



<b>Request for Tender:</b>	<i>Library Management System</i>
<b>All submissions to be emailed:</b>	<i>toc@claremont.wa.go.au</i>
<b>RFT Number:</b>	RFT 04-2022

## PART 1 BACKGROUND

---

This Request for Tender (RFT 04-2022) is comprised of the following parts:

Part 1 – Background (*read and keep this part*).

Part 2 – Specification (*read and keep this part*).

Part 3 – Contractor's Offer (*read, complete and return this part*).

Part 4- Good and/or Services Contract Conditions (*to be executed by successful contractor*)

### 1. Introduction

The Western Suburbs Library Group (WSLG) is a consortia group formed in August 2000 under the aegis of the Western Suburbs Regional Organization of Councils (WESROC) collectively referred to herein as the Principal.

The Principal operate the following libraries:

Library	Local Government Authority	Address
Nedlands	City of Nedlands	71 Stirling Hwy, Nedlands 6009
Mt Claremont	City of Nedlands	71 Stirling Hwy, Nedlands 6009
The Grove	Shire of Peppermint Grove Town of Cottesloe Town of Mosman Park	1 Leake St, Peppermint Grove 6011
Subiaco	City of Subiaco	241 Rokeby Rd, Subiaco 6008
Claremont	Town of Claremont	308 Stirling Hwy, Claremont 6010

The Principal seeks the services of a Contractor to provide a cloud-based software for the management of the Library services (**the Project**). The Principal currently runs version 10.7.5 of Spydus.

The Principal invites Contractors to submit a tender for the services required and as described in greater detail below in Part 2.

The City of Nedlands, City of Subiaco and Town of Claremont will enter into their own contract (as shown in Part 4) with the Contractor. The Shire of Peppermint Grove, Town of Cottesloe and Town of Mosman Park will collectively have one contract (as shown in Part 4) with the Contractor.

## 2. Conditions

By submitting an offer, the Contractor acknowledges that they have read, understood and agree to be bound by the terms and conditions in this RFT.

By submitting an Offer, the Contractor agrees to be bound by the Principals Good and/or Services Contract Conditions (Part 4). A Contractor is not entitled to add or substitute their own conditions of contract. Any terms and conditions shown on the reverse of a Contractor's letter or tender submission (or elsewhere in the RFT) will not be binding on the Principal.

The proposed term is 5 years with the possibility of a 2-year extension.

## 3. Budget

The Offer should include all costs associated with the providing the Project including all labour, sub-contractors, trades, specialists, materials, plant, equipment and everything else necessary in order to complete the Project.

## 4. Proposed Timeline

The Principal's estimated timetable is as follows:

Event	Approximate Timeframe
Issue Date	3 September 2022
Closing Date (minimum 4 weeks)	3 October 2022 At 5pm
Evaluation and Presentation to Various Councils for acceptance	4- 14 October 2022 (approx.)
Contract Award Date	21 October 2022 (approx.)

## 5. Briefing Session

The Principal may provide Contractors with the opportunity to inspect any site/locations before the tender closing date. The Principal will consider holding on-site briefing sessions with Contractors if requested by more than two Contractors to do so and it can be arranged prior to the Closing Date.

## 6. How to Prepare and Submit your Offer

- Carefully read this entire Tender including all attachments.
- Complete and return a signed Contractors Offer (Part 3) which responds to all the Selection Criteria prior to the closing date.
- Provide any supplementary information the Contractor wishes to provide, to allow the Principal to properly evaluate the response.
- Assume the Principal has no previous knowledge of the Contractor, their activities, or experience.

All documents including any materials, articles and information submitted by the Contractor will not

be opened until after the closing date and will not be returned.

The Offer is valid for a minimum of six (6) months from the Closing Date.

The Offer must be subject titled "RFT 04-2022" and emailed to *toc@claremont.wa.gov.au*.

## **7. Rejection of Offers**

An Offer will be rejected without consideration of its merits in the event that it is not submitted before the Closing Date. Further, if a Contractor (or their representative or agent) is found to have canvassed any of the Principal's employees or Councillors with a view to influencing the acceptance of any Tender.

An Offer may be rejected without consideration of its merits in the event that:

- a) it fails to comply with any requirements of the RFT;
- b) it fails to include all information requested.

## **8. Further Information**

All technical queries related to the scope of the Project are to be submitted to:

<b>Name:</b>	Lance Hopkinson- Shire of Peppermint Grove
<b>Telephone:</b>	08 92868688
<b>Email:</b>	<a href="mailto:lhopkinson@thegrovelibrary.com">lhopkinson@thegrovelibrary.com</a>

All other including contractual queries related to the scope of the Project are to be submitted to:

<b>Name:</b>	Bree Websdale- Town of Claremont
<b>Telephone:</b>	08 9285 4300
<b>Email:</b>	<a href="mailto:bwebsdale@claremont.wa.gov.au">bwebsdale@claremont.wa.gov.au</a>

When emailing queries into the Principal during the tender opening period, please put subject: "RFT 04-2022" and emailed to *toc@claremont.wa.gov.au*.

Contractors must not contact any other person employed by the Principals or any consultant engaged in relation to this project to discuss this Request for Tender.

## **9. Information Package**

The following attachments are provided:

- Document titled "Record Keeping responsibilities and you".
- WHS questionnaire.

## **PART 2**

### **SPECIFICATION- PROJECT WORKS**

---

The Principal seeks the services of a Contractor to provide a cloud-based software for the management of their library services.

The Principal currently shares its membership database, catalogue and holdings across the five libraries. Each individual library service sets its own loan parameters, fines and have individually branded OPACs.

The Principal issued 531,190 physical items in the 2020/2021 financial year and currently serves a population of 70,221.

<b>Library</b>	<b>Population</b>	<b>Circulation figures 2020/21</b>
Nedlands	22,909	118,294
Mt Claremont		33,499
The Grove	19,222	198,363
Subiaco	16,966	131,194
Claremont	11,124	49,840
<b>TOTAL</b>	<b>70,221</b>	<b>531,190</b>

Across the Principal is a mixture of Windows 7 physical and virtual PCs and Windows 8 and 10 PCs are used for circulation and staff functions.

The desired system requirements are as follows:

- Web-based, full-featured library management system (LMS).
- Ability to run on Windows 10 operating systems and will support migrating to Windows 11 in the future.
- Core modules to include as a minimum: Circulation, Financial management (including fines), Cataloguing, Serials, Acquisitions, System Management, Debt Collection, Reporting (including Statistics), Archives, Digital Asset Storage and Management, and Inter-Library Loans (Requests).
- All core modules to be web-based and support for the latest web browsers.
- Access to a support forum and an email/web-based support ticket system.
- Comprehensive support available by telephone for critical issues ideally arising 8am-6pm WST time. After hours telephone support will be favourably viewed.
- A minimum of two major upgrades during the contract term at no extra cost.
- Bug fixes and patches to be provided as required during the contract term at no extra cost.
- Data migration from existing LMS (Spydus) to include at a minimum Bibliographic data, Holdings, Borrowers, Loans, Serials.
- Migration of existing borrower passwords and lending history highly regarded.
- A minimum of 30 included SIP2 licenses. Cost of licences to be provided in price schedule.

