*Text Legend* *Delete this legend before finalising the document*

*Red text is an instruction and should be deleted after reading*

*Blue text should be edited or deleted as required.* *Change Blue text to Black if keeping*

*Black text should generally be considered as fixed text*

Request

[Goods and services procurement template - Request - ICT, CUA and/or Panel Arrangement]

Request Title:

[Insert Request Title]

Request Number:

[Insert Request Number]

Closing Time:

2:30 PM [Insert Closing Date], Western Australia

[Important Note: In the ‘Issued By’ section below insert the legal entity name of the State Agency issuing the Request. The legal entity name for a government department is “The State of Western Australia acting through [insert name of department]”. For a statutory authority or other body corporate, the legal entity name is the body corporate name as specified in the relevant enabling legislation.]

Issued by:

[For single agency Requests, use the following:]

[Insert entity name]

[For Common Use Arrangement Requests, select Option 1 or Option 2 below:]

[Option 1 – Use if the Contract Authority is the Chief Executive Officer of the Department of Finance (Director General)]The State of Western Australia acting through the Department of Finance, for use by State Agencies and Authorised Bodies described as Potential Customers in Clause 2.1 of the General Conditions

or

[Option 2 – Use if the Contract Authority is the Procurement Executive Body]The Procurement Executive Body, for use by State Agencies and Authorised Bodies described as Potential Customers in Clause 2.1 of the General Conditions

[For Multi-User Cooperative Procurement Arrangement Requests use the following:]

[Insert entity name] for use by the State Agencies [and Authorised Bodies]*[Remove Authorised Bodies if there will be none]* described as Potential Customers in Schedule 1 – Head Agreement Details of this Request

[For Distributor Model Cooperative Procurement Arrangement Requests use the following:]

[Insert entity name]

[For Group Buying Cooperative Procurement Arrangement Requests use the following:]

[Insert Lead Agency entity name] on behalf of [Insert participating State Agencies and/or Authorised Bodies entity names]

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Part A – Request No [Insert Request Number]

# Introduction

## Background

*[Provide an overview of the proposed contract, where goods/services are to be delivered, proposed contract period and other relevant contract information. Corporate information is not required.]*

## Submission of Offer

*[Do not change this clause number as it is referenced in the Request Conditions]*

### Hand and Post Lodgement

The Respondent may not submit the Offer by hand or post.

[Or if hand or postal lodgement is critical]

*[Where lodgement of an Offer, by hand, post and/or fax, is going to be at the State Agency then the State Agency is to ensure it has in place appropriate procedures for the receipt, opening and registration of offers to safeguard their security and confidentiality]*

The Respondent may submit the Offer:

|  |  |
| --- | --- |
| By hand at: | By post at: |
| **[insert State Agency address for hand submission or Tendering Services, Djookanup,16 Parkland Road, Osborne Park WA 6017]** | **[insert State Agency address for postal submission or Tendering Services, Locked Bag 11, Osborne Park BC WA 6916]** |

If the Respondent submits the Offer by hand or post, the Respondent must submit the Offer to the relevant addresses above and provide One (1) unbound copy marked “Original Copy” and provide [insert number] (X) copies.

### Facsimile Lodgement

*[Please ensure that any Request closing at Tendering Services is marked "Offers may not be submitted by facsimile"]*

The Respondent may submit the Offer by facsimile at **[insert State Agency's fax number]**.

[or]

Offers may not be submitted by facsimile.

### Electronic Lodgement

[**Important note:** The Tenders WA system has been updated to implement a file format whitelist (the **Whitelist**). This means that the system will only accept files for uploading in formats that are on the Whitelist. Agency personnel can view the Whitelist by logging in to Tenders WA and following the links ‘Help’ >‘Help Guides’ >‘Buyers Help Guides’.

If electronic lodgement of Offers is permitted under this Request, review the current Whitelist and ensure all potentially relevant file formats are listed in the table below. If you are unsure whether a listed file format is relevant or accessible by your agency, check with your agency’s ICT team.

If you have queries about the Whitelist and/or require additional formats to be approved and added to the Whitelist, contact Procurement Systems Operations –[procurementsystems@finance.wa.gov.au](mailto:procurementsystems@finance.wa.gov.au).]

The Respondent may submit their Offer electronically by uploading file(s) in an approved format (**TWA Approved File Format**) at [www.tenders.wa.gov.au](file:///C:\Users\00031908\Downloads\www.tenders.wa.gov.au).

If uploading Offer file(s) at Tenders WA, the Respondent must ensure that:

1. the lodgement is made in accordance with the [Tenders WA Terms of Use](https://www.tenders.wa.gov.au/watenders/terms-and-conditions.vm?CSRFNONCE=FD7098E53C524FC9D6DA11E3F0AA598B);
2. the Respondent is registered on Tenders WA to submit an offer electronically;
3. the Offer is lodged against the correct Request Number;
4. each file name is no more than 125 characters in length;
5. each file upload request is equal to or less than 100MB per upload request; and
6. each file is uploaded in one of the following TWA Approved File Formats:

[The TWA Approved File Formats in the table below are a subset of the file formats on the Whitelist. Check the current version of the Whitelist (available from Tenders WA) and if other Whitelist formats are relevant to your procurement, add those file formats to the table. Not all formats are accessible by all agencies. If you are unsure, check with your agency’s ICT team.

**Ensure that only Whitelist file formats are listed in the advertised Request**.]

|  |  |  |  |
| --- | --- | --- | --- |
| TWA Approved File Formats | | | |
| Adobe Reader File # | .pdf | Image File | .jpeg |
| Microsoft Excel File \* | .xls | Image File | .jpg |
| Microsoft Excel File \* | .xlsx | Image File | .png |
| Microsoft Excel File \* | .csv | Media File | .mp4 |
| Microsoft PowerPoint File \* | .ppt | Media File | .mpp |
| Microsoft PowerPoint File \* | .pptx | Rich Text Format File | .rtf |
| Microsoft Publisher File \* | .pub | Text File | .txt |
| Microsoft Word File \* | .doc | [insert] | [insert] |
| Microsoft Word File \* | .docx | [insert] | [insert] |
| Microsoft Word File \* | .docm | [insert] | [insert] |
| TWA Approved File Formats – Compression Formats | | | |
| ZIP File | .zip | Unix File | .z |
| gzip File | .gz | 7-zip File | .7z |
| RAR File | .rar |  |  |

# PDF files must be Adobe compatible. \* Microsoft files must be PC / Windows compatible. [If your agency can accept non-Adobe pdf files and/or Microsoft for Mac files, update or delete this wording.]

Notwithstanding paragraph (f) above, if the Respondent uploads Offer file(s) to Tenders WA:

1. in a file format that is not listed in the table above; or
2. uses one of the compression file formats listed above, and the underlying compressed file(s) is saved in a format not listed in the table above,

the Contract Authority or Customer may exclude the content of that file(s) from their consideration of the Respondent’s Offer at their discretion.

The Tenders WA Terms of Use can be viewed at [www.tenders.wa.gov.au](file:///C:/Users/05016715/Documents/Offline%20Records%20(TP)/Procurement%20Templates%20-%20Changes%20And%20~%20GOVERNMENT%20PROCUREMENT%20-%20PROCEDURES(2)/www.tenders.wa.gov.au). Guidelines to assist Respondents with registering on Tenders WA and lodging an Offer electronically can be downloaded at [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au) by following the links ‘Help’ > ‘Help Guides’ > ‘Business Help Guides’.

Queries in relation to Tenders WA, including TWA Approved File Formats, should be directed to the ‘Advice on using Tenders WA’ contact person listed in Part A, section 1.6 of this Request.

[or]

Offers may not be submitted electronically

### Conditions regarding the submission of Offers (including late lodgement and mishandling) are contained in the Request Conditions.

## Offer Validity Period

The Offer Validity Period is for a period of [insert number] months.

## Tenders WA

The Respondent may register (free) for the Tenders WA website to ensure that the complete Tender has been downloaded including any and all addenda.

## Briefing

*[Delete this clause if a briefing is not required]*

A [mandatory / non-mandatory] briefing to Respondents will be conducted at:

Date: [Insert Date]

Time: [Insert time] AM/PM Western Australia

Location:

The Respondent is requested to confirm its attendance by no later than [time] AM/PM, Western Australia & [date] by contacting [contact person’s name and phone number].

[Only insert the following paragraph if the briefing is mandatory]

Failure to attend the Request briefing will result in the Offer being ineligible for further consideration.

## Contact Persons

Different enquiries can be best dealt with by the most appropriate contact, shown below.

The Respondent must not contact any other person within Government or any consultant engaged in relation to this Request to discuss this Request.

**Contractual and Routine Enquiries:**

Name:

Title:

Telephone:

E-mail:

**Technical / Customer Enquiries:**

Name:

Title:

Telephone:

E-mail:

Advice on Delivering Offers:

Name: Tendering Services

Telephone: (08) 6551 2345

[Or your State Agency contact and delete the above]

Name: [Insert name]

Telephone: [Insert phone number]

Facsimile: [Insert fax number]

*[Delete the following paragraph if not applicable, i.e. not advertised on Tenders WA, no option to submit offers via upload to Tenders WA]*

Advice on Using Tenders WA:

Name: Procurement Systems Support

Telephone: (08) 6551 2020

## Request Conditions

The “Request Conditions” are contained in the Part A of the *Request Conditions and General Conditions of Contract* [July 2024] located at <https://www.wa.gov.au/government/publications/request-conditions-and-general-conditions-of-contract-july-2024> and contain important provisions regarding the nature of this Request and the consequences of the Respondent submitting an Offer. The Respondent is deemed to have read and considered the Request Conditions prior to submitting an Offer.

# Selection Process

## Selection Process

Achieve Value for Money is a key Western Australian Procurement Rule. It ensures that when purchasing Goods and/or Services, State Agencies achieve the best possible outcome, for every dollar spent, by assessing the costs and benefits of, and the risks inherent in, an Offer, rather than simply selecting the lowest Offered Price.

In determining Value for Money, the Contract Authority or the Customer will:

1. apply relevant [Western Australian Procurement Rules](https://www.wa.gov.au/government/publications/western-australian-procurement-rules) and Government policies and priorities, including those referenced in the [Western Australian Social Procurement Framework](https://www.wa.gov.au/government/publications/western-australian-social-procurement-framework), to the assessment of Offers;
2. require Offers to meet the Pre-Qualification Requirements in Section 3 in Part B;
3. assess Offers against the Compliance and Disclosure Requirements in Section 4 in Part B;
4. assess Offers against the Qualitative Requirements in Section 5 in Part B;
5. assess Offers against the Insurance Requirements in Section 6 in Part B; and
6. assess the Offered Prices which includes assessing the Offered Price and Pricing Requirements in Schedule 3.

The determination of Value for Money will require a consideration of all of the above factors and any other matters that the Contract Authority or Customer considers relevant.

## Western Australian Procurement Rules and Government Policies

The following apply to this Request:

1. The Western Australian Procurement Rules, as applicable

The [Western Australian Procurement Rules](https://www.wa.gov.au/government/publications/western-australian-procurement-rules) can be viewed at and downloaded from wa.gov.au.

1. The WA Buy Local Policy 2022

The [WA Buy Local Policy 2022](https://www.wa.gov.au/government/publications/western-australian-buy-local-policy-2022) can be viewed at and downloaded from wa.gov.au.

*[Include point c if the procurement has a metropolitan contract delivery point and is valued at $1,000,000 or above* ***or*** *if the procurement has a regional contract delivery point and is valued at $500,000 or above. For further information refer to the* [*Western Australian Industry Participation Strategy*](https://www.wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation/western-australian-industry-participation-strategy) *on wa.gov.au.]*

[Delete if WAIPS is not applicable]

1. Western Australian Industry Participation Strategy (WAIPS)

The [WAIPS](https://www.wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation/western-australian-industry-participation-strategy) can be viewed at and downloaded from wa.gov.au.

*[Include the following statement if the procurement is a Covered Procurement. The inclusion of this statement is required due to the agreement of the State of Western Australia to be bound by the Government Procurement chapters of the Free Trade Agreements that the Australian Government has entered into. For further information on requirements for Covered Procurements, refer to the* [*Western Australian Procurement Rules*](https://www.wa.gov.au/government/publications/western-australian-procurement-rules)*. Covered Procurement requirements are not applicable to the excluded Covered Procurement categories listed in Appendix 3 of the Rules or to State Agencies not identified as a Covered State Agency in Appendix 4 of the Rules.]*

This Request is a Covered Procurement as defined in the [Western Australian Procurement Rules](https://www.wa.gov.au/government/publications/western-australian-procurement-rules).

## Supplier Debarment Regime

In January 2022, the Western Australian supplier debarment regime commenced operation. The debarment regime establishes grounds and processes through which a supplier can be excluded (by suspension or debarment) from supplying goods, services and works to State Agencies. The regulatory scheme is established under Part 7 of the *Procurement Act 2020* and the *Procurement (Debarment of Suppliers) Regulations 2021*. Further information about the regulatory scheme is available from [WA.gov.au](https://www.wa.gov.au/organisation/department-of-finance/debarment-regime) and [Tenders WA](https://www.tenders.wa.gov.au/watenders/news/browse.do?CSRFNONCE=D698D425818DEE32BA3DFEEFE7D868B7&&ss=1).

Unless operation of the *Procurement (Debarment of Suppliers) Regulations 2021* has been excluded, the Contract Authority or Customer must exclude from consideration any Offer received from a Respondent who is suspended or debarred, and any Offer which includes a subcontracting arrangement with a suspended or debarred subcontractor.

Schedule 1 - Head Agreement Details and (delete if not a CUA or Panel Arrangement or Multi-User CPA) Customer Contract Details

[If not a Common Use Arrangement or Panel Arrangement or Multi-User Cooperative Procurement Arrangement, delete the Head Agreement Details. If a Common Use Arrangment or Panel Arrangement or Multi-User Cooperative Procurement Arrangement, the Head Agreement Details AND the Customer Contract Details MUST both be included in the Request.]

