date the variation has effect under the Standing Offer and the date of the Customer's notice, unless the parties agree an alternative date, and such variation does not need to be signed by the parties.

## 27.3 Assignment, Novation and Change in Control

- (a) The Contractor must not sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Contract without the prior consent of the Customer.
- (b) If the Contractor is a corporation (other than a "public company" as defined in the Corporations Act) the Contractor is taken to have assigned the Contract if:
  - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or
  - (ii) there is any change in control of the Contractor or any parent company of the Contractor (where "control" has the same meaning as given in the Corporations Act).

## 27.4 Assignment or Novation – Contracts under a Standing Offer

If the Requesting Agency consents to the assignment or novation of the Standing Offer from the Contractor to a third party and the Customer is a State Agency but a different body corporate to the Requesting Agency:

- (a) the Customer appoints the Requesting Agency as its agent to do all things necessary to give effect to the novation or assignment; and



- (b) the Customer and Contractor agree that the Contract is deemed to be novated or assigned as specified in the novation or assignment deed between the Requesting Agency, the Contractor and third party.

## 27.5 Survival

- (a) All provisions of the Contract which expressly or by implication from their nature, or under any Law, are intended to survive termination or expiration of the Contract will survive such termination or expiration, including any provision which is in connection with:
  - (i) the Customer's rights to set off and to recover money;
  - (ii) finalisation of payment to either party upon or after the termination or expiry of the Contract;
  - (iii) confidentiality or privacy;
  - (iv) Intellectual Property Rights;
  - (v) any obligation regarding Records including access to Records;
  - (vi) any obligation regarding audits;
  - (vii) any obligation in relation to access to the Contractor's premises;
  - (viii) co-operation with other service providers;
  - (ix) any obligation in relation to Customer Data;
  - (x) insurance;
  - (xi) any warranty given by the Contractor under the Contract;
  - (xii) any indemnity or other financial security given in accordance with the Contract;  
or
  - (xiii) any right or obligation arising on termination of the Contract.
- (b) Nothing in this clause 27.5 prevents any other provision of the Contract, as a matter of interpretation, also surviving the termination of the Contract.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with the Contract.

## 27.6 Waiver

- (a) Any waiver by the Contractor or the Customer:
  - (i) must be in writing and signed by the party waiving the right; and
  - (ii) does not affect its rights in respect of any other breach of the Contract by the other party.
- (b) Subject to clause 27.6(a)(i), any failure by a party to enforce any right under the Contract will not, by itself, be construed as a waiver of its respective rights under the Contract.



## **27.7 Entire Agreement**

The Contract supersedes all prior negotiations, understandings and agreements between the parties relating to the matters covered by the Contract and constitutes the full and complete agreement between the parties relating to the matters covered by the Contract.

## **27.8 Severability**

Any term of the Contract which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Contract is not affected. The previous two sentences of this clause do not apply if the severance would, without more, materially disadvantage a party.

## **27.9 Rights are Cumulative**

Unless otherwise stated, the rights, powers and remedies in the Contract are in addition to, and do not exclude, the rights, powers and remedies existing at Law.

## **27.10 Electronic Execution and Counterparts**

- (a) Unless stated to the contrary in the Contract, any document entered into under the Contract may be executed electronically (including through an electronic platform) and in one or more counterparts.
- (b) Notwithstanding the manner in which a document under the Contract is submitted or accepted, the terms of the Contract will apply and any click-wrap, "pop-up" or other like terms and conditions of the Contractor appearing in the course of such submittal or acceptance will have no force or effect.

## **27.11 Governing Law and Jurisdiction**

- (a) The Contract is governed by the Laws of the State.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and courts of appeal from them.

## **27.12 Auditor General**

- (a) The powers and duties of the Auditor General under any Law are not limited or otherwise affected by the terms and conditions of the Contract.
- (b) The Contractor must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning the Contract.

## **27.13 Department CEO**

- (a) The powers and responsibilities of the Department CEO under the Procurement Act are not limited or otherwise affected by the terms and conditions of the Contract.

- (b) The Contractor must allow the Department CEO, or an authorised representative of the Department CEO, to have access to and examine the Contractor's Records concerning the Contract.

## **27.14 Consent**

Whenever the consent of the Customer is required under the Contract:

- (a) that consent may be given or withheld by the Customer in the Customer's absolute discretion and may be given subject to such conditions as the Customer may determine;
- (b) the Customer is not required to provide a reason or reasons for giving or refusing its consent; and
- (c) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 27.14(a) will constitute a breach of a condition by the Contractor under the Contract.

## **27.15 Further Assurance**

The parties must do everything reasonably necessary, including signing further documents, to give full effect to the Contract.

## **27.16 Right of Set Off**

The Customer may set off or deduct any amount claimed by the Customer from any amount owing by the Customer to the Contractor on any account under the Contract or any other contract between the Contractor and the Customer.

## **27.17 Costs**

- (a) Unless otherwise expressly agreed, the Contractor must comply with all obligations of the Contractor at the Contractor's cost.
- (b) The parties must pay their own legal and other costs in connection with the preparation and signing of the Contract.
- (c) The Contractor must pay all stamp duty on the Contract.

## **27.18 Trusts**

If the Contractor has entered into the Contract in the capacity of trustee whether or not the Customer has any notice of the trust, the Contractor:

- (a) is taken to enter into the Contract both as trustee and in the Contractor's personal capacity and acknowledges that the Contractor is personally liable for the performance or non-performance of the Contractor's obligations under the Contract;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Customer for any default by the Contractor; and

- (c) warrants that:
- (i) the Contractor has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Contract;
  - (ii) the assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 27.18(c)(i) and all other obligations in respect of which the Contractor has a right to be indemnified out of those assets; and
  - (iii) the Contractor has the power and authority under the terms of the trust to enter into and perform the Contract.

**~ END OF DOCUMENT ~**

# TRP General Conditions of Contract

This document has been developed by the Department of Finance (**Finance**) in collaboration with the State Solicitor's Office. It is designed for use by State Agencies that are subject to the [Western Australian Procurement Rules](#) and has been issued by Finance in connection with the Template Redevelopment Project (**TRP**) Pilot – Phase 1.

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The document history is set out below.

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1 July 2024	1	Internal release to Finance (Buildings and Contracts).
January 2025	2	Information security related updates made to clauses 1.1, 9, 10.3, 18 and 25.

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