- Integration with EnvisionWare products; OneStop Self Service, PC Reservation, LTP: One, Sale Transaction Station and include SIP2 connectivity.
- Inter-library loans module with possible integration with future State Library of WA's document delivery system.
- Compatibility with and support for RFID technologies.
- Mobile applications for devices.
- Ability to use EFTPOS payment platforms.
- SIP2 connectivity for customer login to e-content resources including OverDrive and Bolinda BorrowBox.
- Ability to integrate with the State Library of WA for stock supply including MARC load templates.
- Ability to interface with other library management systems using established protocols to enable cross database searching and resource sharing (Z39.50/NCIP etc).
- Integration with Syndetics for enhanced title information.
- Online Public Access Catalogue (OPAC) with discovery layer, providing customers with the ability to personalize their experience, including new title alerts, recommendations, the social media experience etc.
- Comprehensive borrower circulation history visible to both customers (through the OPAC) and library staff.
- OPAC layout and design to be customizable by library staff and allow for sites too differ between locations if necessary.
- Ability for potential borrowers to create a membership online and utilize electronic resources immediately.
- Functional offline circulation module which enables basic library circulation functions (lending, returning and Memberships) to continue during network down time with minimal material double handling requirements.
- An active product development roadmap with new features and enhancements introduced in consultation with library requirements.
- Intuitive and easy to use search methods; both basic and advanced searching must be supported and include spell Check.
- Advanced search to allow for the option of searching multiple fields simultaneously for words or phrases. Staff should be able to define their own search conditions - based on standard indexed options.
- Robust API functionality.
- Administrative capabilities to create new logins and change system parameters.
- Automation of routine background processes including creation and dispatch of overdue notices, reservation collection notices etc.
- Events module with linkages to borrower database for ease of booking transactions, and potentially for payments (Additional cost may apply).
- A minimum of 100GB of included data storage for digital assets including photographic collections.
- Allow shared database access across the consortium but still allow individual branding to suit each LGA.
- Support separate loan and borrowing parameters and policies for each of the consortia libraries.
- Allow two of the five consortia libraries to work as a branch system.
- Allow each Library to set individual fees and fines or to disable fines completely. Payment of fines must be kept separate as each consortia library has different financial responsibilities.
- Each library must be able to use their own branding. This including reports and notifications.
- Reports and Notifications must be able to run independently for each consortia library and

- include SMS, Email and Print options.
- Comprehensive collection management tools including detailed reporting.
- Allow for a floating collection between two branch libraries of the five consortia libraries.
- Have a process that allows stock transfer between the consortia libraries including detail statistic on stock movement.
- Shared catalogue and authority database. Holding must not automatically refresh from the cataloguing allowing each of the libraries to record individual item information on the holding record.
- Transactions/till function
- Ability to create and modify some settings at a global level across the consortium and at the individual library level
- Support for archival/local history material to allow access of these materials
- ILLs/Requests
- Maintenance options, for example WPAC, notices.
- Be able to split cost between the consortia libraries using the WESROC formula provided which will be provided to the successful contractor.

### *Training*

- Comprehensive training programme and user manuals for library staff pre go live.
- Additional staff training offered in line with updates.

### *Reporting*

- Comprehensive reporting with a range of snapshot, pre-determined, and user definable reports with the ability to separate by library. Detail any additional software required to create and/or view reports.
- Reliable reporting software or service that enables each library system to obtain statistics pertaining to the entire consortium or the individual library systems
- Reliable scheduled broadcasts for routine reports
- Customisable reporting with options to drill-down.
- Provide statistics of click through rates and visitor usage' of the OPAC.

### *Service Reliability*

- System availability - less than 1% downtime of the system during the prime-time hours from 8.30am to 8.00pm Monday to Friday and 9.00am to 5.00pm Saturday and Sunday.
- All on-line transactions are complete within five seconds.
- 95% of on-line transactions undertaken at peak times are complete within two seconds.
- Provide adequate notice for outages.

### *Support*

- Managed service, preferably hosted in Australia including monitoring and backup.
- Timely and satisfactory resolution of service desk queries.
- Response within four hours for data corruption or system unavailability
- Response within one week for problems causing impeded functionality (eg, slowness, broken links); and
- Response within two weeks for general queries.

## Timeline

The proposed timeline for the Project is as follows

Activity	Month/Year
Commencement of contract	End October 2022
Go Live Date	1 December 2022



## **PART 3**

### **CONTRACTORS OFFER**

---

#### **1. Identity of Contractor**

Identity of the Contractor	
Trading Name	
Legal Entity Name	
ACN	
ABN	
Address	
Contact Person	
Contact Person Title	
Contact Person Email	
Contact Person Telephone	
Address for Service of Contractual Notices	

I/We (Registered Entity Name): \_\_\_\_\_

of: \_\_\_\_\_

In response to "RFT 04-2022"

I/We agree that I am/we are bound by, and will comply with this RFT including all schedules and attachments.

I agree I am bound to comply with the Good and/or Services Contract Conditions (Part 4).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022

Signature of Authorised signatory: \_\_\_\_\_

Name of Authorised signatory: \_\_\_\_\_

Position of Authorised signatory: \_\_\_\_\_

## 2. Pre-Qualification Requirements

The Principal will not consider any Offer that does not meet all of the following Pre-Qualitative Requirements:

### a. Contractors Structure

The Contractor must provide

- An outline of its organisational structure listing key positions applicable to this Project.
- A historical ASIC company extract (where applicable).
- A summary of the number of years the Contractor has been in business.

### b. Insurance Requirements

The Contractor must demonstrate that it holds the insurances as required by the General Conditions of Contract (Clause 34 in Part 4).

A copy of certificate of currency must be provided with the Offer.

Any costs associated with obtaining the above required insurances are the responsibility of the Contractor and will not be paid by the Principal.

Workers Compensation Insurance		
The Contractor shall maintain insurance in accordance with the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) and to a value not less than \$50m.		
Insurer	ABN of Insurer	Policy Number
Insured Amount	Expiry Date	Exclusions Present (Yes /No)
Details of Exclusions		

Public Liability and Product Liability Insurance		
The Contractor shall maintain insurance to a value not less than \$20m.		
Insurer	ABN of Insurer	Policy Number

Insured Amount	Expiry Date	Exclusions Present (Yes /No)
Details of Exclusions		

<b>Vehicle, Plant and Equipment Insurance (if applicable)</b>		
The Contractor shall maintain insurance for replacement value for its vehicles, plant and equipment as per clause 34.3 of the Contract.		
Insurer	ABN of Insurer	Policy Number
Insured Amount	Expiry Date	Exclusions Present (Yes /No)
Details of Exclusions		

<b>Professional Indemnity Insurance</b>		
The Contractor shall maintain insurance to a value of not less than \$5m.		
Insurer	ABN of Insurer	Policy Number
Insured Amount	Expiry Date	Exclusions Present (Yes /No)
Details of Exclusions		

**c. Financial Position**

Is the Contractor presently able to pay all your debts in full as and when they fall due?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the Contractor is awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**d. Conflict of Interest**

Is the Contractor aware of any conflict of actual, potential or perceived conflict of interest which currently exists with The Principal, its officers or Elected Members, or which may arise in relation to the performance of the contract (if awarded)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Details	

### 3. Selection Criteria

The Qualitative Requirements are not weighted equally. They are weighted as indicated.

Criteria	Weighting
Value for Money, Price	30%
Relevant Experience	25%
Understanding of and Capacity to undertake the Project	25%
Key Personnel: skills, experience and resourcing	15%
Work Health and Safety	5%
	100%

**a . Value for Money, Price**

**30 % Weighting**

Value for Money is a key objective for the Principals.

Tendered prices must include Goods and Services Tax (GST).

All prices for goods/services offered are as a rule to be fixed for the term of the Contract. Where they are not fixed or subject to annual increases they must be specified.

The Contractor must provide and outline the prices for support and upgrades required within the contract period of 5years.

Any charge or cost not stated as being additional to the price will not be payable by The Principal unless approved in writing as a variation.

The Contractor must provide a Price and completed Price Schedule addressing the following:

- Project Start-up, Initiation, Planning and Management.
- Licensing.
- Business Requirements and other Workshops.
- Configuration.
- Data mapping and migration.
- Installation of software
- Implementation.
- Core modules.
- Operational Training (during implementation and post).
- User Acceptance Testing
- Project Reporting.
- Project meetings.
- Go live Support and post go live support
- Annual support during contract.
- Further upgrades during contract.
- Further bug fixes and patches during contract.
- Extra SIP2 licences.
- Extra data storage cost.

The Contractor must outline the proposed payment milestones by reference to the proposed timeline.