**Head Agreement Details**

|  |  |
| --- | --- |
| 1. **Contract Authority** | [For Common Use Arrangement Requests, select either Option 1 or Option 2 below.]  Select Option 1 if contracting as Department CEO:  The Contract Authority is the Chief Executive Officer of the Department of Finance (Director General) exercising powers conferred by the *Procurement Act 2020* (WA).  Selection Option 2 if contracting as the Procurement Executive Body:  The Contract Authority is the Procurement Executive Body, a body corporate established by section 18(1) of the *Procurement Act 2020* (WA).  [For State Agency Panel Arrangement or Multi-User Cooperative Procurement Arrangement Requests, use the text below.]  The Contract Authority is the [Insert Entity Name].  [**Important Note:** The legal entity name for a government department is “The State of Western Australia acting through [insert name of department]”. The legal entity name for a statutory authority or other body corporate is the body corporate name as specified in the relevant enabling legislation.] |
| 1. **Potential Customer** | *Include this section for Multi-User Cooperative Procurement Arrangements only.*  For the purposes of this Request, the Potential Customers are [Insert names of State Agencies and/or Authorities Bodies] *[or, if more than 10]* listed in Schedule 16 of this Request.  The Potential Customers mentioned and/or described in this Item 2 override the State Agencies and Authorised Bodies described as Potential Customers in Clause 2.1 of the General Conditions.  *Include the statement below where the approval to establish a Multi-User Cooperative Arrangement identified access provisions will be included in the cooperative arrangement.*  From time to time, other State Agencies and/or Authorised Bodies may become Potential Customers upon written notice being given by the Contract Authority to the Contractor/s. |
| 1. **The Term of the Head Agreement** | The Term of the Head Agreement is [insert number of months or years]. |
| 1. **Commencement Date** | The Contract Authority will notify the Contractor of the Commencement Date in the Letter.  *[or]*  The Contract Authority and the Contractor will agree on the Commencement Date and the Contract Authority will confirm the agreed Commencement Date in the Letter.  *[or]*  The Commencement Date is [insert date]. |
| 1. **Extensions** | The Contract Authority has [insert number] options to extend the Term, each option having a one (1) year duration. [delete if not applicable] |
| 1. **Notice of Extension** | [insert period of notice of extension]  or  Clause 3.8 of the General Conditions applies. |
| 1. **Price Variation** | The Price is fixed for the Term.  or (option 2)  The Price is fixed for the first year of the Term.  On each anniversary of the Commencement Date, the Price will be varied by the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth).  or (option 3)  The Price is fixed for the first year of the Term.  The Price will be varied after the first year of the Term on [Specify Date] by [Specify Mechanism].  [Important Note: If price variations are linked to exchange rate variations seek advice on the financial risk involved from the WA Treasury Corporation (WATC) at www.watc.wa.gov.au or on (08) 9235 9100.]  *[The following text must be included if option 2 or 3 above are used]* The Contractor shall apply in writing for the Contract Authority’s approval each time a revised price is to be applied to the Head Agreement. Twenty one (21) days prior notice is required for a Price Variation request.  Documentation will be required to justify applications for revised Head Agreement prices during the term of the Head Agreement.  No price variation is payable unless and until approved by the Contract Authority.  Any request by the Contractor for back-payment of price variations will not be considered. |
| Important Note: The indicative insurance categories and amounts in this section do not represent ‘set’ minimum requirements. Insurance requirements should be determined by an insurable assessment of the contract risk.  If your risk assessment indicates the standard insurance requirements below need to change, contact the Insurance Commission of WA ([contracts@icwa.wa.gov.au](mailto:contracts@icwa.wa.gov.au)) to discuss the requirements before releasing the Request.  An introductory overview of risk management in the procurement context and procurement insurance requirements is also available from WA.gov.au ([Manage Risk Guidelines](https://www.wa.gov.au/government/multi-step-guides/procurement-guidelines/procurement-planning-individual-purchases-guidelines/manage-risk-guidelines)). | |
| 1. **Public Liability** | Public Liability insurance covers bodily injury and property damage arising out of acts or omissions by the Contractor. This cover is required in relation to the Services under the Head Agreement. Public Liability insurance cover should be not less than $20 million, or such higher level of cover as may be required by reference to the risk assessment.  Public liability insurance covering:   1. the legal liability of the Contractor and the Contractor Personnel arising out of the Services for an amount of not less than **[$20 million]** for any one occurrence and unlimited in the number of occurrences happening in any one period of insurance; and 2. indemnification of the Contract Authority as principal to the extent of its liability arising out of the Services. |
| 1. **Workers’ Compensation** | Important Note: This provision has been updated to refer to the new Workers’ Compensation and Injury Management Act 2023 (WA) (the WCIM Act 2023) which commenced on 1 July 2024.  The workers’ compensation insurance must include cover for both common law liability and principal’s indemnity cover in respect of liability under section 217 of the WCIM Act 2023. This type of extension is commonly called a ‘Principal’s Indemnity Extension’.  Workers’ compensation insurance in accordance with the provisions of the *Workers’ Compensation and Injury Management Act 2023* (WA) (the **WCIM Act**).  The insurance policy must include:   1. common law liability cover for an amount of not less than **$50 million** for any one event in respect of workers of the Contractor; and 2. principal’s indemnity cover (by policy extension or otherwise), covering any claims or liability that may arise under the principal’s indemnity described in section 217 of the WCIM Act. |
| 1. **Contract Management Requirements** | *Supplier performance management requirements should be considered and included here.*  Reporting  [insert details]  Meetings  [insert details]  Key Performance Indicators  [insert details]  Contract Authority’s Representative  [insert details]  Contract Authority’s address and email details  [insert details] |
| 1. **Confidential Information** | **Important Note**: If there is any particular information that the Contractor must treat as confidential, insert the first option below and specify that particular information.  If there is not any particular information that the Contractor must treat as confidential, insert the second option below.  The Contract Authority specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:  [Insert confidential information]  or (second option)  For the purposes of paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions, there is no information that is specified by the Contract Authority as confidential. |
| 1. **Panel Arrangement** | **Note**: If this request is to establish a CUA Panel Arrangement or a Multi-User Cooperative Procurement Arrangement Panel then select the first option. If this request is to establish a State Agency Panel Arrangement then select the second option. If the request is not to establish a Panel Arrangement but is still a standing offer, select the final option.  This Request is to establish a Panel Arrangement. Clause 4(b) of the General Conditions applies.  or  This Request is to establish a Panel Arrangement. Clause 4(c) of the General Conditions applies.  or  Clause 4(b) and 4(c) of the General Conditions do not apply. |
| 1. **Police Clearance** | Clause 18.4 of the General Conditions applies.  or  Clause 18.4 of the General Conditions does not apply. |
| 1. **Confidential Declaration – Prevention of Paedophilia** | Clause 18.5 of the General Conditions applies.  or  Clause 18.5 of the General Conditions does not apply. |
| 1. **Warranties** | The Contractor must give, or ensure the Contract Authority has the benefit of, the following warranties:  [Insert warranties]  If the warranty specified exceeds the Term of the Customer Contract, the warranty survives the expiry or termination of the Customer Contract.  or  For the purposes of clause 19.5 of the General Conditions, no warranties are specified. |
| 1. **Intellectual Property Owner** | **Important Note**: Under clause 23.1 of the General Conditions, the owner of Intellectual Property Rights in New Material is the State of Western Australia, unless otherwise specified. If the owner is to be an entity other than the State (e.g. a particular statutory authority), specify that entity in this Special Condition.  [ ] is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.1 of the General Conditions  or  If the owner of Intellectual Property Rights in New Material is to be the Contractor, use this Special Condition.  The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions. |
| 1. **Publicity** | **Important Note**: Under clause 24.4 of the General Conditions, the Contractor may not use the name or logo of the Contract Authority, the Customer or any other State Agency without the requisite prior written consent. If there is "any other State Agency", specify in this Special Condition.  [ ] is specified for the purposes of clause 24.4 of the General Conditions.  or  For the purposes of clause 24.4 of the General Conditions, no other State Agency is specified. |
| 1. **Government Policies** | **Important Note**: If the Request requires the Contractor to comply with Government procurement policies, then insert the first option below and specify the relevant policy obligations.  The following obligations are obligations relating to Government procurement policies for the purposes of clause 32 of the General Conditions:   * The Western Australian Industry Participation Strategy requirements mentioned and/or described in Item [insert applicable Item number] of the Head Agreement Details * The Pro Bono Legal Services requirements mentioned and/or described in Item [insert applicable Item number] of the Head Agreement Details * The Buy Local 2022 requirements mentioned and/or described in Item [insert applicable Item number] of the Head Agreement Details   *[or] if there are no Government procurement policy obligations for the Contractor, insert the second option below:*  For the purposes of clause 32 of the General Conditions, no obligations relating to Government procurement policies are specified. |
| 1. **Termination Without Cause** | *This clause is to be included in all CUAs. Not required for State Agency Panel Arrangements or Multi-User Cooperative Procurement Arrangement Panels.*  *Please contact* [*ProcurementAdvice@finance.wa.gov.au*](mailto:procurementpractice@finance.wa.gov.au) *for the clause.* |
| 1. **Western Australian Industry Participation Strategy (WAIPS) – Requirements For CUA and Panel Arrangements** | **Important Note**  Include where:   * the estimated total Head Agreement value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Participation Plan as a qualitative requirement has been granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Exemption Reporting**    1. The Contractor must submit a completed WAIPS Participation Plan Exemption Report for Common Use Arrangements and agency panel contracts to the Contract Authority:       1. annually (**Annual Report**); and       2. upon the expiry of the Head Agreement (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the [WAIPS Participation Plan Exemption Report for Common Use Arrangements and agency panel contracts template](https://www.wa.gov.au/government/publications/waips-exemption-report-templates) which is available to download from [WA.gov.au](https://www.wa.gov.au/government/publications/waips-exemption-report-templates).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Contract Authority to the Contractor; and      2. a Final Report no later than two months after the expiry of the Head Agreement.   3. Where the Head Agreement is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Contract Authority may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause** **survives**   This clause survives the termination or expiration of the Head Agreement. |
| 1. **Western Australian Industry Participation Strategy (WAIPS) – Requirements For Participation Plans** | **Important Note**  Include where:   * the estimated total Head Agreement contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Participation Plan as a qualitative requirement has not been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Participation Plan Reporting**    1. The Contractor must submit a completed WAIPS Participation Plan Report to the Contract Authority:       1. annually (**Annual Report**); and       2. upon the expiry of the Head Agreement (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the [WAIPS Participation Plan Report template](https://www.wa.gov.au/government/publications/waips-participation-plan-report-template) which is available to download from [WA.gov.au](https://www.wa.gov.au/government/publications/waips-participation-plan-report-template).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Contract Authority to the Contractor; and      2. a Final Report no later than two months after the expiry of the Head Agreement.   3. Where the Head Agreement is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Contract Authority may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Head Agreement. |
| 1. **Pro Bono Legal Services** | [Important Note: This condition and Appendix 1 must be included in all Requests where the Contractor will be providing legal services to the State of Western Australia.]  As a condition of provision of Services under this Head Agreement, the Contractor must provide Pro Bono Legal Services in accordance with the Pro Bono Appendix in Appendix 1. This condition includes compliance with reporting requirements as set out in Appendix 1. |
| 1. **WA Buy Local Policy 2022** | *If this procurement has a regional delivery point(s) and regional price preferences are to be applied as part of the evaluation of the**Head Agreement, then include the following clause. However, if Regional Price Preferences are only going to be applied when evaluating individual purchases from the CUA or Panel Agreement, then do not include this clause in the Head Agreement Details.*   1. **Obligations**   Where the Contractor claimed a Regional Content Preference, the Contractor must use the regional content detailed in its Offer.  If the Contractor is unable to use the agreed regional suppliers or subcontractors detailed in its Offer, the Contractor must:   * 1. Promptly notify the Contract Authority in writing; and   2. Where agreed by the Contract Authority in writing, use substitute regional suppliers or subcontractors.   The Contractor must allow the Department of Jobs, Tourism, Science and Innovation, or an authorised representative of the Department of Jobs, Tourism, Science and Innovation, to have access to and examine the Contractor’s Records concerning the Head Agreement to confirm whether the Contractor has met its regional content commitments.  *If a State Agency requires a Contractor to provide reporting for the agency’s Implementation Agreement, the reporting should be identified here. For regional procurements, it may also be appropriate to specify reporting requirements of a nature and frequency that will enable the State Agency to monitor any commitments made by the Contractor in claiming Regional Content Preference.*   1. **Reporting**   [Insert contractor reporting requirements related to the WA Buy Local Policy]  *If reporting requirements are inserted ensure the following are included.*   1. **Use of Information**   The Contract Authority may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Head Agreement. |
| 1. **National Principles for Child Safe Organisations** | *Remove this clause if not required.*  In relation to Services that comprise or involve “child-related work” (as defined in section 6 of the *Working with Children (Screening) Act 2004* (WA)), the Contractor agrees to implement the National Principles for Child Safe Organisations (<https://childsafe.humanrights.gov.au/national-principles/download-national-principles>). |
| 1. **Working with Children** | *Remove this clause if not required.*  Clause 18.6 of the General Conditions applies. |
| 1. **Annual Paid Information Session on Workplace Rights** | **Important Note:** The inclusion of this Special Condition in relevant contracts is mandated by General Procurement Direction 2023/01. It must be included in all ongoing cleaning and security contracts with an estimated contract value of $50,000 or above, except where the services are to be undertaken in schools and hospitals.  If you are using this template for a CUA or Panel Arrangement for cleaning services, ensure that you review the Request – Cleaning template (available from [wa.gov.au](https://www.wa.gov.au/government/document-collections/goods-and-services-templates)) and incorporate relevant cleaning services provisions as required.  The Contractor agrees to:   1. grant paid leave, paid at the ordinary rate of pay during normal working hours, to each of its employees who are Contractor Personnel (each a Contract Employee) in order for the Contract Employee to travel for and attend an information session on workplace rights conducted by the relevant union (Information Session); 2. grant that paid leave (Information Session Leave) to the Contract Employee for the period reasonably necessary to enable the Contract Employee to travel for and attend the Information Session,   subject to the conditions that:   1. this clause does not require the Contractor to grant to the Contract Employee more than two hours of Information Session Leave per calendar year during the Term, running from the commencement of the Term; 2. this clause does not require the Contractor to grant Information Session Leave to the Contract Employee to attend an Information Session which is scheduled to occur, or which occurs, at a time when the Contract Employee is not rostered or otherwise scheduled or obliged to work; and 3. the Contractor may stipulate reasonable conditions as to Information Session Leave, including as to the provision of sufficient notice in respect of the Contract Employee's planned attendance at an Information Session.   The Contractor must ensure that each of its contractors and subcontractors at any tier (if any) complies with this clause in respect of their employees who are Contractor Personnel.  In this clause, a reference to "employee" includes a natural person engaged under a contract for services. |

[The Customer Contract Details must be included in every Request]