The Contractor has included the costs of both the Contractor, all labour, subcontractors, trades, specialists, materials, plant, equipment, and everything else necessary in order to complete the Project.	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

**b. Relevant Experience****25% Weighting**

<p>The Contractor must provide details of no more than 5 contracts or projects completed within the last 5 years, which are similar (or larger) in scope and / or nature to the Project requirements. Contractor to include:</p> <ul style="list-style-type: none"><li>- A brief description of the contract scope and services provided under the previous contracts. Description to include:<ul style="list-style-type: none"><li>- performance in relation to timelines and budgets.</li><li>- any issues that arose during the project and how these were managed.</li><li>- similarities between those contracts and this contract.</li></ul></li></ul> <p>The Principal requires the Contractor to demonstrate competency and proven track record of achieving outcomes.</p>	
Has the Contractor provided a response which addresses all of the above criteria?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contractors are required to provide at least Referees for 3 previous contracts identified. These Referees may be contacted to verify claims of relevant experience. It is not acceptable to state that Referees will be provided at a later stage.

Employees of the Principal cannot be used as Referees in order to maintain fairness and impartiality. Where the Contractor has previously provided goods and/or services to the Town, internal records shall be consulted to consider past performance.

Referee One Details	
Name and Position Title	
Name of Referee Organisation	
Contract Title	
Products/Services Provided	
Email Address:	
Telephone number:	



Referee Two Details	
Name and Position Title	
Name of Referee Organisation	
Contract Title	
Products/Services Provided	
Email Address:	
Telephone number:	

Referee Three Details	
Name and Position Title	
Name of Referee Organisation	
Contract Title	
Products/Services Provided	
Email Address:	
Telephone number:	

**c. Understanding of and Capacity to undertake the Project**

**25% Weighting**

The Contractor must:

- Provide a detailed project schedule/timeline in line with Principal timeline (or as close to as possible).
- That timeline must show and detail project planning, configuration, data migration, project delivery, user acceptance testing, go live, end user training, post go live support and other key milestone dates.
- That timeline must demonstrate the Principals requirements and an understanding of the Scope of the Project.
- The process for the delivery of the Project to all libraries.
- Any contingency measures or backup of resources.
- Demonstrate current capacity to undertake the Project. As a minimum, the Contractor should provide a current commitment schedule for other Projects.
- Outline target response times for queries and fault reporting.

**d . Key Personnel: skills, experience and resourcing****15% Weighting**

**Specified Personnel** means Personnel of the Contractor proposed to perform functions in relation to the provision of the Project. The Contractor must identify the proposed management and personnel who will be integral to the performance of the Project, together with a brief summary for each person identified:

- Their role for the Contractor.
- Their responsibility in relation to the Project.
- Their expected % time input to the Project.
- Their relevant experience.
- The contacts (from (b) above) they were involved in.
- Their qualifications and where applicable licences they hold.

The Contractors must provide a resource plan

The Contract must provide after-hours contacts for emergencies and demonstrate the ability to provide additional personnel if the above key personnel are not available or additional personnel are required.

Is the Contractor acting jointly or in association with another person/s/or entities?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Contractor engaged, or does the Contractor intend to engage, another person or persons as a subcontractor?  If so please provide the same details for each subcontractor including; the name, address and the number of people employed; and the Requirements that will be subcontracted	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Contractor provided a response which addresses all of the above criteria?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Contractor or any identified Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention?  If so please provide details.  The Principal may request Police Clearances for all employees prior to the start date.	<input type="checkbox"/> Yes <input type="checkbox"/> No

**e. Work Health and Safety**

**5% Weighting**

This contract has been determined as a low-risk contract due to the nature of the services provided.

The Contractor must provide details regarding their WSH arrangements including completing (in full) the **enclosed WHS questionnaire**.

Please include copies of your:

- Safety Management Policy
- WHS plan. The WHS plan should outline how the Contractor will manage occupational health and safety for the Project and term of the contract.
- Risk Assessments to be used for this Contract and mitigation strategies.
- Safety protocols/Safe Work Method Statement/JSA's to be used for this Contract.

Has the Contractor provided a completed WHS questionnaire?  
This is required to be provided

☐Yes ☐No

# **GOODS AND/OR SERVICES CONTRACT CONDITIONS**

**(Principal)**

**And**

**[*insert Contractor*] of  
[insert address]  
[insert ABN]  
(Contractor)**

**(together, the Parties)**

**Date of Contract:**

## **TABLE OF CONTENTS**

<b>PART A – DEFINITIONS AND INTERPRETATION</b>	<b>4</b>
1 Definitions	4
2 Interpretation	8
<b>PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY</b>	<b>9</b>
3 Quality of Goods, sources of supply and substitution	9
4 Quantities of Goods	9
5 Delivery obligations and Delivery Point	9
6 Property and risk in the Goods	9
7 Sale of Goods Act	9
<b>PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY</b>	<b>10</b>
8 Quality of Services	10
9 Quantity and value of Services	10
<b>PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES</b>	<b>10</b>
10 Supply of Goods and/or Services	10
11 Plant and Equipment	11
12 Orders under a Long-Term Award	11
13 Time for performance and extensions of time	12
14 Receipt and Acceptance of Goods and/or Services	12
15 Rejection and removal of Defective Goods and/or Defective Services	12
16 Failure to provide Goods and/or Services	13
17 Information	13
18 Price basis	13
19 Formation of contract and Term	14
20 Contractor to have informed itself	14
21 Conflict of interest	14
22 Legal Requirements, industrial awards and Standards and Procedures	15
23 Safety obligations	15
24 <b>SUSTAINABLE PROCUREMENT</b>	<b>16</b>
25 Contractor's Personnel	17
26 Representatives	18
27 Invoicing and payment	18
28 Goods and services tax	18
29 Access to Principal's Premises and Principal's Documents	18
30 Confidentiality	19
31 Data security	20
32 Intellectual Property Rights	20
33 Liability and indemnity	21
34 Insurance and risk management	21

<b>35</b>	<b>Force Majeure Event</b>	<b>24</b>
<b>36</b>	<b>Settlement of Disputes</b>	<b>25</b>
<b>37</b>	<b>Default, suspension and termination for breach</b>	<b>25</b>
<b>38</b>	<b>Termination</b>	<b>26</b>
<b>39</b>	<b>Assignment and subcontracting</b>	<b>27</b>
<b>40</b>	<b>Restructure of the Principal</b>	<b>27</b>
<b>41</b>	<b>Notices</b>	<b>27</b>
<b>42</b>	<b>General</b>	<b>28</b>
<b>43</b>	<b>Special Conditions</b>	
<b>EXECUTION</b>		<b>30</b>
<b>CONTRACT SPECIFICS</b>		<b>31</b>

**DATE:**

**PARTIES:**

**BACKGROUND**

- (a) The Principal has engaged the Contractor to provide the Goods and/or Services.
- (b) This Document sets out the terms and conditions upon which the Contractor shall provide the Goods and/or Services to the Principal.

**OPERATIVE PART**

**PART A – DEFINITIONS AND INTERPRETATION**

**1 DEFINITIONS**

In this Document, except where the context indicates otherwise:

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

- (a) the Principal notifying the Contractor in writing that the Goods and/or Services are accepted; or
- (b) the expiry of the day 21 days after delivery of the Goods to the Delivery Point or completion of the Services where the Principal has not, during that 21 day period, notified the Contractor in writing that the Goods and/or Services, as the case may be, are rejected.

**Affected Obligation** has the meaning given in clause 35.1(a).

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

**Assessment Notice** means an assessment notice under section 12 of the *Working With Children Act*.

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

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

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

**Child-Related Work** has the meaning given in section 6 of the *Working With Children Act*.

**Child-Related Site** means a location at which Goods are to be delivered and/or Services are to be performed where children are likely to be present.

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

**Confidential Information** means:

- (a) the Contract;
- (b) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;
- (c) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;



- (d) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and
- (e) any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person.

**Conflict of Interest** means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively.

**Consequential Loss** includes any:

- (a) loss of production, revenue, profit, business reputation, opportunities or anticipated savings; and
- (b) loss arising from wasted overheads or business interruptions.

**Contract** means the agreement between the Parties regarding the supply of the Goods and/or Services containing the terms and conditions set out in this Document.

**Contract Price** means the prices or rates specified in an Order as the amount to be paid by the Principal for the provision of the Goods and/or Services the subject of that Order or otherwise set out in the Contract. To avoid doubt, there may be multiple Contract Prices where the Contract applies to multiple Orders of Goods and/or Services.