**Customer Contract Details**

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| --- | --- |
| 1. **Customer** | [For a CUA or a Multi-User Cooperative Procurement Arrangement]  The Customer will be specified in the Order.  [or for a State Agency contract, including Panel Arrangement]  The Customer is the [insert entity name].  [or for a Group Buying Cooperative Procurement Arrangement]  The Customers are:   * [insert entity name of State Agency or Authorised Body] * [insert entity name of State Agency or Authorised Body].   *[****Important Note:*** *The legal entity for a government department is “The State of Western Australia acting through [insert name of department]”. The legal entity for a statutory authority or other body corporate is the body corporate name as specified in the relevant enabling legislation.]* |
| 1. **The Term of the Customer Contract** | The Term of the Customer Contract is [insert number of months or years]. [If a period contract with extension options, clauses 4 and 5 below must be included]  *[or]*  The Term of the Customer Contract will be specified in the Order.  *[or]*  The Term will commence on the Commencement Date and will expire when the Services have been supplied in accordance with Clause 6 of the General Conditions.  *[or]*  The Term will commence on the Commencement Date and will expire when the Goods have been supplied in accordance with Clause 7 of the General Conditions. |
| 1. **Commencement Date** | The Customer will notify the Contractor of the Commencement Date in the [insert either Letter or Order].  [or]  The Customer and the Contractor will agree on the Commencement Date and the Customer will confirm the agreed Commencement Date in the [insert either Letter or Order].  [or]  The Commencement Date is [insert date] |
| [If you have chosen the first option in clause 2 and wish to establish a period contract with extension options, include clauses 4 and 5 below] | |
| 1. Extensions | The Customer has [insert number] options to extend the Term, each option having a one (1) year duration. |
| 1. Notice of Extension | [insert period of notice]  [or]  Clause 3.4 of the General Conditions applies. |
| 1. Price Variation | The Price is fixed for the Term.  [or option 2]  The Price is fixed for the first year of the Term.  On each anniversary of the Commencement Date, the Price will be varied by the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth).  [or option 3]  The Price is fixed for the first year of the Term.  The Price will be varied after the first year of the Term on [Specify Date] by [Specify Mechanism].  [Important Note: If price variations are linked to exchange rate variations seek advice on the financial risk involved from the WA Treasury Corporation (WATC) at www.watc.wa.gov.au or on (08) 9235 9100]  The following text must be included if option 2 or 3 above are used] The Contractor shall apply in writing for the Customer’s approval each time a revised price is to be applied to the Contract. Twenty one (21) days prior notice is required for a price variation request.  Documentation will be required to justify applications for revised Contract prices during the term of the Contract.  No price variation is payable unless and until approved by the Customer.  Any request by the Contractor for back-payment of price variations will not be considered. |
| **Important Note:** The indicative insurance categories and amounts in this section do not represent ‘set’ minimum requirements. Insurance requirements should be determined by an insurable assessment of the contract risk.  **If your risk assessment indicates the standard insurance requirements below need to change, contact the Insurance Commission of WA** ([contracts@icwa.wa.gov.au](mailto:contracts@icwa.wa.gov.au)) to discuss the requirements before releasing the Request.  An introductory overview of risk management in the procurement context and procurement insurance requirements is also available from WA.gov.au ([Manage Risk Guidelines](https://www.wa.gov.au/government/multi-step-guides/procurement-guidelines/procurement-planning-individual-purchases-guidelines/manage-risk-guidelines)).  Examples of insurance requirements are set out below. Consider the contract deliverables and delete insurances marked as optional (see blue text) if not applicable. | |
| 1. Public Liability | **Public Liability** insurance covers bodily injury and property damage arising out of acts or omissions by the Contractor. Select this Item if the contract deliverables are **services only.**  If the contract deliverables are goods and/or services, delete this Item and select the Public and Products Liability Item below. Do not select both Items.  Public liability insurance cover should be **not less than $20 million**, or such higher level of cover as may be required by reference to the risk assessment.  Public liability insurance covering:   1. the legal liability of the Contractor and the Contractor Personnel arising out of the Services for an amount of not less than **[$20 million]** for any one occurrence and unlimited in the number of occurrences happening in any one period of insurance; and 2. indemnification of the Customer as principal to the extent of its liability arising out of the Services. |
| 1. Public and Products Liability | **Public Liability** insurance covers bodily injury and property damage arising out of acts or omissions by the Contractor. **Products Liability** insurance covers bodily injury and property damage arising out of loss or damage caused by the supply of faulty goods or products.  Select this item if the contract deliverables are **goods and services**, or **goods only**. This item should not be used for services only, unless the services include goods manufactured, erected, installed, constructed, repaired, serviced, sold or supplied, e.g. trade services, ICT services etc.  Delete this Item if you have selected the Public Liability Item above. Do not select both Items.  Public and products liability insurance cover should be **not less than $20 million**, or such higher level of cover as may be required by reference to the risk assessment.  Public and products liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Goods and / or Services for an amount of:   1. not less than [$20 million] for any one occurrence; 2. unlimited in the number of occurrences happening in any one period of insurance for public liability; and 3. limited in the annual aggregate to [$20 million] for products liability for all occurrences in any one period of insurance.   The monetary values in this Item are specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.  The Contractor’s public and products liability insurance cover must include cover for the indemnification of the Customer as principal to the extent of its liability arising out of the Goods and/or Services. |
| 1. Professional Indemnity | Important note: Automatic reinstatement of cover and the items listed in paragraphs (a)-(f) below may be standard cover or extensions to standard cover under a professional indemnity policy. These items are noted in Part B - Section 6 (Head Agreement and Customer Contract Insurance Requirements) to ensure that the relevant certificate of currency confirms coverage for these items.  Professional Indemnity insurance limits start at $1 million and rise in the following increments – $2 million, $5 million and $10 million. Coverage above $10 million is available (limits increase in increments of $10 million).  Set the required coverage by reference to the risk assessment and contact the Insurance Commission of WA ([contracts@icwa.wa.gov.au](mailto:contracts@icwa.wa.gov.au)) with any queries if guidance is required.  Professional indemnity insurance covering the civil liability of the Contractor and the Contractor Personnel under the Customer Contract, arising out of a breach of professional duty in the performance of the Services under the Customer Contract for an amount not less than **[select required value - $1 million / $2 million / $5 million / $10 million / $20 million]** for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.  Any monetary value(s) in this Item are specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.  The Contractor’s professional indemnity insurance must include cover commonly described as cover for:   1. fraud and dishonesty; 2. defamation; 3. intellectual property infringement; 4. loss of or damage to documents, data and electronic records; 5. breach of Australian Consumer Protection Legislation; and 6. vicarious liability for acts of agents and consultants.   The reference to “Australian Consumer Protection Legislation” in this Item means the *Competition and Consumer Act 2010* (Cth), *Corporations Act 2001* (Cth), *National Consumer Credit Protection Act 2009* (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction.  In some cases not all of the coverage items listed in paragraphs (a) to (f) above will be relevant to the risks associated with the Customer Contract. Contact [contracts@icwa.wa.gov.au](file:///C:\Users\00031908\Downloads\contracts@icwa.wa.gov.au) for guidance if required. |
| 1. **Workers’ Compensation** | Important Note: This provision has been updated to refer to the new Workers’ Compensation and Injury Management Act 2023 (WA) (the WCIM Act 2023) which commenced on 1 July 2024.  The workers’ compensation insurance must include cover for both common law liability and principal’s indemnity cover in respect of liability under section 217 of the WCIM Act 2023. This type of extension is commonly called a ‘Principal’s Indemnity Extension’.  Workers’ compensation insurance in accordance with the provisions of the *Workers’ Compensation and Injury Management Act 2023* (WA) (the **WCIM Act**).  The insurance policy must include:   1. common law liability cover for an amount of not less than **$50 million** for any one event in respect of workers of the Contractor; and 2. principal’s indemnity cover (by policy extension or otherwise), covering any claims or liability that may arise under the principal’s indemnity described in section 217 of the WCIM Act. |
| 1. Motor Vehicle Third Party | The **$25 / $30 million coverage** stated below is considered suitable for general vehicle transport. As part their risk assessment, agencies should consider factors including, the type of vehicles that will be used (supplier fleet vehicles or employee personal vehicles) and the way in which the vehicles will be used during the term of the Contract. A higher level of cover may be appropriate for contracts involving factors that increase risks, such as transport of dangerous goods.  Motor vehicle third party liability insurance covering legal liability of the Contractor for property loss or damage and bodily injury to, or death of, persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the Goods and / or Services for an amount of not less than [**$25 million / $30 million**] for any one occurrence or accident. |
| 1. Compulsory Third Party | Compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Goods and / or Services. |
| 1. Cyber Liability | **Important Note:** The inclusion of cyber liability insurance should be considered for procurements when, **as part of a detailed risk assessment**, a cyber liability exposure is identified. Please contact the Insurance Commission of WA ([contracts@icwa.wa.gov.au](mailto:contracts@icwa.wa.gov.au)) with any queries if guidance is required, including guidance on the appropriate coverage threshold between $1 million and $20 million.  The risks covered by cyber liability insurance include the Respondent’s legal liability following a “cyber attack” for claims arising from:  o the public disclosure of personal or corporate information  o liability, loss of, damage or destruction to any property (including data) whilst in the care, custody or control of the Respondent  o a breach of confidentiality or privacy  o any act by an unauthorised person or entity resulting in loss of, damage or destruction to the computer system (including hardware, software and data) owned or used by the Respondent.  If cyber liability insurance is required, select the clause below and add Cyber Liability to the Customer Contract Insurance Requirements table at section 6.  **Do not use a cyber liability insurance clause from a previous procurement as that clause may not be suitable in current circumstances**.  Cyber insurance covering the financial loss and legal liability of the Contractor for costs, expenses, loss or claims arising from any:   * 1. disclosure of personal or corporate information;   2. ransomware and extortion;   3. business interruption;   4. lost, damaged or destroyed data/records including software and hardware and recovery of such data/records;   5. computer virus and hacking including denial of service;   6. media liability; or   7. regulatory fines and penalties,   for an amount not less than **[select required value between $1 million - $20 million]** for any one claim and in the aggregate in any one period of insurance.  Any monetary value(s) in this Item are specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.  Select the maintenance of insurance provision below if the Contractor will retain access to Customer ICT systems and/or Customer information post expiry of the Contract. Contact ICWA ([contracts@icwa.wa.gov.au](mailto:contracts@icwa.wa.gov.au)) for guidance on the maintenance period if needed.  The cyber insurance required under this Item must be maintained throughout the Term and for a period of at least 6 years after termination or expiration of the Customer Contract.  **Survival**  The Contractor’s obligations under this Item are continuing obligations that survive the termination or expiration of the Customer Contract for so long as the obligations of the Contractor under this Item continue. |
| 1. Insurance Review | Consider including this Item when an assessment of insurable risk and the Term of the Customer Contract indicate that the Customer may require a mechanism to review the insurance requirements during the Term.   * 1. The Customer reserves the right, from time to time, to review the adequacy and appropriateness of the policies of insurance effected by the Contractor in relation to the Customer Contract. As part of the review, the Customer may ascertain whether, in the Customer’s reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Contractor in relation to the Customer Contract and maintained at the time of the review are still required or require amendment.   2. The Contractor must commence negotiations to obtain insurances or amend the policies of insurance effected by the Contractor in relation to the Customer Contract within [ten (10) Business Days] of receiving notice from the Customer to do so, and must, as soon as practicable thereafter at the Contractor’s own cost, obtain insurances or amend the policies of insurance effected by the Contractor in relation to the Customer Contract to reflect the recommendations made by the Customer following its review.   3. The Contractor must promptly notify the Customer if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the Customer review. The parties must determine what action, if any, is to be taken following receipt of this notice.   4. Each party warrants to the other that it will act reasonably and in good faith with respect to any action taken under or in connection with this Item. |
| 1. **Contract Management Requirements** | *Supplier performance management requirements should be considered and included here.*  Customer’s Representative  [insert details]  Customer’s address and email details  [insert details]  Reporting  [insert details]  Meetings  [insert details]  Key Performance Indicators  [insert details] |
| **SPECIAL CONDITIONS** [delete clauses if not applicable] | |
| 1. Performance Guarantee | [Optional clause - Delete if not applicable. However, if this clause is applicable, then the entire clause must be inserted (including the paragraph stating that this is a mandatory requirement).]  The Customer will conduct a financial due diligence on the short-listed Respondent. If the Customer determines in its discretion that the short-listed Respondent lacks the financial capability to perform the Contract then:   1. the Customer may seek a performance guarantee, in accordance with the form set out in Schedule 4; and 2. if the Customer requests a performance guarantee, then the short-listed Respondent must provide the performance guarantee by the date specified by the Customer.   This is a mandatory requirement. Failure by the Respondent to agree to this requirement will result in the Customer rejecting the Respondent's Offer. |
| 1. Financial Undertaking | [Optional clause - Delete if not applicable. However, if this clause is applicable, then the entire clause must be inserted (including the paragraph stating that this is a mandatory requirement).]  The Customer requires a financial undertaking to the amount of AUD$ [ ]million from an entity, and in a form, acceptable to the Customer.  The financial undertaking may be drawn down on termination of the Contract due to breach of contract by the Contractor or on the occurrence of any of the trigger events identified in these Customer Contract Details.  This is a mandatory requirement. Failure by the Respondent to agree to this requirement will result in the Customer rejecting the Respondent's Offer. |
| 1. Discharge of Performance and Financial Guarantee | [This clause must be inserted if a clause for Performance Guarantee or Financial Undertaking are inserted in this Request.]  The Customer will consent to the discharge of a performance guarantee, financial undertaking or similar arrangement made pursuant to these Special Conditions if, at any time following the termination or expiry of the Customer Contract, the Contractor can demonstrate to the Customer’s reasonable satisfaction that there is no basis for any claim to be made against the performance guarantee, financial undertaking or similar arrangement in the future. |
| 1. Liquidated Damages and Trigger Events | [Optional clause - Delete if not applicable. If this clause is to be used, the amount of liquidated damages and the events that trigger the payment of liquidated damages must be specified.]  [Important Note: if liquidated damages are required also require a financial guarantee for an appropriate amount] |
| 1. Civil Liability Act | [IMPORTANT NOTE: Optional clause - this clause should only be inserted following receipt of advice from the State Solicitor’s Office]  The Customer and the Contractor agree that Part 1F of the *Civil Liability Act (WA) 2002* does not apply to the Customer Contract. |
| 1. Confidential Information | **Important Note**: If there is any particular information that the Contractor must treat as confidential, insert the first option below and specify that particular information.  If there is not any particular information that the Contractor must treat as confidential, insert the second option below.  The Customer specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:  [Insert confidential information]  or (second option).  For the purposes of paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions, there is no information that is specified by the Customer as confidential. |
| 1. Police Clearance | Clause 18.4 of the General Conditions applies.  [or]  Clause 18.4 of the General Conditions does not apply. |
| 1. Confidential Declaration – Prevention of Paedophilia | Clause 18.5 of the General Conditions applies.  [or]  Clause 18.5 of the General Conditions does not apply. |
| 1. Warranties | The Contractor must give, or ensure the Customer has the benefit of, the following warranties:  [Insert warranties]  If the warranty specified exceeds the Term of the Customer Contract, the Warranty survives the expiry or termination of the Customer Contract.  [or]  For the purposes of clause 19.5 of the General Conditions, no warranties are specified. |
| 1. Intellectual Property Owner | **Important Note**: Under clause 23.1 of the General Conditions, the owner of Intellectual Property Rights in New Material is the State of Western Australia, unless otherwise specified. If the owner is to be an entity other than the State (e.g. a particular statutory authority), specify that entity in this Special Condition.  Clause 23.1 (a) of the General Conditions applies.  [or]  [ ] is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.1 of the General Conditions.  [or]  If the owner of Intellectual Property Rights in New Material is to be the Contractor, use this Special Condition.  The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions. |
| 1. **Working Papers** | Clause 23.1 (e) of the General Conditions applies.  or  Copyright and property in all Working Papers vest in the Contractor. |
| 1. **Publicity** | **Important Note**: Under clause 24.4 of the General Conditions, the Contractor may not use the name or logo of the Customer or any other State Agency without the requisite prior written consent. If there is "any other State Agency", specify in this Special Condition.  [ ] is specified for the purposes of clause 24.4 of the General Conditions.  or  For the purposes of clause 24.4 of the General Conditions, no other State Agency is specified. |
| 1. **Government Policies** | **Important Note**: If the Request requires the Contractor to comply with Government procurement policies, then insert the first option below and specify the relevant policy obligations.  The following obligations are obligations relating to Government procurement policies for the purposes of clause 32 of the General Conditions:   * The Western Australian Industry Participation Strategy requirements mentioned and/or described in Item [insert applicable Item number] of the Customer Contract Details * The Pro Bono Legal Services requirements mentioned and/or described in Item [insert applicable Item number] of the Customer Contract Details * The Buy Local 2022 requirements mentioned and/or described in Item [insert applicable Item number] of the Customer Contract Details * The Aboriginal Procurement Policy - Aboriginal participation requirements mentioned and/or described in Item [insert applicable Item number] of the Customer Contract Details   *[or] if there are no Government procurement policy obligations for the Contractor, insert the second option below:*  For the purposes of clause 32 of the General Conditions, no obligations relating to Government procurement policies are specified. |
| 1. **Western Australian Industry Participation Strategy – Requirements For Exempted WAIPS Contracts** | **Important Note**  **Do Not Include This Clause If Establishing A Head Agreement**.  Include where:   * the estimated total Customer Contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Participation Plan as a qualitative requirement has been granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Exemption Reporting**    1. The Contractor must submit a completed WAIPS Participation Plan Exemption Report to the Customer:       1. annually (**Annual Report**); and       2. upon the expiry of the Customer Contract (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the [WAIPS Participation Plan Exemption Report template](https://www.wa.gov.au/government/publications/waips-exemption-report-templates) which is available to download from [WA.gov.au](https://www.wa.gov.au/government/publications/waips-exemption-report-templates).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Customer to the Contractor; and      2. a Final Report no later than two months after the expiry of the Customer Contract.   3. Where the Customer Contract is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause** **survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **Western Australian Industry Participation Strategy (WAIPS) – Requirements For Participation Plans** | **Important Note**  **Do Not Include This Clause If Establishing A Head Agreement**.  Include where:   * the estimated total Customer Contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Participation Plan as a qualitative requirement has not been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation*.*  1. **Participation Plan Reporting**    1. The Contractor must submit a completed WAIPS Participation Plan Report to the Customer:       1. annually (**Annual Report**); and       2. upon the expiry of the Customer Contract (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the [WAIPS Participation Plan Report template](https://www.wa.gov.au/government/publications/waips-participation-plan-report-template) which is available to download from [WA.gov.au](https://www.wa.gov.au/government/publications/waips-participation-plan-report-template).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Customer to the Contractor; and      2. a Final Report no later than two months after the expiry of the Customer Contract.   3. Where the Customer Contract is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **Disability Access and Inclusion Plan** | Note: this clause should only be used if the Customer is required to have a Disability Access and Inclusion Plan (DAIP) under the Disability Services Act 1993 (In which case, the Customer must take all practicable measures to ensure that the DAIP is also implemented by the Contractor. The DAIP only applies to services provided to the public. It does not apply to services provided by the Contractor directly to the Customer e.g. cleaners, re-wiring of telephones etc.).  If the Customer Contract involves the supply of Services to the public, then the Contractor will:   1. to the extent practicable, implement the Customer’s “Disability Access and Inclusion Plan” prepared under the *Disability Services Act 1993*; and 2. provide a report to the Customer by [insert date] in each year of the Term reporting on the extent to which the Contractor has implemented the Customer’s Disability Access and Inclusion Plan. |
| 1. **Pro Bono Legal Services** | [Important Note: This condition and Appendix 1 must be included in all Requests where the Contractor will be providing legal services to the State of Western Australia.]  As a condition of provision of Services under this Contract, the Contractor must provide Pro Bono Legal Services in accordance with the Pro Bono Appendix in Appendix 1. This condition includes compliance with reporting requirements as set out in Appendix 1. |
| 1. **WA Buy Local Policy 2022** | *If this procurement has a regional delivery point(s), and regional price preferences are to be assessed as part of the evaluation of the Customer Contract, then include the following clause. However, for a CUA or Panel Arrangement where Regional Price Preferences are only going to be evaluated when establishing the Head Agreement, then do not include this clause in the Customer Contract Details.*   1. **Obligations**   Where the Contractor claimed a Regional Content Preference, the Contractor must use the regional content detailed in its Offer.  If the Contractor is unable to use the agreed regional suppliers or subcontractors detailed in its Offer, the Contractor must:   * 1. Promptly notify the Customer; and   2. Where agreed by the Customer in writing, use substitute regional suppliers or subcontractors.   The Contractor must allow the Department of Jobs, Tourism, Science and Innovation, or an authorised representative of the Department of Jobs, Tourism, Science and Innovation, to have access to and examine the Contractor’s Records concerning the Customer Contract, to confirm whether the Contractor has met its regional content commitments.  *If a State Agency requires a Contractor to provide reporting for the agency’s Implementation Agreement, the reporting should be identified here. For regional procurements, it may also be appropriate to specify reporting requirements of a nature and frequency that will enable the State Agency to monitor any commitments made by the Contractor in claiming Regional Content Preference.*   1. **Reporting**   [Insert contractor reporting requirements related to the WA Buy Local Policy]  *If reporting requirements are inserted ensure the following are included.*   1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **National Principles for Child Safe Organisations** | *Remove this clause if not required.*  In relation to Services that comprise or involve “child-related work” (as defined in section 6 of the *Working with Children (Screening) Act 2004* (WA)), the Contractor agrees to implement the National Principles for Child Safe Organisations (<https://childsafe.humanrights.gov.au/national-principles/download-national-principles>). |
| 1. **Working with Children** | *Remove this clause if not required.*  Clause 18.6 of the General Conditions applies. |
| 1. **Aboriginal Procurement Policy – Aboriginal Participation Requirements** | ***Important Note:*** *Remove this clause where there is a Standing Offer/Panel Arrangement with multiple suppliers and no expenditure or market share commitment.*  *This condition must be included in all Requests with an Estimated Contract Value of* ***$5 million and above*** *in the following industries (applicable UNSPSC codes are included in brackets):*   * *community and social services (all contracts delivered under the Delivering Community Services in Partnership Policy)* * *education and training (86100000, 86110000, 86130000, 86140000)* * *public administration and finance services (93150000)* * *construction (7210000, 72110000, 72120000, 72140000, 72150000). Note this template is for goods and services procurement and may not be suitable for works procurement; or* * *where the contract will be delivered to Aboriginal persons or target the specific needs of Aboriginal persons.*   *If this condition applies, include both* ***a i Aboriginal Business / ACCO Subcontracting Outcomes*** *and* ***a ii Employment of Aboriginal Persons Outcomes*** *in the Request. The Respondent will indicate which target it intends to pursue in their response to the Compliance and Disclosure Requirements.*  *Further information about the application of the Aboriginal participation requirements is available in the* [*Aboriginal Procurement Policy Agency Practice Guide*](https://www.wa.gov.au/government/publications/general-procurement-direction-202108-aboriginal-procurement-policy) *on wa.gov.au.*   1. **Aboriginal participation requirements**   The Contractor agrees to meet minimum Aboriginal participation requirements for:   * 1. **Aboriginal Business / ACCO Subcontracting Outcomes:**   At least 4 per cent of the contract value (at contract award) awarded to Aboriginal business subcontractors by the expiry of the Customer Contract.  For the purposes of this clause a i:   * + 1. ‘Aboriginal business’ means a business registered on Supply Nation’s Indigenous Business Direct (<https://supplynation.org.au/>) or the Aboriginal Business Directory of WA (<https://www.abdwa.com.au/>);     2. ‘ACCO’ means an Aboriginal Community Controlled Organisation as defined under the [Delivering Community Services in Partnership Policy](https://www.wa.gov.au/government/multi-step-guides/buying-community-services/getting-started-community-services-procurement/introducing-the-delivering-community-services-partnership-policy); and     3. Only contracts awarded to subcontractors contracted directly by the Contractor count towards the target.   or   * 1. **Employment of Aboriginal Persons Outcomes:**   *Include the applicable percentage based on the contract delivery point:*  *Perth metropolitan area; Peel; South West; Great Southern; Wheatbelt; and all statewide contracts: 2 per cent*  *Gascoyne, Mid West and Goldfields-Esperance: 5 per cent*  *Pilbara; Kimberley: 10 per cent.*  *Where the contract will be delivered across multiple regions, the lowest applicable target is to be included.*  Annually, based on the anniversary of the commencement of the Term, at least [2, 5 or 10] per cent of the total number of persons Employed on the contract will be Aboriginal Persons.  For the purposes of this clause a ii:   * + 1. ‘Aboriginal Person’ means a person who is of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which he or she lives or has lived.     2. ‘Employment’ means full-time, part-time, casual employees, apprentices and trainees, workers engaged through labour hire arrangements and other employer supported employment initiatives such as cadetships and internships, that engage in at least one hour of paid work per week. ‘Employed’ has a corresponding meaning.     3. Only employment by the Contractor and its direct subcontractors counts towards the target.  1. **Reporting**   Include additional reporting frequencies and/or requirements below if required.  The Contractor agrees to meet the following reporting requirements:   * 1. For the Aboriginal Business / ACCO Subcontracting Outcomes requirement, reporting must be submitted no later than 30 calendar days after the expiry of the Contract:      1. Subcontracts valued at $50,000 and above must be reported against this requirement.      2. The Contractor may report contracts awarded to Aboriginal business / ACCO subcontractors valued less than $50,000, however contracts valued less than $5,000 will not count against achieving this requirement.   2. For the Employment of Aboriginal Persons Outcomes, reporting relating to employment by the Contractor and its direct subcontractors must be submitted no later than 30 days within the anniversary of the Contract Commencement Date.   3. For either Aboriginal participation requirement (that is, under clause a.i or clause a.ii above), where the Contract Term is 12 months or less, only one report from the Contractor is required to be submitted no later than 30 days after the Expiry of the Contract.   4. The Contractor must submit each report on Tenders WA unless the State Agency advises otherwise.   5. For either Aboriginal participation requirement (that is, under clause a.i or clause a.ii above), the Contractor must retain substantiating information used to report against the relevant target for auditing purposes.   Further reporting guidance is available in the [APP Aboriginal Participation Requirements Guide](https://www.wa.gov.au/government/publications/general-procurement-direction-202108-aboriginal-procurement-policy) on wa.gov.au.   1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **Annual Paid Information Session on Workplace Rights** | **Important Note:** The inclusion of this Special Condition in relevant contracts is mandated by General Procurement Direction 2023/01. It must be included in all ongoing cleaning and security contracts with an estimated contract value of $50,000 or above, except where the services are to be undertaken in schools and hospitals.  If you are using this template for a CUA or Panel Arrangement for cleaning services, ensure that you review the Request – Cleaning template (available from [wa.gov.au](https://www.wa.gov.au/government/document-collections/goods-and-services-templates)) and incorporate relevant cleaning services provisions as required.  The Contractor agrees to:   1. grant paid leave, paid at the ordinary rate of pay during normal working hours, to each of its employees who are Contractor Personnel (each a Contract Employee) in order for the Contract Employee to travel for and attend an information session on workplace rights conducted by the relevant union (Information Session); 2. grant that paid leave (Information Session Leave) to the Contract Employee for the period reasonably necessary to enable the Contract Employee to travel for and attend the Information Session,   subject to the conditions that:   1. this clause does not require the Contractor to grant to the Contract Employee more than two hours of Information Session Leave per calendar year during the Term, running from the commencement of the Term; 2. this clause does not require the Contractor to grant Information Session Leave to the Contract Employee to attend an Information Session which is scheduled to occur, or which occurs, at a time when the Contract Employee is not rostered or otherwise scheduled or obliged to work; and 3. the Contractor may stipulate reasonable conditions as to Information Session Leave, including as to the provision of sufficient notice in respect of the Contract Employee's planned attendance at an Information Session.   The Contractor must ensure that each of its contractors and subcontractors at any tier (if any) complies with this clause in respect of their employees who are Contractor Personnel.  In this clause, a reference to "employee" includes a natural person engaged under a contract for services. |