**Contractor** means the party who is engaged by the other party to provide the Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

**Contractor's Vehicles and Equipment** has the meaning given in clause 34.4.

**Cyber Incident** means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Principal Data residing on that system.

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

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

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

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

- (a) charged to the Principal at cost; and
- (b) incidental to the provision of the Services.

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

**Dispute Notice** has the meaning given in clause 36.1.

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

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

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

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty;

- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or
- (d) a change in any Law or any authority exercised by an Authority or official by Law.

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

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

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

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

**Hazard** means a source or situation with the potential for harm in terms of human injury or ill health, damage to property, environment or a combination of these.

**Insolvency Event** means:

- (a) in relation to a corporation, where that corporation:
  - (i) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
  - (ii) is otherwise dissolved;
  - (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
  - (iv) enters into any composition or scheme of arrangement with its creditors;
  - (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
  - (vi) is otherwise unable to pay all its debts as and when they fall due; and
- (b) in relation to a natural person, where that natural person:
  - (i) commits an act of bankruptcy;
  - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
  - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
  - (iv) is otherwise unable to pay all its debts as and when they fall due.

**Insurances** means the insurances which the Contractor is required to obtain under clause 34.

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

**Invoice** means a valid tax invoice under the GST Law.

**Law** means statute, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or law of the Principal.

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

**Letter of Award** means an Order or Long-Term Award issued by the Principal to the Contractor accepting the Request Response.

**Long-Term Award** means the acceptance of a Request Response relating to the provision of goods and/or services in the future where the nature of the goods and/or services to be provided are not stated or known at the time of formation of the Contract and will be the subject of future Orders.

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

**Order** means the RFQ or RFT documentation, a purchase order or other written direction from the Principal to the Contractor which requires the supply of specified Goods and/or Services.

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

**WSH Laws** means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under the Contract are being performed. This includes the *Work Health and Safety Act 2020* and associated regulations, in addition to any other relevant legislation or regulations.

**Parties** means the Principal and the Contractor.

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

**Plant and Equipment** means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under the Contract.

**Principal** means the party engaging the other Party to provide Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

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

**Principal Request** means the written request provided by the Principal to the Contractor to submit an offer and price to provide the Goods and/or Services and includes RFT and RFQ documentation.

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

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

**Request Response** means the offer submitted by the Contractor to supply the Goods and/or Services made in response to a Principal Request.

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

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

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

- (a) provided by the Principal to the Contractor before the Contractor provided its Request Response; or

- (b) developed after the Contractor provided its Request Response or after the Contract came into effect, and agreed to by the Parties.

**Specified Personnel** means Personnel of the Contractor proposed in a Request Response to perform functions in relation to the provision of the Goods and/or Services.

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

**Start Date** means the date specified as such in the Principal Request or, where no such date is specified in the Principal Request, means the date that the Parties agree in writing that the Contractor must commence the Services.

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

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

**Sustainability Objectives** has the meaning given in clause 24.1.

**Transition Plan** means a written plan to facilitate the transition of the supply of the Goods and/or Services from the Contractor to another supplier or from another supplier to the Contractor.

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

**Working With Children Act** means the *Working With Children (Criminal Record Checking) Act 2004* (WA).

## 2 INTERPRETATION

2.1 In this Document, unless the context suggests otherwise:

- (a) a reference to the Contract means the Contract as novated or varied from time to time;
- (b) a reference to 'including' must be read as if it is followed by '(without limitation)';
- (c) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) words in the singular include the plural and vice-versa;
- (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a clause is a reference to a clause of this Document;
- (h) a reference to a 'day' or 'month' is a reference to a calendar day or calendar month;
- (i) headings are for convenience only and do not affect interpretation of this Document; and
- (j) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it.

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

### **3 QUALITY OF GOODS, SOURCES OF SUPPLY AND SUBSTITUTION**

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

### **4 QUANTITIES OF GOODS**

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

### **5 DELIVERY OBLIGATIONS AND DELIVERY POINT**

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

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

### **6 PROPERTY AND RISK IN THE GOODS**

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

### **7 SALE OF GOODS ACT**

The Principal and Contractor acknowledge and agree 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.

## **PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY**

### **8 QUALITY OF SERVICES**

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

### **9 QUANTITY AND VALUE OF SERVICES**

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

## **PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES**

### **10 SUPPLY OF GOODS AND/OR SERVICES**

- 10.1 The Contractor must:
- (a) at its expense, obtain any Approvals necessary for the provision of the Goods and/or Services;
  - (b) at its expense, comply with all reasonable directions of the Principal regarding the provision of the Goods and/or Services, including regarding the transition of the provision of the Goods and/or Services from an alternative supplier to the Contractor;
  - (c) where the Principal provides the Contractor with written notice that an alternative supplier will, in the future, be supplying the Principal with the Goods and/or Services provided under the Contract, at its expense provide reasonably requested assistance to the Principal in transitioning the supply of the Goods and/or Services to the new supplier, including making arrangements for the novation or assignment of relevant contracts with third parties;
  - (d) comply with any Transition Plan; and

- (e) co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time, provided that the Contractor will be entitled, by prior written agreement with the Principal, to charge for costs incurred as a direct result of providing such co-operation and assistance.
- 10.2 The Principal must provide the Contractor with any information reasonably necessary for the Contractor to provide the Goods and/or Services.
- 10.3 If a Transition Plan is not developed prior to the Contract coming into effect between the Parties, the Principal may:
  - (a) make a written request to the Contractor to prepare a draft Transition Plan for the Principal's review within a reasonable period of time specified by the Principal and the Contractor must comply with that request; and
  - (b) accept or propose reasonable amendments to the draft Transition Plan prepared by the Contractor in accordance with clause 10.3(a) and provide a final version of the Transition Plan to the Contractor.

## **11 PLANT AND EQUIPMENT**

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

## **12 ORDERS UNDER A LONG-TERM AWARD**

- 12.1 This clause applies where the Letter of Award is a Long-Term Award.
- 12.2 From time to time the Principal may give the Contractor an Order containing the following information:
  - (a) a description and/or specification of the Goods and/or Services required, including the required quantity;
  - (b) the Completion Date; and
  - (c) where the Order relates to Goods, the Delivery Point.
- 12.3 Within 5 Business Days of receipt of an Order the Contractor must give notice to the Principal of:
  - (a) any aspect of the Order which it does not accept and supporting reasons; and/or
  - (b) any recommended changes to the Order and supporting reasons,
 following which the Parties shall seek to agree on the terms of the Order and a revised Order shall be issued by the Principal to the Contractor.
- 12.4 If the Contractor does not give notice under clause 12.3, the Contractor must fulfil the Order.
- 12.5 To avoid doubt, the Principal is not obliged to issue Orders to, or otherwise purchase Goods and/or Services from, the Contractor.

### **13 TIME FOR PERFORMANCE AND EXTENSIONS OF TIME**

- 13.1 The Contractor must commence the provision of the Services on the Start Date.
- 13.2 Subject to this clause 13, the Contractor shall deliver the Goods to the Delivery Point and/or perform the Services, as the case may be, by the Completion Date.
- 13.3 The Contractor is entitled to an extension to the Completion Date if a delay to the provision of the Goods and/or Services is due to:
- (a) a breach by the Principal of the Contract;
  - (b) a Force Majeure Event occurring before the Completion Date;
  - (c) suspension of the Contract under clause 37.3 where the suspension is the result of a breach by the Principal; or
  - (d) a variation being agreed in writing to the nature of the Goods and/or Services provided.
- 13.4 To obtain an extension, the Contractor must make a written request to the Principal within 5 Business Days after the cause of delay has arisen or within any other period agreed in writing by the Parties, which request must include the facts on which the request is based (**Extension Request**).
- 13.5 The Principal, acting reasonably, must notify the Contractor within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether an extension of time to the Completion Date is granted and any relevant period of extension, which must be reasonable in the circumstances giving rise to the Extension Request.
- 13.6 Time is of the essence. The Parties must endeavour to mitigate any delay.