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| **Note:** Finance has recently published a new guideline containing introductory guidance on work health and safety (WHS) risks in procurement and model clauses for use in goods and services documents. The [Work Health and Safety in Procurement Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) *(the* ***WHS Guideline****)* is available on WA.gov.au and forms part of the Manage Risk Guidelines.  The new guideline contains WHS related model clauses and guidance on when each clause may be applicable. The WHS Special Conditions below should be read together with the guideline. The Special Conditions do not cover all WHS risks or scenarios, but provide examples of commonly applicable provisions that a Customer may utilise to monitor and manage WHS risks during the Term of a Customer Contract.  Each Special Condition may or may not be relevant depending on the factual circumstances of the procurement and the WHS risks identified in the procurement risk assessment. Select, adapt, supplement or delete the Special Condition(s) as required.  If you need to adapt, expand, or substitute these Special Conditions to address WHS risks associated with a procurement, you are encouraged to engage with your agency’s WHS team and/or seek legal advice as required. | |
| 1. **Customer’s WHS Procedures** | Select or delete this Item as required. Refer to the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition.  In this special condition:  WHS Procedures means the document, as may be updated by the Customer from time to time during the Term, that describes the Customer’s work health and safety procedures relevant to the Contractor’s activities under the Customer Contract.   1. The Customer will provide the Contractor with the WHS Procedures [prior to the commencement of the Customer Contract [or] within [insert number of Business Days] Business Days of the Commencement Date] and provide the Contractor with a revised version promptly following any update to the WHS Procedures during the Term. 2. The Contractor has [insert number of Business Days] Business Days from the date of receipt of the WHS Procedures (and any update thereto) to implement processes and procedures to maintain compliance with the WHS Procedures in the provision of the Goods and/or Services. 3. The Contractor must ensure the Contractor Personnel engaged in performing work under the Customer Contract comply with WHS Procedures, including without limitation completing required training and/or attending the Customer's safety induction at a time and place to be specified by the Customer prior to commencing work. |
| 1. **WHS Management Plan** | Select or delete this Item as required. Refer to the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition. Note that this Item cross refers to the defined terms WHS Notification Requirement and WHS Laws, both of which are defined in clause 1.1 of the General Conditions.  In this special condition:  **WHS Incident** means an incident which triggers a WHS Notification Requirement.  **WHS Management Plan** means a plan demonstrating how the Contractor will manage specific work health and safety issues relevant to the Goods and/or Services during the Term, including documenting the system and methods that will be used by the Contactor.   1. The Contractor must:    1. prepare and implement a WHS Management Plan in relation to the performance of the Customer Contract; and    2. submit the WHS Management Plan to the Customer within [10] Business Days of the Commencement Date, for the Customer's information only. 2. The Contractor must:    1. review the WHS Management Plan at intervals of at least every [insert number of months] months during the Term, and as informed by the review, update the WHS Management Plan to ensure that it remains relevant; and    2. promptly submit the updated WHS Management Plan to the Customer, for the Customer's information only. 3. The WHS Management Plan must, at a minimum, detail:    1. the policies and procedures that the Contractor will implement to meet any applicable legislative or regulatory work health and safety requirements;    2. the timing and content of work health and safety training to be provided to Contractor Personnel and the relevant qualifications of the Contractor Personnel;    3. work health and safety issues and how each issue will be managed by the Contractor, if it occurs;    4. the procedures that the Contractor will implement to ensure compliance with Item[s] [insert cross reference to other applicable WHS Special Conditions, selected from template Items 38-43 or added by the Customer]; and    5. the specific process and timetable for WHS Incident management. |
| 1. **Safety and Operation Information** | Select or delete this Item as required. Refer to the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition.  The Contractor must provide the Customer with all relevant safety, operational, inspection and testing information relating to the Goods [specify time period for delivery of the information]. e.g. within [X] Business Days of the Commencement Date / delivery of the Goods / installation etc. |
| 1. **Work Health and Safety Training** | Select or delete this Item as required. Refer to of the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition. Note that this Item cross refers to the defined terms WHS Notification Requirement and WHS Laws, both of which are defined in clause 1.1 of the General Conditions.  In this special condition:  **WHS Management Plan** means a plan demonstrating how the Contractor will manage specific work health and safety issues relevant to the Goods and/or Services during the Term, including documenting the system and methods that will be used by the Contactor.  **WHS Procedures** means the document, as may be updated by the Customer from time to time during the Term, that describes the Customer’s work health and safety procedures relevant to the Contractor’s activities under the Customer Contract.   1. The Contractor must ensure all Contractor Personnel undertake work health and safety training [prior to commencing work under the Customer Contract], including but not limited to familiarisation with:    1. the legislative framework of WHS Laws;    2. [the WHS Procedures and ]the WHS Management Plan; and    3. procedures for the reporting and resolution of work health and safety issues in the workplace. 2. The Contractor shall maintain training attendance records [signed by each attendee ]and make those records available to the Customer on request. |
| 1. **Work Health and Safety Reporting** | Select or delete this Item as required. Refer to the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition.  The Contractor must provide to the Customer:   1. a report in writing regarding work health and safety performance in relation to the Customer Contract:    1. in the format specified by the Customer; At a minimum, reporting should be provided in writing. Consider whether a specific reporting format is required. Consult your agency’s WHS team if needed.    2. [in the timeframe specified by the Customer] / [within [X] Business Days of receipt of a request from the Customer] / [specify reporting frequency, e.g. monthly, bi-annually, annually etc.]; Specify the reporting frequency 2. at the request of the Customer, documentation evidencing the Contractor’s compliance with its work health and safety obligations under the Customer Contract[. / ; and] 3. Only include this provision for procurements with high WHS risks[if the Customer (on reasonable grounds) suspects the Contractor is not complying with its work health and safety obligations under the Customer Contract, an independent verification report prepared:    1. by a suitably qualified expert (acceptable to the Customer);    2. at the Contractor’s expense,   verifying the Contractor’s compliance with its work health and safety obligations under the Customer Contract]. |
| 1. **WHS Incident** | Select or delete this Item as required. Refer to the [WHS Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) for guidance on using this Special Condition. Note that this Item cross refers to the defined terms WHS Notification Requirement and WHS Laws, both of which are defined in clause 1.1 of the General Conditions.  In this special condition:  **WHS Incident** means an incident which triggers a WHS Notification Requirement.  The Contractor must:   1. promptly investigate any WHS Incident, unless directed otherwise by the Customer; 2. allow the Customer to conduct its own investigation into the WHS Incident, and co-operate with the Customer’s investigation on request by the Customer; and 3. promptly provide the Customer with all relevant information and documents, in relation to the WHS Incident including:    1. details of any notification made in accordance with clause 19.10 of the General Conditions;    2. a copy of any notice issued by an WorkSafe WA or other work health and safety authority requiring the Contractor to provide information or documents;    3. a copy of any information or document provided by the Contractor to WorkSafe WA or other work health and safety authority;    4. details of any enforcement action taken against the Contractor, including legal proceedings commenced against the Contractor; and    5. a copy of any investigation report prepared by or at the instruction of the Contractor. |

[For Use With ICT Contracts Only]

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| **Supply of Consultancy and Contracting Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Description of Consultancy and Contracting Services | [insert description of Consultancy and Contracting Services]  or  [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Resources required | [insert details] |
| 1. Methodology requirements | [insert details] |
| 1. Performance Measures | [insert details] |
| **Hardware/Good Specific Issues** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Details of Hardware required | [insert details] or [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Time for transfer of title | [insert details] |
| 1. Overview of implementation and training services | [insert details] |
| 1. Whether Hardware warranted to be free of defects | [insert period] |
| 1. Whether Hardware warranted to be in compliance with the Specification | [insert details] |
| 1. Period for which warranty applies | [insert details] |
| **Supply of Hardware Maintenance Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements, Schedule 7 - Project Plan and Schedule 9 - Hardware Maintenance Services* | |
| 1. Overview of Hardware Maintenance requirements | [insert details] |
| 1. Commencement date | [insert details] |
| 1. Renewal arrangements | [insert details] |
| 1. Whether maintenance is to commence prior to the expiry of a warranty | [insert details] |
| 1. Whether preventative maintenance is required | [insert details] |
| 1. Whether remedial maintenance is required | [insert details] |
| **Supply of Managed Services** [delete if not applicable]  *See also Schedule - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. General Obligations of Contractor | [insert details] or [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Service commencement date | Services shall commence on [insert date] |
| 1. Assets to be acquired from Customer | [insert details] |
| 1. Content of procedures manual | [insert details] |
| 1. Service delivery requirements | [insert details] |
| 1. Reporting intervals (if not monthly) | [insert details] |
| 1. Qualifications on transition-out obligations | [insert details] |
| **Supply of Software Development Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Overview of the Software to be developed | [insert details] |
| 1. Resources required | [insert details] |
| 1. Date for submission of project plan | [insert details] |
| 1. Date for approval of project plan | [insert details] |
| 1. Extended period for approval of project plan | [insert details] |
| 1. Date for submission of Design Specification | [insert details] |
| 1. Date for approval of Design Specification | [insert details] |
| 1. Extended period for approval of Design Specification | [insert details] |
| 1. Documentation requirements | [insert details] |
| 1. Whether the source code is to be placed in escrow | [insert details] |
| 1. Whether Developed Software can be used prior to Acceptance | [insert details] |
| **Software Licensing** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Description of Licensed Software | [insert details] |
| 1. Special or alternative licence conditions (attach if necessary) | [insert details] |
| 1. Number of copies of Licensed Software | [insert details] |
| 1. Whether the licence can be transferred to another government entity | [insert details] |
| 1. Whether the licence is transferable | [insert details] |
| 1. Period of licence | [insert details] |
| 1. Customer's record keeping requirements | [insert details] |
| 1. Implementation and training services | [insert details] |
| 1. Requirements for updates and new releases | [insert details] |
| 1. Period during which Contractor must maintain superseded version (if not 18 months) | [insert details] |
| 1. Designated equipment for the Licensed Software | [insert details] |
| 1. Whether the Customer requires an archival copy | [insert details] |
| 1. Restrictions on archival use | [insert details] |
| 1. Post-licence period for return or destruction of Licensed Software | [insert details] |
| 1. Whether escrow is required | [insert details] |
| 1. Name of escrow agent if one is required | [insert details] |
| 1. Special conditions governing application of third party contracts | [insert details] |
| **Supply of Software Support Services** [delete if not applicable]  *See Schedule 10 - Software Support Services* | |
| 1. Overview of Software Support Services | [insert details] |
| 1. Commencement date for Software Support Services | [insert details] |
| 1. Renewal arrangements | [insert details] |
| **Supply of Systems Integration** **Services** [delete if not applicable]  See Schedule 2 - Specification/Statement of Requirements and Schedule 7 - Project Plan | |
| 1. Overview of Systems Integration Services | [insert details] |
| **Supply of Telecommunications Services** [delete if not applicable]  *See Schedule 2 - Specifications/Statement of Requirements and Schedule 7 - Project Plan* | |
| 1. Overview of Telecommunications Services | [insert details] |
| 1. Authorities which Contractor is to obtain | [insert details] |
| 1. Special terms and conditions applicable to Telecommunications Services | [insert details] |
| 1. Interoperability Requirements | [insert details] |
| **Acceptance Testing** [delete if not applicable]  *See Schedule 13 - Acceptance Testing Requirements* | |
| 1. Whether Acceptance testing is required | [insert details] |