### **14 RECEIPT AND ACCEPTANCE OF GOODS AND/OR SERVICES**

- 14.1 The Parties agree that:
- (a) delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal; and
  - (b) Acceptance by the Principal is without prejudice to the Principal's rights in respect of the Defects Liability Period applicable to any Goods and/or Services.
- 14.2 If, following any review, inspection, examination or witnessing of the Goods and/or Services, the Principal is not satisfied that the Goods and/or Services are being, or have been, provided in compliance with the Contract, the Contractor must, after receiving a written request from the Principal, promptly take all steps necessary to ensure compliance.

### **15 REJECTION AND REMOVAL OF DEFECTIVE GOODS AND/OR DEFECTIVE SERVICES**

- 15.1 During the Defects Liability Period, the Principal may notify the Contractor in writing that any Goods and/or Services provided are Defective.
- 15.2 Where the Principal notifies the Contractor under clause 15.1, the Principal may direct the Contractor to replace, rectify or re-perform the Goods and/or Services, as the case may be, free of charge to the Principal and within a reasonable time specified by the Principal.
- 15.3 The Contractor must comply with a direction under clause 15.2 within the time period specified in the notice or otherwise agreed in writing by the Parties.
- 15.4 Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 15.3, the Principal may give the Contractor written notice of its



intention to rectify, replace or have re-performed the Goods and/or Services by a third party, together with the estimated and itemised reasonable costs of the Principal in rectifying, replacing or having re-performed the Goods and/or Services.

- 15.5 Following receipt of a notice under clause 15.4 from the Principal, the Contractor has 5 Business Days to notify the Principal in writing as to whether the Contractor will replace, rectify or re-perform the Goods and/or Services and to reach agreement with the Principal regarding the timeframe for doing so, otherwise the Principal may rectify, replace or have re-performed the Goods and/or Services and recover its costs in doing so from the Contractor.
- 15.6 Where the Contractor has made good any Defective Goods and/or Services, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods and/or Services from the date the Contractor completes making good the Defective Goods and/or Services.
- 15.7 The Principal shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Contractor has been notified in writing by the Principal that they are Defective.
- 15.8 Without limiting clause 33, any cost or expense reasonably incurred by the Principal in connection with, or as a result of, the Defective Goods and/or Services shall be a debt due from the Contractor to the Principal.
- 15.9 To avoid doubt, nothing in this clause shall prejudice any other right of the Principal arising out of the failure by the Contractor to provide Goods and/or Services in accordance with the Contract.

## **16 FAILURE TO PROVIDE GOODS AND/OR SERVICES**

- 16.1 The Contractor must provide written notice to the Principal as soon as possible if the Contractor is unable to provide the Goods and/or Services and the period of time for which the Contractor will be so unable.
- 16.2 Where the Contractor provides written notice to the Principal under clause 16.1, the Principal may, acting reasonably, and without being liable in any way to the Contractor, obtain or acquire such goods and/or services as it requires from a third party until the Principal receives a further written notice from the Contractor that the Contractor is able to recommence the provision of Goods and/or Services.

## **17 INFORMATION**

- 17.1 The Contractor must keep the Principal fully informed about:
- (a) any matters that may adversely affect the Contractor's ability to provide the Goods and/or Services; and
  - (b) delivery of the Goods and/or completion of the Services.

## **18 PRICE BASIS**

- 18.1 The Contract Price shall be firm and not subject to rise and fall.
- 18.2 The Contract Price is not subject to an annual CPI increases or rate adjustments.
- 18.3 To avoid doubt, the Principal's liability to the Contractor for the Contractor's costs in providing the Goods and/or Services is capped at the Contract Price, unless otherwise agreed in writing by the Parties.

## **19 FORMATION OF CONTRACT AND TERM**

- 19.1 Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document.
- 19.2 Where this Document is not executed by the Parties:
- (a) the Contract shall be formed, and shall commence, on the date of the Letter of Award; and
  - (b) the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract's existence.
- 19.3 The Contract shall terminate 10 Business Days after Acceptance or upon expiry of the time period specified in the Letter of Award, whichever is the later, subject to clauses 19.4 and 19.5.
- 19.4 The Parties may agree in writing to extend the term for an agreed period of time.
- 19.5 The Contract may terminate before the expiry of the period of time in clause 19.3:
- (a) if the Parties agree in writing; or
  - (b) otherwise in accordance with this Document.
- 19.6 The termination of the Contract does not affect:
- (a) any rights of the Parties accrued before the date of termination; and
  - (b) the rights and obligations of the Parties which survive termination.
- 19.7 Clauses 1 (definitions), 2 (interpretation), 3.2 (manufacturer's warranties), 6.2 (warranty regarding property in goods), 8.2 (warranties regarding personnel), 10.1(c) and 10.1(d) (transition out), 14 (Acceptance and Defects Liability Period), 15 (Defective Goods and/or Services), 19.6 and 19.7 (term), 20 (Contractor to have informed itself), 30 (Confidentiality), 31 (Data security), 32 (Intellectual Property Rights), 33 (Liability and indemnity), 36 (Settlement of disputes), 38.2 to 38.4 (inclusive) (termination), 41 (Notices), 42.1 (relationship of Parties) and 42.8 (Governing law) shall survive termination of the Contract.

## **20 CONTRACTOR TO HAVE INFORMED ITSELF**

- 20.1 By providing the Request Response, the Contractor acknowledges that it has:
- (a) examined carefully, and has acquired actual knowledge of the contents of, its Request Response, this Document and any other information made available in writing by the Principal to the Contractor for the purposes of the Request Response and the Contract; and
  - (b) satisfied itself as to the correctness and sufficiency of the Request Response and that the Contract Price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the proper performance and completion of the Contract.

## **21 CONFLICT OF INTEREST**

- 21.1 The Contractor warrants that, to the best of its knowledge, as at the date of providing the Request Response:

- (a) the Contractor has declared in its Request Response any Conflicts of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
  - (b) the information contained in the Contractor's Request Response as to the existence of any Conflicts of Interest is correct and comprehensive.
- 21.2 If a Conflict of Interest or risk of Conflict of Interest arises, including because of work undertaken by the Contractor for a person other than the Principal, the Contractor must immediately give written notice of the Conflict of Interest, or the risk of it, to the Principal.

## **22 LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES**

- 22.1 The Contractor shall comply without limitation with all Legal Requirements, Standards and Procedures affecting or applicable to the Goods and/or Services and/or the performance of the Contract and ensure that its Personnel also comply with the same, at the Contractor's cost.
- 22.2 The Contractor shall:
- (a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor for the purposes of providing the Goods and/or Services;
  - (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;
  - (c) to the extent practicable, use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 22.2(a) and 22.2(b) in relation to the Sub-contractors' own employees; and
  - (d) ensure that it pays each of its Sub-contractors in accordance with the Contractor's agreement with that Sub-contractor, subject to the Contractor's acceptance of the goods and/or services provided by the Sub-contractor.

## **23 SAFETY OBLIGATIONS**

- 23.1 The Contractor must:
- (a) Provide and maintain, where practicable, a working environment for its employees and members of the public, that is safe and without risk to health and free of hazards.
  - (b) Do all things reasonably necessary to ensure that the Goods and/or Services are provided in a manner that is safe and not likely to cause injury or illness to any person.
  - (c) Ensure Personnel that may be engaged to perform a service on its behalf will at all times identify and exercise all necessary precautions for the health and safety of all persons including Personnel, Subcontractors and members of the public who may be affected by the provision of Goods and/or Services.
  - (d) Perform all relevant functions and fulfil all relevant duties under all relevant WSH Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under WSH Laws.
  - (e) As far as reasonably practicable, comply with and ensure that its Personnel comply with all relevant WSH Laws applicable to this contract or the performance of the services under this Contract.

- 23.2 Where any injury, property or environmental damage, accident or incident occurs, the Contractor must:
- (a) as soon as practicable, but in any event within 24 hours, notify the Principal in writing of that injury, property damage, accident or incident; and
  - (b) provide the Principal with any further information requested by the Principal.
- All lost time incidents shall be promptly notified to the Principal.
- 23.3 For incidents that are notifiable under any Legal Requirement, the Contractor must provide a report of any such incident within three days, giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future. This requirement is in addition to, and independent of, any incident notification duty required by law.
- 23.4 The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter premises under the control of the Principal or the Principal's Personnel they must comply with the Principal's work health and safety policies and procedures and do so at the Contractor's own risk. If the Contractor's work health and safety policies and procedures are more stringent or onerous than the Principals, compliance is required with those policies and procedures. The Contractor will comply with such procedures or measures that produces the highest level of health and safety.
- 23.5 Without limiting clauses 37.3 to 37.5 (inclusive), any breach by the Contractor of WSH Laws or this clause which gives rise to circumstances which:
- (a) present actual or potential risk of life or serious injury; or
  - (b) are otherwise required to be notified under WSH Laws,
- entitles the Principal to suspend the whole or part of the performance of the Contractor's obligations.

## 24 SUSTAINABLE PROCUREMENT

- 24.1 The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by clause 24.2 (**Sustainability Objectives**) and acknowledges that its support of the Sustainability Objectives assists the Member in meeting its own Sustainability Objectives.
- 24.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply the Goods and/or Services in a manner which seeks to support the Sustainability Objectives, which endeavours may include:
- (a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;
  - (b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:
    - (i) using recycled materials and products;
    - (ii) reducing emissions;
    - (iii) adopting greener energy solutions;
    - (iv) adopting environmentally sustainable design; and
    - (v) reducing wastage;
  - (c) providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);

- (d) sponsoring and supporting local community groups and local community development initiatives;
  - (e) promoting fair workplace practices;
  - (f) promoting workplace health;
  - (g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and
  - (h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.
- 24.3 The Contractor agrees to provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.
- 24.4 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Goods and/or Services to the Principal are supplied from sustainable sources.

## **25 CONTRACTOR'S PERSONNEL**

- 25.1 The Contractor must, and must ensure its Personnel, when providing the Goods and/or Services:
- (a) comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the Goods and/or Services;
  - (b) do not cause any damage, loss or injury to any property or person; and
  - (c) act, in all circumstances and at all times, in a fit and proper manner.
  - (d) hold and maintain all relevant licenses and qualifications necessary to provide the Goods and Services.
- 25.2 If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Specified Personnel, it must obtain the prior written approval of the Principal.
- 25.3 The Contractor must provide the Principal with an Australia-wide police clearance in respect of any of its Personnel within 30 Business Days of such a request being made in writing by the Principal to the Contractor.
- 25.4 If any police clearance obtained under clause 25.3 evidences that any of the Contractor's Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to its other rights under the Contract, request the Contractor to promptly remove that person from involvement in the provision of the Goods and/or Services, and the Contractor must comply with such a request as soon as possible.
- 25.5 If the Goods and/or Services to be provided by the Contractor involve Child-Related Work or involve the delivery of the Goods and/or Services at a Child-Related Site:
- (a) the Contractor must provide to the Principal an Assessment Notice in respect of all Personnel involved in performing the Child-Related Work, or providing the Services or delivering Goods at the Child-Related Site, before they commence such work; and
  - (b) the Principal may require the Contractor to immediately remove any of the Contractor's Personnel who do not have a current Assessment Notice and the Contractor must comply with such a request as soon as possible.

## **26 REPRESENTATIVES**

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

## **27 INVOICING AND PAYMENT**

- 27.1 Subject to the Contractor satisfactorily providing the Goods and/or Services, the Principal must pay the Contractor the Contract Price in accordance with this clause 27 and the Contractor's preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.
- 27.2 As soon as reasonably practicable following the end of each month, or at another time or frequency agreed in writing by the Parties, the Contractor must provide to the Principal an Invoice for the provision of the Goods and/or Services or any delivered or completed part of the Goods and/or Services.
- 27.3 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices issued in accordance with this clause within 30 Business Days of issue to the Principal or such other period as agreed in writing by the Parties, except where the Principal disputes the Invoice, in which case, to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute.
- 27.4 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing.
- 27.5 A payment made pursuant to the Contract is taken to be payment on account and is not proof or admission of the value of the Goods and/or Services provided or that the Goods delivered and/or the Services performed, or any part thereof, were to the Principal's satisfaction.
- 27.6 The Parties agree that failure by the Principal to pay the amount payable at the due time will not be grounds for the Contractor to terminate, invalidate or avoid the Contract.
- 27.7 All invoices must reference a purchase order number (as provided by the Principal) and itemise the areas where the work was performed. Any invoice which does not reference an official purchase order number will be rejected.

## **28 GOODS AND SERVICES TAX**

- 28.1 Words capitalised in this clause 28 and not otherwise defined have the meaning given in the GST Law.
- 28.2 Where an amount of Consideration is payable for a Taxable Supply made under the Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.
- 28.3 The Party making a Taxable Supply under the Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
- 28.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under the Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

## **29 ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS**

- 29.1 The Principal agrees to provide the Contractor with access to the Principal's Premises and Principal's Documents as reasonably required to provide the Goods and/or Services.

- 29.2 The Contractor must only use the Principal's Documents for the sole purpose of providing the Goods and/or Services and must take reasonable security measures to protect the Principal's Documents from unauthorised disclosure or use.
- 29.3 The Contractor acknowledges and agrees that:
- (a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;
  - (b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Principal's Premises or Principal's Documents at any time; and
  - (c) where the Principal has suspended or denied the Contractor's access to the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

### **30 CONFIDENTIALITY**

- 30.1 In this clause 30 the following terms have the following meanings:
- (a) **'Disclosing Party'** means the Party which has disclosed Confidential Information that is confidential to that Party; and
  - (b) **'Receiving Party'** means the Party to whom Confidential Information is disclosed by the Disclosing Party.
- 30.2 Subject to clause 30.3, the Parties must not:
- (a) disclose Confidential Information to any other person; or
  - (b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.
- 30.3 Subject to clause 30.4, a Party may disclose Confidential Information to a third party:
- (a) with the prior consent of the Disclosing Party;
  - (b) to the extent required by any Law or applicable securities regulation or rule;
  - (c) in connection with any dispute or litigation concerning the Contract or its subject matter;
  - (d) to the extent required by any Authority having jurisdiction over the Receiving Party; or
  - (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.
- 30.4 Before making a disclosure to a person under clause 30.3, the Receiving Party must:
- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under the Contract, except where clause 30.3(b) applies;
  - (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
  - (c) where clause 30.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably,

imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

## **31 DATA SECURITY**

31.1 The Contractor must:

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

31.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 34 shall apply to this insurance with any necessary modifications.

## **32 INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

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

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

32.7 The Contractor must ensure that:

- (a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Sub-contractor of the Contractor or any other third party; and
- (b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Goods and/or Services or the Contract contrary to the interests of the Principal.



- 32.8 A Party must not:
- (i) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or
  - (j) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.
- 32.9 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

### **33 LIABILITY AND INDEMNITY**

- 33.1 Subject to the other provisions of this clause 33, the Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss (including Consequential Loss) suffered by the Principal or its Personnel arising directly or indirectly from:
- (a) any breach of the Contract by the Contractor;
  - (b) any Wilful Misconduct, or a negligent act or omission, by the Contractor or its Personnel;
  - (c) any loss or damage to the Principal's premises or property caused by the acts or omissions of the Contractor or its Personnel;
  - (d) any claim made by a third party against the Principal or its Personnel, to the extent that the claim arose out of any act or omission of the Contractor or its Personnel; and
  - (e) any act or omission of the Contractor or its Personnel that causes the Contractor to breach any Legal Requirement,
- except to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or its Personnel.

#### ***Consequential Loss***

- 33.2 The Principal will not be liable to the Contractor for any Consequential Loss.