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| **Indemnities, Liability and Releases** | |
| (a) Restricted Application of Indemnity | Sub-clauses (b) (c), (d), (e) and (f) only apply to loss or liability arising from claims made by a third party. The obligations of the parties in circumstances not addressed by these clauses will be determined by reference to sub-clause (g). |
| (b) Third Party Indemnity by Contractor | The Contractor indemnifies the Customer (including the Customer’s Personnel) against any loss or liability that has been incurred by the Customer as the result of a claim made by a third party, including loss or liability in respect of personal injury, sickness, death or property damage, where and to the extent that loss or liability:   1. was caused or contributed to by a breach of the Customer Contract, or tortious, unlawful or wrongful act or omission, by the Contractor or the Contractor’s Personnel; or 2. arises from a claim made or threatened against the Customer in which it is alleged that a Service or Good (including the Customer's use of a Service or Good) infringes the Intellectual Property Rights of a third party. For the purposes of this sub-clause (b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the *Patents Act 1990* (Cth) s.163, the *Designs Act 2003* (Cth) s.96, the *Copyright Act 1968* (Cth) s.183 and the *Circuits Layout Act 1989* (Cth) s.25, constitute an infringement; or 3. arises from a claim made or threatened against the Customer relating to a breach of confidence or privacy by, or a conflict of interest in respect of, the Contractor. |
| (c) Customer's Obligations to Contractor | Where the Customer wishes to enforce an indemnity in sub-clause (b), it must   1. not admit liability for the alleged breach, or tortious, unlawful, or wilfully wrong act or omission, or infringement; 2. give written notice to the Contractor as soon as practicable; 3. subject to the Contractor agreeing to comply at all times with government policy relevant to the conduct of the litigation, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and 4. in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation. |
| (d) Continued Use or Replacement of Infringing Material | If a claim of infringement of Intellectual Property Rights is made or threatened by a third party, the Customer will allow the Contractor, at the Contractor’s expense, to either:   1. obtain for the Customer the right to continued use of the Good; or 2. replace or modify the Good so that the alleged infringement ceases so long as the Good continues to provide the Customer with equivalent functionality and performance as required in the Specifications. |
| (e) Third Party Indemnity by the Customer | The Customer indemnifies the Contractor (including the Contractor’s Personnel) against any loss or liability that has been incurred by the Contractor as the result of a claim made by a third party where and to the extent that loss or liability was caused or contributed to by a breach of the Contract or tortious act or omission by the Customer or the Customer’s Personnel including loss or liability in respect of personal injury, sickness, death or property damage. |
| (f) Contractor's Obligations to Customer | Where the Contractor wishes to rely on the indemnity in sub-clause (e) it must:   1. not admit liability for the alleged breach or tortious act or omission; 2. give written notice to the Customer as soon as practicable; 3. permit the Customer, at the Customer's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and 4. provide all reasonable assistance to the Customer in the handling of negotiations and litigation. |
| (g) Liability Generally | Subject to the releases from loss or liability (if any) in sub-clauses (i), (j) and (k) the liability of either party for breach of the Contract or for any other common law or statutory cause of action arising out of the operation of the Contract will be determined under the relevant law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time. |
| (h) General Exclusions from Release from Liability | Any release from loss or liability does not apply to loss or liability for:   1. 3rd party claims including in respect of any exemplary or punitive damages awarded to a 3rd party; 2. personal injury, sickness and death; 3. subject to sub-clause (k), loss of, or damage to, tangible property which does not include data or Software; 4. infringement of Intellectual Property Rights; 5. breach of confidence or privacy by the Contractor; 6. a conflict of interest in respect of the Contractor; 7. matters that cannot be excluded at law; 8. to the extent that a party is able to recover the loss from its insurer; 9. an abandonment of the Customer Contract by a party; 10. reckless acts or omissions carried out with a wilful disregard for the consequences; 11. wilful and intentional breach by a party; 12. any statutory fines or penalties levied against a party;   and in no circumstances is the Contractor released from liability to the Customer in respect of any unlawful acts or omissions of the Contractor or the Contractor’s Personnel.  None of the exclusions in paragraph (a) to (l) inclusive shall limit the operation of any other exclusion(s). |
| (i) Customer – Contractor (Party- Party) Liability | Each party releases the other in respect of Party-Party claims from all loss or liability from a breach of the Customer Contract or tortious act or omission in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Term.  or  Loss or liability arising from a breach of the Contract or tortious act or omission is unlimited.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (j) Indirect and Consequential Losses | (Loss of Profit etc.) Each party releases the other from all loss or liability from any and all claims in respect of all loss of profit, income, savings, production, business or investment opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  or  (Loss of Profit etc.) All loss of profit, income, savings, production, business or investment opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341, is recoverable.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  or  (Loss of Profit etc.) Each party releases the other from all loss or liability from any and all claims in respect of all loss of profit, income, savings, production business or investment opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341, in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Contract Term.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (k) Loss of data etc. | (Loss of Data and Damage to Software (Non-Tangible Property) Sub-clause (h) is amended by deleting the reference to “*tangible property which does not include data or Software*” and replacing it with “*property which includes for the purposes of the Contract data and Software*”.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  or  Each party releases the other from all loss or liability from any and all claims in respect of loss of data or damage to Software.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  or  Each party releases the other from all loss or liability from any and all claims in respect of loss of data or damage to Software in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Contract Term.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (l) Contribution | The liability of a party ("1st Party") for loss or liability sustained by the other party ("2nd party") will be reduced proportionately to the extent that such loss or liability has been caused by the 2nd Party's failure to comply with its obligations and responsibilities under the Contract and to the extent that a tortious act or omission of the 2nd Party has contributed to such loss or liability. |
| (m) Termination of Contract | If a claim is made by the Customer against the Contractor which results in any of the releases in this sub-clause having effect, the Customer may by notice in writing to the Contractor immediately terminate the Contract.  If a claim is made by the Contractor against the Customer which results in any of the releases in this sub-clause having effect, the Contractor may by notice in writing to the Customer immediately terminate the Contract. |
| (n) Survival | This clause survives the termination or expiry of the Contract. |

Schedule 2 - Specification / Statement of Requirements

# Statement of Requirements

[insert a brief description of the Goods and / or Services required]

# Specification

[insert a detailed and clearly set out specification for the Goods and / or Services required]

Refer to and ensure compliance with Procurement Rule D2 – Request Specifications and all the subsection Rules when developing your specification particularly if this Procurement is a Covered Procurement.

Also, where it has been determined one or more of the Western Australian Social Procurement Framework Community Objectives and Outcomes can be delivered through this procurement, the specification is to set out the requirements for the objectives and outcomes.

Further to the specifying of the objectives and outcomes requirements, consideration should also be given to the development of your qualitative criteria and contract management requirements.

Refer to the [*Western Australian Social Procurement Framework*](https://www.wa.gov.au/government/publications/western-australian-social-procurement-framework) for information about the Community Objectives and Outcomes and the [*Western Australian Social Procurement Framework Practice Guide*](https://www.wa.gov.au/government/publications/western-australian-social-procurement-framework) for information about identifying and incorporating the Community Objectives and Outcomes into a procurement.

## Goods

The following are some suggestions that may be considered:

* Good/quality description with the possible inclusion of a minimum technical specifications table and/or industry standards.
* *Appropriate social procurement initiatives with the inclusion of suitable requirements/obligations to support the targeted initiative and community outcome e.g.* Sustainability and environmental requirements to achieve sustainability outcomes.
* Quantities required or specify an estimated number required annually.
* Samples to be supplied (if required) – at no cost, when and where they are to be provided and sample returns.
* Delivery Free into Store, date, time and location of deliveries.
* Ordering arrangements.
* Warranties.
* Installation (if required).
* Training (if required).
* Post warranty maintenance.
* Work Health and Safety (WHS):
  + Are there any specific design requirements, industry standards or codes of practice; or specific safe design principles, production, delivery and/or disposal requirements that should be applied?
  + Are there any WHS licences, certifications or authorisations that must be held; or WHS management systems or procedures that should be in place; or information sharing or WHS training that should be required?
* Any special payment provisions and where invoices are to be submitted.
* Contract Management requirements: rectification of unsatisfactory work – contract meetings – any performance indicators.

## Services

The following are some suggestions that may be considered:

* Description – objectives – tasks of the services.
* *Appropriate social procurement initiatives with the inclusion of suitable requirements/obligations to support the targeted initiative and community outcome e.g.* Sustainability and environmental requirements to achieve sustainability outcomes.
* Quality/industry standards that may be required.
* Where the services are to be performed.
* Outline of methodology.
* Indicative hours (if applicable).
* Any material to be provided by the Customer.
* Stakeholder consultations.
* Service outcomes: project timetable – development of a project plan – deliverables – reports (when they required both draft and final – whether progress reports are required – are presentations to the Customer required –format of report – number of copies).
* Work Health and Safety (WHS) – Are there any WHS licences, certifications or authorisations that must be held; or WHS management systems or procedures that should be in place; or information sharing or WHS training that should be required?
* Any special payment provisions and where invoices are to be submitted.
* Contract management requirements: rectification of unsatisfactory work – contract meetings – any performance indicators.
* Whether it is necessary to include information about service users, particularly for procurements of services that involve the public. This may include outlining the groups that will be targeted or impacted by the Procurement including the identification of Aboriginal, ethnic, social minority and LGBTIQA+ communities. Any language services requirements (i.e. interpreting or translation services) should also be identified. It may be appropriate to include an inclusivity requirement within the specification to make Contractors aware of the State agency’s expectations.

Part B – Content Requirement and Respondent’s Offer

*Part B should be completed by the Respondent and returned to the Contract Authority or Customer (refer ‘submission of offer’ requirements of clause 2.1 in the Request Conditions).*

# Note to Respondent

In preparing its Offer, the Respondent must:

1. address each requirement in the form set out in this Part B;
2. take into account the [Head Agreement and] (delete if not applicable) Customer Contract requirements, as explained in the [Head Agreement Details and] (delete if not applicable) Customer Contract Details. The Respondent must read these in conjunction with the General Conditions;
3. in respect of the Qualitative Requirements in Section 5 in this Part B, provide full details of any claims, statements or examples. No detail is to be referenced to any website (refer ‘(no reference to information on websites)’ under clause 2.7 of the Request Conditions;
4. assume that the Contract Authority or Customer has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the Contract Authority, Customer or any other State Agency; and
5. nominate any Offer Information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions.

# Identity of Respondent

The Respondent must provide the following details:

|  |  |
| --- | --- |
| **Respondent to Complete:** | |
| 1. Name of Legal Entity: |  |
| 1. ACN (if a company): |  |
| 1. Registered address of Company or address of principal place of business if no registered address: |  |
| 1. Business Name: |  |
| 1. ABN: |  |
| 1. Contact Person: |  |
| 1. Contact Person Position Title: |  |
| 1. Email: |  |
| 1. Telephone: |  |
| 1. Address and email for service of contractual notices: |  |

**NB: The Offer does not require the Respondent’s signature**.

# Pre-Qualification Requirements

There are no pre-qualification requirements for this Request.

*or*

The Contract Authority or Customer will not consider any Offer that does not meet all of the following Pre-Qualification Requirements:

These should be specified with extreme caution

1. (for example) Quality

[Requesting that Respondents have certification to the AS/NZS ISO 9001:2016 Quality Management Systems standard (or similar standards) is appropriate for complex, high risk and high value procurements, particularly those requiring specialist skills, knowledge, innovation or design that may affect departmental programs. Unless there is a specific need for this standard, do not request it]

|  |  |
| --- | --- |
| The Respondent must provide a management system certified as complying with the requirements of AS/NZS ISO 9001:2016 – Quality Management Systems – Requirements. The Respondent’s scope of registration must include **[state specific requirement]** [Design / Standard].  **Respondent to Complete:**  Does the Respondent have a quality management system that complies with the quality assurance requirements specified in this clause? | |
| Yes | No |

1. (for example) Attendance at Mandatory Briefing

|  |  |
| --- | --- |
| The Respondent, or its representative, must have attended the mandatory briefing described in clause 1.5 of Part A  **Respondent to Complete:**  (for example) Did the Respondent attend the mandatory briefing? | |
| Yes | No |

1. (for example) Licensing or Statutory Approval Requirements

|  |  |
| --- | --- |
| **Respondent to Complete:**  (for example) Is the Respondent licensed as required, or able to attain the statutory approvals as required? | |
| Yes | No |

# Compliance and Disclosure Requirements

The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements, and/or which contains material departures from the Head Agreement Details *(delete if not applicable)*, Customer Contract Details and/or General Conditions.