#### ***Civil Liability Act***

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

### **34 INSURANCE AND RISK MANAGEMENT**

- 34.1 The Contractor must:
- (a) procure and maintain the Insurances with the minimum level of cover set out in this Document, or otherwise specified by the Principal in the Principal Request, from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Principal, which either:
    - (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or

- (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;
- (b) ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the provision of the Goods and/or Services to the Principal;
- (c) upon the Principal's written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;
- (d) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor;
- (e) disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the provision of the Goods and/or Services by the Contractor or a claim in connection with the Contract;
- (f) pay all premiums and deductibles applicable to any of the Insurances when due;
- (g) promptly reinstate any Insurance required if it lapses or cover is exhausted;
- (h) give the Principal at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and
- (i) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

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

- (a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and
- (b) where the Principal is entitled to cover under the Insurance:
  - (i) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
  - (ii) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
  - (iii) except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);
  - (iv) provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and
  - (v) provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

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

- (a) is for an amount not less than \$20 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of

occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;

- (b) covers the liability of the Contractor, its Personnel and the Principal in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),

arising out of or in connection with the Contractor's performance of the Contract; and

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

34.4 Where the Contractor shall be using its own vehicles, plant and equipment in providing the Goods and/or Services, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (**Contractor's Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), which must:

- (a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;
- (b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;
- (c) be unlimited in the number of occurrences; and
- (d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Principal.

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

- (a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than \$50 million, or such amount as is specified in a Principal Request, in respect of any one event; or
- (b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.

34.6 Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:

- (a) be for not less than \$5 million, or such other amount as is specified in the Principal Request, or otherwise reasonably requested by the Principal in respect of any one claim;
- (b) be for an amount not less than the amount specified in the Principal Request in the aggregate for all claims arising in any one 12 month period of insurance (if an amount is so specified);
- (c) include one full automatic reinstatement of the limit of liability;
- (d) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under the Contract; and

- (e) cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.

34.7 The Parties acknowledge and agree that:

- (a) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under the Contract;
- (b) the Insurances are primary, and not secondary, to the indemnities referred to in this Document and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
- (c) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
- (d) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances;
- (e) nothing in this clause 34 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and
- (f) where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.

34.8 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.

## **35 FORCE MAJEURE EVENT**

35.1 A Party must:

- (a) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under the Contract (**Affected Obligations**); and
- (b) if it gives such a notice, either:
  - (i) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
  - (ii) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.

35.2 The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

35.3 The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.

35.4 If a Force Majeure Event continues to affect the provision of the Goods and/or Services for the duration of the Force Majeure Event Termination Period, the Principal may terminate the Contract by serving written notice on the Contractor.

## **36 SETTLEMENT OF DISPUTES**

- 36.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).
- 36.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties may meet to seek to negotiate, in good faith, a resolution to the Dispute.
- 36.3 In the event that the Dispute remains unresolved after the time period referred to in clause 36.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with clause 36.4. There is no requirement for a Party to agree to mediation.
- 36.4 A mediation under this clause 36 shall:
- (a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice of intention under clause 36.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
  - (b) be conducted according to the rules proposed by the appointed mediator; and
  - (c) be conducted during a period of 30 Business Days (or such longer period as the Parties may agree in writing or as directed by the mediator) from the acceptance by the mediator of his or her appointment.
- 36.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.
- 36.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 36.4(c), or have elected not to Mediate, either Party may take whatever other action is available to it under the Contract or the Law, including initiating proceedings in a court of competent jurisdiction.
- 36.7 Nothing in this clause 36 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

## **37 DEFAULT, SUSPENSION AND TERMINATION FOR BREACH**

### ***Default***

- 37.1 If a Party breaches a provision of the Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
- (a) identifying the nature of the alleged breach;
  - (b) requiring the Party to comply with the relevant provision of the Contract; and
  - (c) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice.
- 37.2 If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages or exercise any other right under the Contract or under any applicable Legal Requirement.

### ***Suspension***

- 37.3 If a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 37.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party's reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of the Contract is no longer suspended at which point the Parties must promptly recommence the performance of their obligations.
- 37.4 The Contractor must bear any cost it incurs as a result of a suspension under clauses 23.5 or 37.3 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor under this clause become a debt due to the Principal by the Contractor, where the Contractor is the defaulting Party.
- 37.5 To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clause 37.3, the Completion Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

#### ***Termination for breach***

- 37.6 Subject to clause 37.7, without limiting the other circumstances in which the Contract may be terminated, if a Party breaches a provision of the Contract and fails to comply with a notice issued under clause 37.1, then the other Party:
- (a) may give a further notice to the defaulting Party of its intention to terminate the Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and
  - (b) by a further and final notice in writing to the defaulting Party immediately terminate the Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 37.6(a).
- 37.7 If a Party breaches a material provision of the Contract and that default is incapable of remedy or rectification, the non-defaulting Party may terminate the Contract by written notice to the defaulting Party.

### **38 TERMINATION**

- 38.1 Without limiting the other circumstances in which the Contract may be terminated, if a Party:
- (a) commits an Insolvency Event;
  - (b) assigns or sub-contracts the Contract or any part thereof without any prior written consent of the other Party required by the Contract;
  - (c) or any of its Personnel are found guilty of any criminal act relating to the Goods and/or Services; or
  - (d) includes in its Request Response any statement, representation, description of fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Party or not,
- then the other Party may by notice in writing to that Party immediately terminate the Contract.
- 38.2 If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to provide similar or equivalent goods and/or services to the Goods and/or Services.
- 38.3 Where the Principal terminates the Contract under clauses 37.6, 37.7 or this clause 38, the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.

- 38.4 When the Contract is terminated, the Contractor must:
- (a) promptly return to the Principal or destroy any of the Principal's property or Principal's Documents as directed in writing by the Principal; and
  - (b) if requested by the Principal, co-operate with and assist the Principal to transition the provision of the Goods and/or Services to the Principal or to another contractor engaged by the Principal, including by complying with the terms of any agreed Transition Plan.

## **39 ASSIGNMENT AND SUBCONTRACTING**

- 39.1 The Contractor shall not:
- (a) assign all or any part of its rights and obligations under the Contract; or
  - (b) sub-contract the whole or any part of the Contract,
- without:
- (c) the Principal's prior written approval, which must not be unreasonably withheld; and
  - (d) in the case of an assignment under clause 39.1(a) where obligations are to be assigned, the proposed assignee executing a deed in favour of the Principal agreeing to comply with and be bound by the obligations of the Contractor under the Contract.
- 39.2 To avoid doubt, the Principal's approval to sub-contract does not discharge or release the Contractor from any liability or obligation under the Contract.

## **40 RESTRUCTURE OF THE PRINCIPAL**

- 40.1 If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure. To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

## **41 NOTICES**

- 41.1 Any notice under the Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:
- (a) hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or in **Error! Reference source not found.**, as applicable, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or
  - (b) email to the email address of the receiving Party specified in the Request Response, Letter of Award or in **Error! Reference source not found.**, as applicable, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.
- 41.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:
- (a) if by delivery in person, when delivered to the address of the receiving Party;
  - (b) if by post, 5 Business Days from and including the date of postage; and
  - (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving Party's time), it is regarded as received at 9.00am on the following Business Day.

## **42 GENERAL**

### **42.1 Relationship of the Parties**

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

### **42.2 Promotion and Advertising**

- (a) The Contractor must not erect on the site or Principals premise, or permit to be erected on the Site, any sign, advertisement, promotion or other display without the written approval of the Principal or the Principal's Representative.