1. **Compliance**
2. Head Agreement Details [delete if not applicable]

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the Head Agreement Details. If the Respondent will not comply with any clause of the Head Agreement Details, the Respondent must set out:   * + 1. the clause(s) of the Head Agreement Details it will not comply with;     2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Head Agreement Details; and     3. the reason for non-compliance.   **Respondent to Complete:**  Does the Respondent agree to the Head Agreement Details? | |
| Yes | No |
| If no, provide details: | |

1. **Customer Contract Details**

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the Customer Contract Details (excluding the General Conditions and Schedules). If the Respondent will not comply with any clause of the Customer Contract Details, the Respondent must set out:   1. the clause it will not comply with; 2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Customer Contract Details; and 3. the reason for non-compliance.   **Respondent to Complete:**  Does the Respondent agree to the Customer Contract Details? | |
| Yes | No |
| If no, provide details: | |

1. **General Conditions / Schedules**

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the General Conditions and Schedules. If the Respondent will not comply with any of the General Conditions and Schedules, the Respondent must set out:   * + 1. the General Condition / Schedules it will not comply with;     2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the General Conditions / Schedules; and     3. the reason for non-compliance.   **Respondent to Complete:**  Does the Respondent agree to the General Conditions/Schedules? | |
| Yes | No |
| If no, provide details: | |

1. **Aboriginal Procurement Policy – Aboriginal Participation Requirements**

*[Delete if not applicable]*

|  |  |  |
| --- | --- | --- |
| **Respondent to Complete:**  Does the Respondent agree to apply the Aboriginal participation requirements as outlined in Schedule 1 – Customer Contract Details, Item *[Insert the Item number of the Aboriginal Procurement Policy – Aboriginal Participation Requirements clause]*? | | |
| Yes | No | |
| If Yes, which Aboriginal participation requirement does the Respondent agree to comply with? | | |
| Aboriginal Business / ACCO Subcontracting Outcomes | |  |
| or | | |
| Employment of Aboriginal Persons Outcomes | |  |
| If no, provide details: | | |

**b). Disclosures**

**(i) Participants (including subcontractors)**

|  |  |
| --- | --- |
| **Respondent to Complete:**  Is the Respondent acting as an agent or trustee for another person or persons? | |
| Yes | No |
| If yes, provide details: | |
| And  Is the Respondent acting jointly or in association with another person or persons? | |
| Yes | No |
| If yes, provide details: | |
| And  Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the supply of the Services? | |
| Yes | No |
| If yes, provide the following details for each subcontractor:  Full legal name of subcontractor:  Business name of the subcontractor:  ACN / ARBN (if applicable):  Postal address:  Requirements to be subcontracted: | |
| The Respondent warrants that the Respondent has obtained consent from each above-named subcontractor permitting the Respondent to receive information from the Customer and the Contract Authority as to whether the subcontractor is a suspended supplier within the meaning of the *Procurement (Debarment of Suppliers) Regulations 2021*, for the purposes of this procurement process and any resulting Customer Contract. | |

**(ii) Criminal Convictions**

|  |  |
| --- | --- |
| The Respondent must confirm that neither the Respondent, nor any of the Respondent’s senior officers (as defined in regulation 3(1) of the *Procurement (Debarment of Suppliers) Regulations 2021*), nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention.  **Respondent to Complete:**  Has the Respondent or any of the Respondent’s senior officers or any person included in the Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention? | |
| Yes | No |
| If yes, provide details: | |

**(iii) Conflict of Interest**

|  |  |
| --- | --- |
| The Respondent must declare and provide details of any actual, potential or perceived conflict of interest.  **Respondent to Complete:**  Does the Respondent have any actual, potential or perceived conflict of interest in relation to the performance of the Customer Contract (if awarded) by the Respondent? | |
| Yes | No |
| If yes, the reasons why: | |

**(iv) Small Business, Australian Disability Enterprise (ADE), Aboriginal Business and/or ACCO**

|  |  |  |
| --- | --- | --- |
| **Respondent to Complete:**  Respondent is required to disclose whether it is a: | | |
| * 1. small business that employs less than twenty (20) people; and/or | | |
| Yes | No | |
| * 1. registered Australian Disability Enterprise (ADE) – registered means to be listed as an approved ADE on the Australian Disability Enterprises website at: [*http://buyability.org.au/directory/*](http://buyability.org.au/directory/); and/or | | |
| Yes | No | |
| * 1. registered Aboriginal business – the business is to be registered on the Aboriginal Business Directory WA at: [*http://www.abdwa.com.au/*](http://www.abdwa.com.au/) and/or on Supply Nation’s Indigenous Business Direct at [*http://supplynation.org.au/*](http://supplynation.org.au/). | | |
| Yes  If Yes, registered on:  Aboriginal Business Directory WA  Supply Nation’s Indigenous Business Direct  Both | | No |
| (D) Aboriginal Community Controlled Organisation (ACCO) – means the organisation is:   * incorporated under State or Commonwealth legislation and not for profit; * controlled and operated by a majority of Aboriginal and/or Torres Strait Islander people; * involved or connected to the community, or communities, in which it delivers the services; * governed by a majority Aboriginal and/or Torres Strait Islander governing body.   *(Aboriginal Community Controlled Organisation is as defined in the* [*Delivering Community Services in Partnership Policy*](https://www.wa.gov.au/government/multi-step-guides/buying-community-services/getting-started-community-services-procurement/introducing-the-delivering-community-services-partnership-policy)*.)* | | |
| Yes | | No |
| If Yes, provide the Respondent’s Australian Charities and Not-for-profits Commission (ACNC) registration as well as one of the following:   * details of the Respondent’s registration with the [Office of the Registrar of Indigenous Corporations](https://www.oric.gov.au/) (ORIC) or the [Australian Securities & Investments Commission](https://asic.gov.au/) (ASIC) or the [Department of Energy, Mines, Industry Regulation and Safety](https://www.dmirs.wa.gov.au/) (DEMIRS); or * an extract of the relevant provisions of the Respondent’s constitution or governing documents. | | |

**(v)** **Work Health and Safety**

As noted in the [Work Health and Safety in Procurement Guideline](https://www.wa.gov.au/government/publications/work-health-and-safety-procurement-guideline) (available on WA.gov.au), it is recommended that this work health and safety (WHS) disclosure is included in all Requests. If the procurement has novel or elevated WHS risks, consider increasing the reference period from 2 years to up to 4 years.

|  |  |
| --- | --- |
| The Respondent must disclose whether the Respondent has received any prohibition notice(s), accepted any enforceable undertaking(s) or been the subject of any prosecution(s) commenced by WorkSafe WA under the *Occupational Safety and Health Act 1984* (WA) or the *Work Health and Safety Act 2020* (WA), or any associated regulations, or any equivalent action under a corresponding work health and safety law in another Australian jurisdiction, in the last [2 years]? | |
| Yes | No |
| If Yes, provide details of the notice, enforceable undertaking and/or prosecution and include a summary of actions taken by the Respondent in response thereto: | |

**(vi) Credit Card/Purchasing Card Payment** [delete if not applicable]

|  |  |
| --- | --- |
| **Respondent to Complete:**  The use of credit cards/purchasing cards by agencies is actively promoted as a payment method.  The Respondent is required to disclose whether it agrees to receive credit card/purchasing card payment.  Does the Respondent agree to receive credit card/purchasing card payments? | |
| Yes | No |
| [Please refer to clause 21.6 of the Request Conditions and General Conditions of Contract for additional information] | |

**(vii)** Software Licence Agreements[delete if not applicable]

|  |  |
| --- | --- |
| **Respondent to Complete:**  The Respondent is required to disclose the basis of the licensing arrangements for the Licensed Software as proposed under the Customer Contract. This is to include:   1. The name of the legal entity with whom the Customer will enter the software licence agreement; 2. If the entity identified in (A) above is not the same as the legal entity submitting this Offer as identified in Section 2 of Part B, the Respondent must explain the relationship between the two entities; 3. If the entities identified in (A) and (B) are not the same legal entity, the Respondent must provide details of the warranties it is prepared to offer to the Customer in relation to the intended solution; 4. A copy of any software licence agreements applicable to the Respondent’s Offer; and 5. A copy of any software maintenance agreements applicable to the Respondent’s Offer.   The Respondent must address each of the points set out above.  And  Has the Respondent included copies of any software licence and maintenance agreements applicable to the Respondent’s Offer? | |
| Yes | No |

**(viii)** Competitive Neutrality [for services only - delete if not applicable]

|  |  |  |
| --- | --- | --- |
| If the Respondent is a tertiary institution or statutory or Government body (including a State Agency), the Respondent’s Offer must:  (A) be calculated on a full commercial basis (in accordance with the guidelines issued by Western Australian Department of Treasury entitled “Costing and Pricing Government Services”  [www.wa.gov.au/government/publications/financial-policy-publications-and-agency-advice](https://www.wa.gov.au/government/publications/financial-policy-publications-and-agency-advice#costing-and-pricing-government-services)  (B) be certified by the chief executive officer of the Respondent; and  (C) be verified by an independent expert, if required by the Customer.  Certification must be in the form of a letter from the chief executive officer of the Respondent certifying that the Offer has been calculated on a full commercial basis.  **Respondent to Complete:**  If the Respondent is a tertiary institution or statutory or Government body (including a State Agency), has the Respondent included certification as required under this clause? | | |
| Yes | No | N/A |
| If no, the reasons why: | | |

**(ix)** Professional Standards Scheme [for selected services only delete if not applicable]

|  |  |
| --- | --- |
| [**https://www.psc.gov.au/professional-standards-schemes/Scheme-documents** provides a list of schemes some of which are applicable to Western Australia.]  **Respondent to Complete:**  Is the Respondent a member of an occupational association for which a scheme has been approved under the Professional Standards Act 1997 (WA) or equivalent legislation of another State or Territory of Australia? | |
| Yes | No |
| If yes, the Respondent must provide details: | |

**(x)** **Gender Equality in Procurement**

*Important Note: The use of this clause is mandatory in accordance with* [General Procurement Direction 2024/02](https://www.wa.gov.au/government/publications/general-procurement-direction-202402-gender-equality-procurement)*. For further information, refer to the* [Gender Equality in Procurement](https://www.wa.gov.au/government/publications/gender-equality-procurement) *webpage on wa.gov.au.*

|  |  |
| --- | --- |
| The Western Australian Government is committed to advancing gender equality in Western Australia as demonstrated by [Stronger Together: WA’s Plan for Gender Equality](https://www.wa.gov.au/government/publications/stronger-together-was-plan-gender-equality). Further information on how to advance gender equality in your business/organisation is available [here](http://www.communities.wa.gov.au/genderequalityinprocurement).  For further information about this disclosure clause, refer to the [Gender Equality in Procurement Guideline](https://www.wa.gov.au/government/publications/gender-equality-procurement). | |
| **Complete this disclosure requirement if your business/organisation employs 100 or more people or select “Not Applicable” below.**  ☐ Not applicable – business/organisation employs less than 100 people. | |
| The *Workplace Gender Equality Act* *2012* (Cth) requires both non-public sector and Commonwealth public sector employers with 100 or more employees to submit a report annually to the Workplace Gender Equality Agency. Non-public sector employers can find further information about reporting requirements at [Preparing to report | WGEA](https://www.wgea.gov.au/reporting-guide/ge/steps-report).   1. Does the Respondent’s business comply with the Workplace Gender Equality Agency gender equality reporting requirements?   *(WGEA reporting requirements are available at* [Reporting Guide | WGEA](https://www.wgea.gov.au/reporting-guide#tendering-for-government-contracts)*.)* | |
| Yes | No |
| 1. Has the Respondent attached a letter of compliance with the *Workplace Gender Equality Act 2012* (Cth)?   *(Information about how to obtain a letter of compliance from WGEA is available from* [*Eligibility & compliance | WGEA*](https://www.wgea.gov.au/reporting-guide/ge/eligibility-compliance#_3-tendering-for-government-contracts)*.)* | |
| Yes | No |
| If you have answered No to (A) and/or (B) above, please provide reasons or explanation for doing so: | |

# Qualitative Requirements

The Contract Authority or Customer will, in its value for money assessment, consider the extent to which the Offer satisfies the following Qualitative Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address and satisfy any of the Qualitative Requirements. The Contract Authority or Customer will not consider references to information on websites when evaluating an Offer.

Each Qualitative Requirement has equal weighting.

or

The Qualitative Requirements are not weighted equally. Refer to the % weighting (xx% weighting) for each Requirement listed below.

Examples of “Qualitative” Requirements*: Change, edit or delete the example Qualitative Requirements as required to reflect the objectives of your Procurement. This may include objectives like inclusivity and any of the* [*Western Australian Social Procurement Framework*](https://www.wa.gov.au/government/publications/western-australian-social-procurement-framework) *Community Objectives and Outcomes detailed in the specification i.e. sustainability.*

Goods

1. Suitability of Proposed Goods (Xx% Weighting)
2. The Respondent must demonstrate how the proposed Goods are suitable and fit for purpose, in accordance with the description set out in Schedule 2 - Specification / Statement of Requirements; and
3. Provide brochures and any relevant information detailing the features of the specified Goods.

Respondent to Complete:

Respondent to demonstrate suitability of proposed Goods.

1. Organisational Capacity (Xx% Weighting)

(i) The Respondent must demonstrate that it has the organisational capacity to perform the Customer Contract; and

(ii) Provide a comprehensive timeframe for the delivery of the proposed Goods and any related services identifying key dates and milestones and outlining how any timing requirements specified in Schedule 2 - Specification / Statement of Requirements, will be met.

Respondent to Complete:

Respondent to provide the organisational capacity information required under this clause.

1. Work Health and Safety Responsibilities (Xx% Weighting)

The Respondent must describe how it will meet its work health and safety responsibilities in providing the Goods including:

1. providing details of its work health and safety management system;
2. [describe requirements addressing the specific work health and safety requirements specified in Schedule 2 - Specification / Statement of Requirements of the Request]; and
3. identifying work health and safety risks associated with the Goods and how these risks are managed.

Respondent to Complete:

Respondent to provide the work health and safety information required under this clause.

1. Service and Maintenance (Xx% Weighting)

The Respondent must provide details in relation to:

1. Conditions and exclusions of the warranty applicable, including duration and any terms and conditions;
2. The availability of spare parts for the proposed Goods in Western Australia;

(ii) The frequency of servicing requirements for the proposed Goods; and

(iii) The arrangements for repairs and maintenance for the proposed Goods, including response times.

Respondent to Complete**:**

Respondent to provide the service and maintenance information required under this clause.

or

**Delivery, Training, Service and Maintenance** (Xx% Weighting)

The Respondent must provide details in relation to:

1. The delivery timeframe for the proposed Goods;
2. Availability of training and the nature of the proposed training;
3. Warranty provisions including inclusions and exclusions and response times for warranty repairs;
4. The availability of spare parts in Western Australia;
5. The frequency of servicing requirements for the proposed Goods; and
6. The arrangements for post warranty repairs and maintenance for the Goods, including response times.

**Respondent to Complete:**

Respondent to provide training, delivery, service and maintenance information requested under this clause.

1. Demonstrated Experience (Xx% Weighting)

(i) The Respondent must provide details of contracts for similar Goods and any related services provided for other clients. The Respondent must provide:

(A) A detailed description of the Goods and / or Services provided;

(B) Similarities between the previous contracts and this Request;

(C) When the previous contracts were performed; and

(D) The outcome of the previous contracts.

(ii) The Respondent must also provide a minimum of [2] referees in respect of the contracts detailed above. Referee details must include:

(A) The referee’s name and position;

(B) Company name;

(C) The contact telephone number; and

(D) The contract or project title.

Respondent to Complete**:**

Respondent to provide the demonstrated experience information required under this clause.

*Services*

1. Suitability of Proposed Services (Xx% Weighting)

The Respondent must:

(i) Demonstrate how the proposed Services meet the description set out in Schedule 2 - Specification / Statement of Requirements; and

(ii) Demonstrate an appreciation and understanding of the requirements of the Request and the Respondent must provide an outline of its proposed methodology and approach. Details of the methodology should include:

(A) The scope of work/requirements broken into components including timeframes and the estimated number of hours required to complete each component of the requirements;

(B) Details of the roles of the Specified Personnel and an estimated percentage of time spent by each in completing the requirements;

(C) A description of critical issues, and quality control mechanisms used in undertaking the requirements.

Respondent to Complete:

Respondent to demonstrate suitability of proposed Services.

1. Specified Personnel (Xx% Weighting)

The Respondent must:

(i) Identify any proposed Specified Personnel together with a brief curriculum vitae for each of them;

(ii) Detail the availability of the proposed Specified Personnel for the Customer Contract during the Term; and

(iii) Describe the skills and industry experience of all proposed Specified Personnel, especially how their experience relates to the requirements set out in Schedule 2 – Specification / Statement of Requirements.

Respondent to Complete**:**

Respondent to provide the Specified Personnel information required under this clause.

or

Demonstrated Skills and Experience of the Organisation to Undertake Projects of a Similar Nature (Xx% Weighting)

The Respondent must provide information regarding:

(i) The skills and experience of the key Specified Personnel who will be involved with this contract. A brief curriculum vitae should be provided outlining their similar experience to the requirements as set out in Schedule 2 – Specification / Statement of Requirements;

(ii) Roles of the Specified Personnel and their availability during the term of the contract; and

(iii) The organisational capacity to perform the Customer Contract including relevant skills and experience within the organisation (other than the specified personnel) in performing similar requirements.

Respondents must provide contact details of referees for Contracts of a similar nature have been successfully completed by the proposed Specified Personnel. These referees may be contacted to verify claims of relevant experience.

Respondent to Complete:

Respondent to demonstrated skills and experience to undertake projects of a similar nature.

1. Organisational Capacity (Xx% Weighting)

(i) The Respondent must demonstrate that it has the organisational capacity to perform the Customer Contract.

(ii) The Respondent must provide a comprehensive timeframe for the delivery of the proposed Goods and / or Services, identifying key dates and milestones and outlining how any timing requirements specified in Schedule 2 - Specification / Statement of Requirements, will be met.

Respondent To Complete**:**

Respondent to provide the organisational capacity information required under this clause.

1. Work Health and Safety Responsibilities (Xx% Weighting)

The Respondent must describe how it will meet its work health and safety responsibilities in providing the [Services / Goods and/or Services] including:

(i) providing details of its work health and safety management system;

(ii) [describe requirements addressing the specific work health and safety requirements specified in Schedule 2 - Specification / Statement of Requirements of the Request]; and

1. identifying work health and safety risks associated with the [Services/ Goods and/or Services] and how these risks are managed.

Respondent to Complete:

Respondent to provide the work health and safety information required under this clause.

1. Demonstrated Experience (Xx% Weighting)

(i) The Respondent must provide details of contracts for similar Goods and / or Services provided for other clients. The Respondent must provide:

(A) A detailed description of the Goods and / or Services provided;

(B) Similarities between the previous contracts and this Request;

(C) When the previous contracts were performed; and

(D) The outcome of the previous contracts.

(ii) The Respondent must also provide a minimum of [2] referees in respect of the contracts detailed above. Referee details must include:

(A) The referee’s name and position;

(B) Company name;

(C) The contact telephone number; and

(D) The contract or project title.

Respondent to Complete**:**

Respondent to provide the demonstrated experience information required under this clause.

1. Participation Plan (10% or 20%Weighting)

[Use for both Goods and Services, for all Requests with estimated contract value of $1 Million and above with contract delivery points in the Metropolitan Area, or $500,000 for delivery points in Regional Western Australia and an exemption from inclusion of the Participation Plan as a qualitative requirement has not been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation]

[Agencies have discretion to choose if this criterion is weighted at 10% or 20%. the decision should consider factors like, but not limited to, contract value, duration, location, market competition and realisable benefits. Refer to the current “WAIPS Operation Guide for Agencies” for more detail. Email [*industrylink@jtsi.wa.gov.au*](mailto:industrylink@jtsi.wa.gov.au) to obtain a copy of the guide.]

[If the procurement has been declared by the Minister for Jobs as a Strategic Project, reflect any prescribed upward variation of the Participation Plan weighting]

This criterion is a requirement of the Western Australian Industry Participation Strategy (WAIPS). Information on the [WAIPS](https://www.wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation/western-australian-industry-participation-strategy) can be found at [WA.gov.au](https://www.wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation/western-australian-industry-participation-strategy).

The Participation Plan type required for this Request is a [**Core** or **Full** [drafter to select]] Participation Plan for goods and services.[Core = total contract value of $1 million to $5 million for Metro delivery points or total contract value of $500,000 to $5 million for Regional delivery points. Full = total contract value of above $5 million for both Metro and Regional delivery points]

Respondents are to download the [WAIPS Participation Plan template](https://www.wa.gov.au/government/publications/waips-participation-plan-template) from [WA.gov.au](https://www.wa.gov.au/government/publications/waips-participation-plan-template) and are to complete the plan in line with the requirements for a [**Core** or **Full** [drafter to select]] Participation Plan. The completed Participation Plan must be submitted with the Respondent’s Offer as a separate attachment.

Respondents should refer to the [How to complete a WAIPS participation plan](https://www.wa.gov.au/government/publications/how-complete-waips-participation-plan) guide when completing the Participation Plan.

Additional assistance may also be sought from the [Industry Link Advisory Service](https://www.wa.gov.au/organisation/department-of-jobs-tourism-science-and-innovation/support-businesses), Department of Jobs, Tourism, Science and Innovation no later than five (5) business days before the Request Closing Date.

The Contract Authority or Customer will, in its value for money assessment, consider as a Qualitative Requirement the extent to which Section B of the Participation Plan meets the Participation Objectives.

The Contract Authority or Customer reserves the right to reject any Offer that does not contain a Participation Plan which properly addresses the matters outlined in the WAIPS Participation Plan template.

**Respondent to Complete:**

A [**Core** or **Full** [drafter to select]] Participation Plan has been completed and attached to our Offer.

Yes  No

If successful, your response to the Participation Plan will be forwarded to the Industry Link Advisory Service (ILAS), Department of Jobs, Tourism, Science and Innovation.

# 

# Head Agreement and (delete if not a CUA or Panel Arrangement) Customer Contract Insurance Requirements

[If not a Common Use Arrangement or Panel Arrangement, delete the Head Agreement Insurance Requirements table. If a Common Use Arrangment or Panel Arrangement, the Head Agreement and Customer Contract Insurance tables must both be included]

**Head Agreement Insurance Requirements** [Delete this section if not applicable]

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Head Agreement Details.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Respondent to Complete**:**  Does the Respondent have the insurance required under Schedule 1 - Head Agreement Details?  (Yes / No)  If yes, the Respondent must complete the following table: | | | | | | |
|  | Insurer | ABN | Policy No | Insured Amount | Expiry Date | Exclusions, if any |
| **Public Liability Insurance** including indemnification of the Contract Authority as principal to the extent of liability arising out of the Services. |  |  |  |  |  |  |
| **Workers’ Compensation Insurance** including cover for:  (a) common law liability cover for an amount of not less than $50 million; and  (b) principal’s indemnity extension cover for claims and liability under section 217 of the *Workers’ Compensation and Injury Management Act 2023*. |  |  |  |  |  |  |
| **or**  If no, does the Respondent confirm that prior to being awarded the Head Agreement, they will obtain the insurance policies specified before the Commencement Date?  (Yes / No)  If no, the reasons why. | | | | | | |

**Customer Contract Insurance Requirements**

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Customer Contract Details.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Respondent to Complete:  Does the Respondent have the insurance requirements set out in Schedule 1 - Customer Contract Details?  (Yes / No)  If yes, the Respondent must complete the following table:  [In the table below, list the insurances specified in the Customer Contract Details] | | | | | | |
|  | **Insurer** | **ABN** | **Policy No** | **Insured Amount** | **Expiry Date** | **Exclusions, if any** |
| [delete row if not applicable]**Public Liability Insurance** including indemnification of the Customer as principal to the extent of liability arising out of the Services. |  |  |  |  |  |  |
| [delete row if not applicable]**Public and Products Liability Insurance** including indemnification of the Customer as principal to the extent of liability arising out of the Goods and/or Services. |  |  |  |  |  |  |
| [delete row if not applicable]**Professional Indemnity Insurance** including annual reinstatement and cover for:  (a) fraud and dishonesty  (b) defamation  (c) intellectual property infringement  (d) loss of or damage to documents, data and electronic records;  (e) breach of Australian Consumer Protection Legislation; and  (f) vicarious liability for acts of agents and contractors |  |  |  |  |  |  |
| **Workers’ Compensation Insurance** including cover for:  (a) common law liability cover for an amount of not less than $50 million; and  (b) principal’s indemnity extension cover for claims and liability under section 217 of the *Workers’ Compensation and Injury Management Act 2023*. |  |  |  |  |  |  |
| **Motor Vehicle Third Party Liability Insurance**[delete row if not applicable] |  |  |  |  |  |  |
| **Cyber Liability Insurance**[delete row if not applicable] |  |  |  |  |  |  | |
| **or**  If no, does the Respondent confirm that prior to being awarded a contract, they will obtain the insurance policies set out in Schedule 1 - Customer Contract Details before the Commencement Date?  (Yes / No)  If no, the reasons why. | | | | | | |

Schedule 3 - Pricing

The Contract Authority or Customer will, in its value for money assessment, consider the extent to which the Offer satisfies the following Offered Price and Pricing Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address and satisfy any of the Offered Price and Pricing Requirements.

1. **Offered Price and Price Schedule**
2. The Respondent must include in the Offer this completed Schedule 3 - Pricing.
3. The Respondent must state the basis of its Offered Price in Australian Dollars.
4. The Offered Price will be deemed to include the cost of complying with this Request (including the Head Agreement Details, Customer Contract Details and any Addenda available, if any) and the General Conditions and the cost of complying with all matters and things necessary or relevant for the due and proper performance of the Head Agreement and Customer Contract. Any charge not stated as being additional to the Offered Price will not be payable by the Customer.
5. If the Offered Price is consideration for a taxable supply under the GST Act, the Offered Price will be deemed to be inclusive of all GST applicable to the taxable supply at the rate in force for the time being.

Example 1 Lump Sum (for Goods)

|  |  |  |  |
| --- | --- | --- | --- |
| Respondent to Complete: | | | |
| Description | Quantity Required | Price Per Unit (inclusive of GST) | Total Cost  (inclusive of GST) |
| *Supply and Delivery of* |  |  |  |
| *Training* |  | |  |
| *Post Warranty Service and Maintenance* |  | |  |
| *Other Costs (Please Specify)* |  | |  |
| *Total Cost (inclusive of GST)* |  | |  |

Note: All costs must be fully declared in your response. Any costs that are not clearly identified in your response will not be accepted when approving payments under this contract.

Example 2: Hours (for Services)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Respondent to Complete:  The Respondent must provide a fixed fee based on [xx] hours per annum as detailed in the Specification:  $ ………………………. (including GST)\*  Given the hours and fixed fee provided above, the Respondent must also provide the hourly rates proposed to be charged for the provision of the Services, stratified on the basis of the staffing requirements and levels assessed by the Respondent as being required to meet the Specification. The proposed hourly rates must include all management and supervision hours and charges. | | | | |
| Description of Services | Name & Position of Consultants | Hours Allocated to Services Per Consultant | Hourly Rate A$ | Total Cost  (inc GST) |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Other Costs – Please Specify:** |  | | |  |
| **TOTAL** |  | | | $ (\*amount shown above) |
| The Respondent should indicate whether the above hourly rates also apply to hours over and above the stated hours. If not, please advise the applicable rates. | | | | |

Note: All fees and charges must be fully declared in your response. Any fees and charges that are not clearly identified in your response will not be accepted when approving payments for engagements under this contract.

Example 3: Schedule of Rates (for Services)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Specified Personnel** | **Hourly Rate**  **(Normal Business Hours) Inc GST** | **Hourly Rate**  **(Outside Business Hours e.g. weekends and Public Holidays) Inc GST** | **Maximum Short-Term Daily Rate**  **(Normal Business Hours) Inc GST** | **Maximum Long-Term Daily Rate**  **(Normal Business Hours) Inc GST** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
| **Other costs (please list and specify)** | | | | **$** |
| **Travel and accommodation (if applicable provide details)** | | | | **$** |
| Disbursements or other charges (if applicable provide details) | | | | **$** |

Note: All fees and charges must be fully declared in your response. Any fees and charges that are not clearly identified in your response will not be accepted when approving payments for engagements under this contract.

1. Settlement Discount

[Only include this clause if payment within 7, 14 or 21 days is feasible. If not feasible then delete the clause. Furthermore, option (iii) must be removed if most invoices are likely to be under $1 million, as all invoices under $1 million must be paid within 20 days as of 1 October 2020, in accordance with Treasurer’s Instruction 323. If settlement discounts are offered by the Respondent, then the discounted price/s must be taken into account when evaluating Offers]

The Respondent must state whether it is prepared to offer a discount if payment of the Price or that part of the Price specified in the invoice is made within:

* 1. seven (7) days;
  2. fourteen (14) days; or
  3. twenty-one (21) days,

of the date of the invoice.

Respondent to Complete**:**

A discount of:

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within seven (7) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within fourteen (14) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within twenty-one (21) days of the date of the invoice;

1. Imported Content

*[The requirement to apply an Imported Content impost is not mandatory under the* [*WA Buy Local Policy 2022*](https://www.wa.gov.au/government/publications/western-australian-buy-local-policy-2022)*. If this Imported Content section is included in the Request, the impost must be applied.]*

The WA Buy Local Policy 2022provides for State Agencies to apply a 20% price impost, for evaluation purposes only, to the portion of an Offer that comprises goods, services or items that the Respondent is proposing to import into Australia directly from another country, excluding New Zealand.

The cost of the goods, services or items that have been directly sourced from overseas is referred to as “imported content”.

The imported content impost can be applied regardless of the location of the contract delivery point. Goods, services or items of foreign origin that have been, or will be, purchased through a supplier based in Australia or New Zealand will not be considered ‘imported’ for the purposes of the price impost.

|  |  |  |
| --- | --- | --- |
| **Respondent to Complete:**  All Respondents are required to complete the imported content questionnaire.  Respondents are required to declare the cost of any portion of their Offer that comprises goods, service or items that have been directly sourced from another country, excluding New Zealand.  Respondents that are not proposing to use any imported content in the delivery of the contract must enter “Nil” or “Not Applicable” on the questionnaire.  Please list details of any goods, service or items included in your Offer that have been directly imported from another country (excluding New Zealand). | | |
| **Goods/Service/Items Description** | **Country of Origin** | **Cost $** |
|  |  |  |
|  |  |  |
| Total Cost of Imported Content | | **$** |

1. Regional Price Preferences [delete if not applicable i.e. Metropolitan based contract]

*[Drafters to Note: Refer to section 4 of the* [*WA Buy Local Policy 2022*](https://www.wa.gov.au/government/publications/western-australian-buy-local-policy-2022) *for further detail on Regional Price Preferences including details on multiple points of delivery and the discretions of an Accountable Authority to modify the application of Regional Price Preferences.*

*With respect to standing offer arrangements, section 4.6 of the WA Buy Local Policy 2022 provides agencies with discretion as to when regional price preferences are applied (either at the point the standing offer is established or when quotes are requested from panel members). JTSI can provide agencies with advice on the most suitable approach if required. See also Schedule 5 – Order Form.]*

The Western Australian Government provides price preferences to Western Australian businesses when they are in competition with other Western Australian businesses for government contracts where the purchase or contract delivery point is in regional Western Australia.

The two types of regional price preferences are Regional Business Preference and Regional Content Preference. Respondents participating in goods and services procurements can claim *either* the regional business preference or the regional content preference, but not both.

In circumstances where one or more Offers are received from businesses located in other States or Territories of Australia or New Zealand and these Offers are not being considered in the final analysis then the Regional Business Preference or the Regional Content Preference will be applied. The Contract Authority or Customer (as the case requires) retains the complete discretion to determine those Offers in the final analysis.

The Contract Authority or Customer reserves the right to request the Respondent to provide documentary evidence to the Contract Authority or Customer’s reasonable satisfaction to verify the validity of any claim for a Regional Price Preference. Where the Respondent is unable to provide evidence to the Contract Authority or Customer’s reasonable satisfaction to verify its claimed preference, the Contract Authority or Customer may consider any such applicable preference to be invalid and not applied to the Offer.

Details regarding the regional price preferences and how they are applied are documented in the Western Australian Government’s WA Buy Local Policy 2022. The policy can be viewed and downloaded at [www.wa.gov.au/government/publications/western-australian-buy-local-policy-2022](https://www.wa.gov.au/government/publications/western-australian-buy-local-policy-2022).

**The regional Contract Delivery Point(s) for this Contract is/are:** [Insert Contract Delivery Point/S]**.**

**The Prescribed Distance for this contract is:** [Insert Number of Kilometres] km, excluding any area falling within Zone 1 (Perth Metropolitan Area). *Remove the reference to ‘excluding any area falling within Zone 1 (Perth Metropolitan Area)’ if no area of the prescribed distance will fall within Zone 1*.

**(i)** Regional Business Preference

Respondents who meet the following requirements are eligible to claim the Regional Business Preference:

* Maintains a permanent operational office within the prescribed distance that is resourced by at least one person who resides in the region and that the business address aligns with its marketing such as a telephone directory listing or the address listed on its website.
* Has had its office established and has conducted similar business and contracting from the office for at least six months prior to the date this Request was released.
* Proposes to manage/deliver the majority of the contract outcomes from the office.

The Contract Authority or Customer, when comparing Offers received from an eligible regional business with Offers received from Western Australian based businesses located outside the Prescribed Distance, including Zone 1, Perth Metropolitan Area, will reduce the price of the Offer received from the eligible regional businesses, for evaluation purposes only, by 10% of the total Offer cost calculated to a maximum of $250,000 for goods and services not related to housing and works projects. The preference is calculated by the Contract Authority or Customer assessing the offers. Eligible regional businesses must show the total cost of their Offer.

Respondents participating in goods and services procurements can claim *either* the Regional Business Preference or the Regional Content Preference, but not both.

To receive the regional business preference and to ensure the preference is applied correctly where appropriate, Respondents that wish to claim eligibility for the regional business preference must complete the following.

|  |  |  |
| --- | --- | --- |
| **Respondent to Complete** | | |
| The permanent operational office for the Offer submission and for contract delivery and management purposes is located in: | | |
|  | | |
|  | | |
|  | | |
|  | | |
| An eligible regional business is one that can bona fide answer “Yes” to all the listed questions below. | **Please click appropriate box** | |
| 1. Is your business located within the prescribed distance from the contract delivery point shown above (excluding Zone 1, Perth Metropolitan Area)? | **Yes** | **No** |
| 2. Does your business maintain a permanent operational office within the prescribed distance from the contract delivery point shown above (excluding Zone 1, Perth Metropolitan Area)? | **Yes** | **No** |
| 3. Has your business maintained this office and conducted similar business and contracting from this office for at least six (6) months prior to the date this Request was released? | **Yes** | **No** |
| 4. Is your business resourced by at least one person who resides in the region? | **Yes** | **No** |
| 5. Will your business manage/deliver the majority of the contract outcomes from the regional office located within the prescribed distance of the contract delivery point? | **Yes** | **No** |
| 6. The regional business preference is only available to eligible Respondents that bid from their regional business location. Have you bid from an office within the prescribed distance of the contract delivery point? | **Yes** | **No** |

**(ii) Regional Content Preference**

A regional content preference is available to Western Australian businesses located outside the prescribed distance, including businesses located in Zone 1, Perth Metropolitan Area. The regional content preference is only applied to the cost of the services or materials that will be purchased from other businesses that are located within the prescribed distance of a regional contract delivery point, and will be used in the delivery of the contract outcomes.