### **42.3 Severability**

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

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

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

### **42.4 Variation to Contract terms**

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

### **42.5 Waiver**

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

### **42.6 Entire agreement**

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

### **42.7 Rights are cumulative**

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

### **42.8 Governing Law**



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

**43. SPECIAL CONDITIONS**

## EXECUTION

### Principal

Signed by an authorised person(s) on behalf [ ] in accordance with a resolution of the Council passed on *[insert date]*:

*sign here* ►

---

*print name*

---

### Contractor

EXECUTED by **[insert name]** ACN **[insert in ]** accordance with section 127(1) of the *Corporations Act 2001* (Cth):

)

)

←

---

Director/Secretary/Sole Director-Secretary (signature)  
(Delete whichever is not applicable)

←

---

Director/Secretary (signature)  
(Delete whichever is not applicable)

---

Director/Secretary/Sole Director-Secretary (print full name)  
(Delete whichever is not applicable)

---

Director/Secretary (print full name)  
(Delete whichever is not applicable)

## CONTRACT SPECIFICS

ITEM	DESCRIPTION	CONTRACT SPECIFIC
1.	Contractor's Representative	Address: [insert] Telephone: [insert] Email: [insert]
2.	Principal's Representative	
3.	Start Date	
4.	End Date	
5.	Additional Period (if applicable)	
6.	Insurances	<p>Insurances must be maintained for the duration of the Contract with the following minimum levels of cover:</p> <p><b>Public liability insurance:</b> the Contractor shall maintain Insurance to a value of \$20,000,000. (clause 34.3).</p> <p><b>Vehicle and equipment insurance:</b> the Contractor shall maintain (clause 34.4).</p> <p><b>Workers' compensation insurance:</b> the Contractor shall maintain insurance in accordance with the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) and to a value of \$50,000,000 (clause 34.5).</p> <p><b>Professional indemnity insurance:</b> the Contractor shall maintain insurance to a value of \$5,000,000 (Clause 34.6).</p>



## **Recordkeeping Responsibilities and You**

The *State Records Act 2000* (the Act) governs recordkeeping within State and local government organizations in Western Australia. Under the Act, every employee of a government organization (including temporary staff and contractors) will have some responsibility for creating and keeping records relating to their work.

### **What is a record?**

A **record** can be defined as any record of information, in any medium, including letters, files, emails, word processed documents, databases, photographs, text messages, and social media posts relevant to the business of the organization. **Government records** are those records created or received by a government organization, or by an employee or contractor in the course of their work for that organization.

### **Why do I need to keep records?**

Records provide evidence of what an organization has done, and why. Keeping records of business activity enables an organization to account for its actions, meet legislative requirements, and make informed and consistent decisions.

### **What are my responsibilities as a government employee?**

**Every employee** of a government organization (including temporary staff, contractors and consultants) has a responsibility to create records of their work for the government organization. While specific responsibilities will differ depending on the work role, employees should ensure that records of their activities, transactions and decisions are captured onto the official record.

### **When should I create a record?**

A record should be created when an activity or transaction takes place, or a decision is made, which relates to the organization's business activity. If you are not sure whether to create a record, **ask yourself**:

- Does the matter relate to my work?
- Did I write, receive or send this in the course of my work?
- Is action required?
- Is this something I have used to do my work or to reach a decision?
- Will I need this information again?
- Will someone else need this information at some stage?

**If the answer is “yes” to any one of these questions, a record should be created.**

### **What do I do with records once they are created?**

Records of business activity should be entered into the organization's official recordkeeping system. By doing this, records relating to particular work matters are kept together and are available for all relevant staff to refer to.

### **How long do I need to keep records?**

Records can only be disposed of in accordance with a disposal authority that has been approved by the State Records Commission. It is illegal to dispose of records unless authorized to do so.

**Further information:** For assistance with recordkeeping responsibilities specific to your work, please contact the Records Manager within your organization **or** the State Records Office on (08) 9427 3661 or via email at [sro@sro.wa.gov.au](mailto:sro@sro.wa.gov.au).

# Town of Claremont WHS QUESTIONNAIRE



	Question	Current Year	Current Year Minus 1 Year	Current Year Minus 2 Years
BACKGROUND METRICS	What is the total number of employee hours worked per annum?			
	Total number of *Personnel (as defined in the Contract) at your company?			
	Number of work-related fatalities?			
	Number of injuries resulting in a medical treatment injury or an injury that caused Personnel to miss more than one day away from work?			
	Number of Worksafe Notifiable injuries in the past 5 years?			

	Question	Response	Details Details / References to attachments / example documents / WHS Performance References, recent audits or accreditations (as required)
1.	<p>Has your business been WHS compliant for the last 36 months?</p> <p>If no, please summarise if your organisation and Personnel have received any regulatory citations (Pins, like a Prohibition Notice or Improvement Notice) and have been involved in any regulatory investigations or court litigation related to WHS or Environmental damage , spills or unauthorised discharges in the last 36 months?</p>		
2.	<p>Does your organization have a director / officer responsible for WHS?</p> <p>If so please list their details and role in relation to this contract.</p>		
3.	<p>Do you have a WHS plan?</p> <p>Please supply a copy with associated documentation.</p>		
If you have attached an approved WHS Plan, please proceed to question 14			
4.	<p>Have you identified key WHS risks that may exist in your business and what are they (please list and summarize) as relevant to the work that you wish to tender to perform for the Town of Claremont?</p>		
5.	<p>Do you have a process with which to assess risks and put in place appropriate controls that follow the Worksafe WA Hierarchy of Controls?</p> <p>Please list and summarize those processes</p>		

	Question	Response	Details Details / References to attachments / example documents / WHS Performance References, recent audits or accreditations (as required)
6.	Do you have a Fitness for Work monitoring policy and program? e.g., Drug and alcohol screening		
7.	Do you evaluate the ability of subcontractors to comply with applicable WHS requirements as part of your selection process? If yes, please list and summarize		
8.	Do you have a documented process to identify work-related physical, environmental, or procedural hazards? ( i.e. hazard inspection checklists, hazard reporting process or consultation method for Personnel to report hazards?)		
9.	Do you have a process to ensure that hazards are addressed in a timely manner? Please list and summarize your processes?		
10.	Do you have in place Safe Work Method Statements (SMWS) specific for your work / expertise?		
11.	Do you have a behaviour-based safety process in place? (e.g. Safe / unsafe observations checklists, Safe Start checks or similar)		

	Question	Response	Details Details / References to attachments / example documents / WHS Performance References, recent audits or accreditations (as required)
12.	Do you have a written process to report, investigate, record, and close out incidents, hazards and near misses? If yes, please summarize		
13.	Do you have an emergency response plan and procedure so that, should any emergency event occur on site that you are reasonably able to respond with a timely response (i.e. lists of nearest hospitals / medical providers, dealing with a serious incident like a collapse or plant roll-over.?		
14.	Do all your Personnel where required by regulatory or industry standards have the required qualifications? (Refer to above training related question. This may include Basic Worksite Traffic Management, EWP, Working at Heights, Load shifting tickets, earth moving equipment tickets, Worksafe Construction Safety (White card) etc.		
15.	<p>If you work on a Road Reserve for the Town, you are required to ensure that Personnel are trained and hold a proper Basic Worksite Traffic Management ticket, Traffic Controller ticket etc.. In all instances a Traffic Guidance Scheme or plan is required to be available.</p> <p>Have you ever had to complete a Traffic Management Plan prior, have you ever engaged Traffic Management providers in the past?</p> <p>Are your Personnel trained? Do you have a traffic management plan?</p>		
16.	<p>Do you have trade / qualification training register that tracks licence/ ticket expiry dates?</p> <p><i>Please provide a copy</i></p>		



	Question	Response	Details Details / References to attachments / example documents / WHS Performance References, recent audits or accreditations (as required)
17.	Do you maintain operating equipment to demonstrate that the plant is maintained as fit for purpose ( i.e. maintenance and servicing records) in compliance with regulatory requirements and /or plant manufacturer specification including certification, calibration, maintenance system, etc.?		
18.	Do you issue Personal Protective Equipment (PPE) to Personnel? How do you ensure that all Personnel have the appropriate PPE and that it is fit for purpose before commencing work on site?		
19.	Do you control unauthorized access to site and how will you ensure that the worksite is not accessed by unauthorized personnel?		
20.	How do you manage potential risks to the public arising from your work?		
21.	How do you ensure that the site is maintained with good house-keeping standards?		
22.	Do you have a Covid – 19 Management Plan and if yes please summarize how you would manage a Covid- 19 outbreak or high caseload on your site.		
23.	Do you consult with your Personnel on WHS matters? If yes please list how i.e. toolbox meeting, WHS committee meetings staff meetings		

**Declaration**

I declare that this report is true and accurate and that I am \*authorised to provide this information on behalf of

\_\_\_\_\_.

I understand that the Town of Claremont is relying on the information provided in this questionnaire and a failure to disclose information or provide false information may result in legal action being taken against me personally and/or

\_\_\_\_\_.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position /Authority: \_\_\_\_\_

Date: \_\_\_\_\_