Eligible regional content is goods, materials or services purchased and used in the delivery of contract outcomes. Eligible costs also include travel, accommodation and meal costs associated with working on a regional contract and all ongoing travel, accommodation and meal costs associated with the delivery of the contract outcome. Land property rental or leasing are not eligible regional content, however other forms of leasing, renting and hiring of services are eligible costs.

In comparing Offers received from Western Australian based businesses, the cost of the declared regional content must be reduced, for evaluation purposes only, by 10% calculated to a maximum of $250,000. The preference is calculated by the Contract Authority or Customer assessing the Offers.

Respondents participating in goods and services procurements can claim *either* the regional business preference or the regional content preference, but not both.

The Respondent should refer to Schedule 1 - [Head Agreement Details and] *(delete if not applicable)* Customer Contract Details for ongoing obligations with respect to claimed Regional Content.

Respondents must show the actual cost of their regional content by completing the following.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Respondent to Complete** | | | | | |
| The permanent operational office for the Offer submission and for contract delivery and management purposes is located in: | | | | | |
|  | | | | | |
|  | | | | | |
|  | | | | | |
|  | | | | | |
| 1. Does your business intend purchasing goods and/or services for use in this contract from regional businesses that are located within the prescribed distance from the contract delivery point (excluding Zone 1, Perth Metropolitan Area)? | | | **Yes** | | **No** |
| 2. List details of the goods and services, including proposed subcontracting arrangements, your business intends purchasing for use on this contract from regional businesses that are located within the prescribed distance from the contract delivery point. Include the value of the goods and services (attach additional list if required). | | | | | |
| **Description of the Goods or Services** | **Supplier’s Name & Location** | | **Cost** **$** | | |
|  |  |  |  |  | |
|  |  |  |  |  | |
| **Total Cost of Regional Content:** | | | $ | | |
|  | | |  | | |

Schedule 4 - Unconditional Performance Guarantee *****[or]* Not Applicable****

***[Delete Schedule Content If Not Applicable]***

Deed of Agreement dated [insert date]

Between

[insert name of the Customer] (the ‘Customer)

And

[insert name and ACN/ABN of the Guarantor] (‘the Guarantor’)

Purpose

[Insert name and ACN/ABN of Contractor] (the ‘Contractor’) has agreed to supply Goods and/or Services to the Customer pursuant to [describe customer contract] (‘Contract’).

The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Contract.

What is agreed:

The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions:

If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Contract.

If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by this clause, and the Contract is then terminated for default, the Guarantor will indemnify the Customer against costs and expenses directly incurred by reason of such default.

The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed the obligations and liabilities of the Contractor under the Contract.

The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.

Where the Guarantor is required to perform any obligation under the Contract in accordance with this Deed of Guarantee, the Guarantor agrees to the novation of the Contract from the Contractor to the Guarantor if requested by the Customer.

This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State of Western Australia.

Where the Contractor has failed to perform under the Contract, the obligations of the Guarantor will continue even though the Contractor has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Act 2001 (Cth) or any other Law.

The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.

A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (by electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party can confirm receipt by any other means.

The address for services of notice for a party is, in the case of the:

Customer

Physical address

Postal address

Phone number

Fax number

Email address

Guarantor

Physical address

Postal address

Phone number

Fax number

Email address

or such other address as a party may notify to the other party in writing from time to time.

A notice or other communication is deemed to be received if:

1. delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
2. sent by post from and to an address within Australia, after three (3) working days;
3. sent by post from or to an address outside Australia, after ten (10) working days;
4. sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
5. sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
6. sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

In witness whereof the parties to this Deed of Agreement have executed the Deed as at the date first written.

Signed for and on behalf of the Customer

by

[insert name of Customer Representative] [signature of Customer Representative]

in the presence of

[insert name of witness] [signature of witness]

Execution by the Guarantor

[insert name of Contractor] [affix common seal below]

[insert ACN, ABN or other identifier]

At:

[insert name of city or town]

In the State of:

[insert name of state or territory and country]

by

[insert name of director] [signature of director]

In the presence of:

[insert name of secretary or other permanent officer] [signature of witness]

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Guarantor, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

Schedule 5 - Order Form *****[or]* Not Applicable****

[For use with Common Use Arrangements, regional group buys or Panel Arrangements Only – Delete Schedule Content If Not Applicable]

[With respect to standing offer arrangements, section 4.6 of the WA Buy Local Policy 2022 provides agencies with discretion as to when regional price preferences are applied (either at the point the standing offer is established or when quotes are requested from panel members). The Department of Jobs, Tourism, Science and Innovation can provide agencies with advice on the most suitable approach if required. If regional price preferences are to be applied when buyers are seeking quotes from panel members, then the order form must include optional text to facilitate the assessment of regional price preferences.]

[WAIPS Participation Plan Exemption – in regard to question 18 – if a commitment has been made to including a Participation Plan qualitative requirement in individual purchases that meet a Western Australian Industry Participation Strategy (WAIPS) threshold, and where a buying rule specifies the purchase must undergo a competitive process, then the order form is to include the option to include the Participation Plan qualitative requirement and associated reporting.]

1.1 …

[insert ...]

1.2 …

[insert ...]

Schedule 6 - Buying Rules *****[or]* Not Applicable****

***[For use with Common Use Arrangements, Multi-User Cooperative Procurement Arrangements or Panel Arrangements only – Delete schedule content If not applicable]***

*[Use if a CUA or Multi-User Cooperative Procurement Arrangement]*Potential Customers will purchase the Goods and/or Services in accordance with the following Buying Rules:

*[Or]*

*[Use if a State Agency Panel Arrangement]* The Customer will purchase the Goods and/or Services in accordance with the following Buying Rules:

*[Use the following table if a CUA, Multi-User Cooperative Procurement Arrangement or a Panel Arrangement]*

|  |  |
| --- | --- |
| Monetary Threshold | Buying Process |
| 1. Goods and/or Services valued at [Insert threshold] | [Insert buying rule] |
| 1. Goods and/or Services valued at [Insert threshold] | [Insert buying rule] |
| 1. Goods and/or Services valued at [Insert threshold] | [Insert buying rule] |

*[The following table is provided as an example of buying rules. Once specified, the buying rules set the minimum requirements for the procurement method that must use to procure the goods or services, depending on the total estimated price of that procurement and the monetary threshold it falls into.]*

|  |  |
| --- | --- |
| Example Only - Buying Rules for a State Agency Panel Arrangement | |
| Monetary Threshold | Buying Process |
| 1. Goods valued at up to $250,000 per Order | Panel members may be accessed directly.  A unit price must be quoted. |
| 1. Goods valued at $250,000 or above per Order | Formally request sufficient number of written quotations from relevant panel members.  A unit price must be quoted. |
| 1. Services valued at up to $250,000 per Order | Panel members may be accessed directly.  A unit rate must be quoted. |
| 1. Services valued at $250,000 or above per Order | Formally request sufficient number of written quotations from relevant panel members.  A unit rate must be quoted. |

[Note: Schedules 7 To 15 apply to ICT contracts only]

*[If not an ICT contract, insert the following and change header to "Schedules 7 To 15 - Not Applicable"]* Schedule 7 TO 15 – Not Applicable

*[or, if an ICT contract, include all schedules and amend content as applicable]* Schedule 7 - Project Plan *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the Customer has a Project Plan for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide the Project Plan then the Respondent is to “complete and return”.

Schedule 8 - Service Level Agreement *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the customer has a Service Level Agreement for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide the Service Level Agreement then the Respondent is to “complete and return”

Schedule 9 - Hardware Maintenance *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the Customer has a requirement for Hardware Maintenance for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide for Hardware Maintenance then the Respondent is to “complete and return”.

Schedule 10 - Software Support *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

[Insert requirements for Software Support Services including service levels, response times and particulars of specific services which are to be included or excluded.]

Additional terms relating to Software Support Services [delete if or to the extent inapplicable]

1. The Services

The services will comprise:

* 1. provision of new releases of the Software by the Contractor to the Customer;
  2. help desk support; and
  3. defect correction.

1. Releases
   1. The Contractor will deliver to the Customer any improved version of the Licensed Software (Release) which the Contractor makes available and the Customer will be responsible for using such version subject to the conditions set out below.
   2. Upon delivery of a new Release, the Contractor will make available to the Customer details of such amendments which will be necessary to properly describe the facilities and functions of the new Release and to distinguish it from the previous release.
   3. The Customer will not be obliged to accept or use the new Release if its use would result in any of the facilities and functions set out in the ddocumentation being diminished or curtailed.
   4. The Contractor will deliver to the Customer the object code of the new Release in machine-readable form together with amended ddocumentation.
   5. If required by the Customer, the Contractor will provide training for the Customer's staff in the use of the new Release as soon as reasonably practicable after the delivery of the new Release. Such training will be deemed part of the help desk service described at clause 3 below in this schedule.
   6. Within 3 months of the Customer receiving the new Release the Customer will have tested such Release and will have notified the Contractor of any failure or error of that Release.
   7. If within 3 months after such delivery no such notification is made, the Customer will be deemed to have accepted the new Release.
   8. If the Customer notifies the Contractor of any fault in the new Release then the Contractor will correct the fault in accordance with the defect correction procedures as set out in clause 4 below.
2. Help Desk
   1. Help desk support will include technical advice in relation to the Software, system advice, problem resolution, training and other general support in respect of the Contract to resolve Customer queries or difficulties in using the Software.
   2. The Contractor will supply up to 150 hours of help desk support in each 12-month maintenance period in respect of all Software supplied under the Contract.
   3. The Contractor will provide help desk services primarily by telephone, facsimile, e-mail and, where consistent with the Customer's internal policies, dial-in support.
   4. Support will be accounted for in 15 minute increments and includes travel time where on-site support is required.
   5. Where on-site support is required the Customer will be liable to additional charges for travel, accommodation and out-of-pocket expenses.
   6. Help desk support may include support for the manipulation of data for input to the system and include amendments to parameter, control files and scripts required to upload data.
   7. Where in the opinion of the Contractor the support for manipulation of data for input requires material Customer specific amendments to the Software, the Contractor will advise the Customer of that opinion and will be excused from providing such support under this agreement.
   8. Where additional support is required, it will be charged at the Contractor's current casual consulting rates.
   9. No additional charges will be made for work which has not been duly authorised by the Customer.
3. Defect Correction
   1. If the Customer discovers that the Software fails to operate correctly by reference to the ddocumentation then the Customer will within 14 days notify the Contractor in writing of the defect or error in question and provide the Contractor (so far as the Customer is able) with a documented example of such defect or error.
   2. The Contractor will use its reasonable endeavours to promptly correct such defect or error. When corrections are completed the Contractor will deliver to the Customer the corrected Software along with appropriate amendments to the documentation. The Contractor will provide the Customer with such assistance as is reasonably required by the Customer to enable the Customer to implement the use of the corrected version of the Software.
   3. Defect correction service will not include any service in respect of:
4. any modification of the Software if such modification would result in a departure from the Specification; or
5. defects that are trivial or that do not have a material effect on the operation or outcomes produced
   1. The Contractor will make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by the Contractor:
6. at the request of the Customer but which do not qualify under the error correction service by virtue of any of the exclusions referred to in clause 4 paragraph (c) above; or
7. at the request of the Customer but which the Contractor finds are not necessary
   1. If the Customer discovers any material fault in the documentation then the Customer will notify the Contractor in writing of the fault in question within 14 days. The Contractor will promptly correct the fault and provide the Customer with appropriate amendments to the documentation.
8. Customer Obligations
   1. The Customer will ensure that the Software is used in a proper manner by competent and trained employees only or by persons under their supervision.
   2. The Customer will not alter or modify the Software or the documentation in any way except with the express approval of the Contractor, nor permit the Software to be combined with any other programs to form a combined work.
   3. The Customer will not request, permit or authorise anyone other than the Contractor to provide any Software Support Services in respect of the Software or the documentation except where the Contractor advises that it is unable or unwilling to provide such services.

Schedule 11 - Transition In Plan *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

If the Customer has a requirement for a Transition Plan for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent has a requirement for a Transition Plan then the Respondent is to “complete and return”.

[Insert details of the Contractor's transition-in obligations including, but not necessarily limited to:

1. third party contracts to be assigned or novated;
2. third party contracts to be managed by Contractor;
3. arrangements for the transfer of the Customer's Personnel;
4. arrangements for the secondment of the Customer's Personnel;
5. timeframe for preparation of a procedures manual; and
6. particulars of interim service levels]

Schedule 12 - Change Order *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

[If the proposed changes will vary the Specification, the Contract Details or any other technical requirements of the Customer, the following form must be completed]

**The Contract is changed in accordance with the terms of this Change Order and its attachments**

Change order number

Date proposed

Name of party instigating the change

Implementation date of change

Details of change proposal

Clauses affected by the

proposal are as follows

New charges payable to the Contractor or

Customer affected by this change proposal

Plan for implementing the change

The responsibilities of the parties

for implementing the change

The new date for the acceptance

testing of the system

Effect of change on performance

Effect on documentation

Effect on training

Effect on the users of the system

Any other matters which the parties

consider are important

**Execution – Signed for and on behalf of the**

**Customer’s representative**

Name (print)

Position

Signature and date / /

**Contractor’s representative**

Name (print)

Position

Signature and date / /

Schedule 13 - Acceptance Testing *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

1.1 Acceptance Test Details

[Insert details]

1.2 Certificate of Acceptance Form

Issued by the Customer’s representative to the Contractor

Name of Customer’s representative

The following items (Service and/or

Good) have been accepted

Conditions attached to the

Certificate of Acceptance

Execution – Signed for and on behalf of the

Customer’s representative

Name (print)

Position

Signature and date / /

Contractor’s representative

Name (print)

Position

Signature and date / /

Schedule 14 - Escrow *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

Deed of Agreement dated [insert date]

Between

[insert name of the Customer] (the ‘Customer’)

And

[Insert the name of the Contractor] (the ‘Contractor’)

And

[Insert the name of the Escrow Agent] (the ‘Escrow Agent’)

Purpose

By contract made on [insert date of Contract] ('the Contract') the Contractor has agreed to grant or procure a licence to the Customer to use certain software (the ‘Licensed Software’).

The Contractor and Customer have agreed to the appointment of an Escrow Agent as an independent person to hold the source code for the Licensed Software for the purposes of this Agreement.

The Escrow Agent has agreed to hold the source code for the Licensed Software, including the software expressed in human-readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of the Licensed Software and the supporting material being all of the material and data developed and used in and for the purpose of creating the software including (but not limited to) compiled object code, tapes, operating manuals and other items listed in Attachment 3 of this Agreement on the following terms and conditions.

What is agreed:

1. Interpretation

Where an obligation is imposed on a party under this Agreement, that obligation will include an obligation to ensure no act, error or omission on the part of that party's employees, Agents or subcontractors occurs which will prevent discharge of the Escrow Agent's obligation.

1. Duration

This Agreement is in force until the source code is released in accordance with the terms of this Agreement.

1. Appointment of Escrow Agent

The Escrow Agent is appointed jointly by the Customer and the Contractor and, subject to the terms and conditions of this Agreement, is granted full power and authority to act on behalf of each party to this Agreement.

1. Contractor's obligations
   1. The Contractor will deliver to, and deposit with the Escrow Agent, one copy of the source code and supporting material within seven (7) days of the date of the contract.
   2. The Contractor agrees to:
   3. maintain the source code and supporting material on a quarterly basis following the initial deposit; and
   4. subject to clause 4.2(a), ensure the source code and supporting material deposited with the Escrow Agent accurately reflects the Licensed Software including all modifications, amendments, updates and new releases made to, or in respect of, the Licensed Software.
   5. The Contractor warrants that the source code is, to the best of Contractor's knowledge, free from any virus or program device, which would:
2. prevent the Licensed Software from performing its desired function; or
3. prevent or impede a thorough and effective checking of the Licensed Software.
4. Escrow Agent's Obligations
   1. The Escrow Agent must accept custody of the source code on the date of delivery in accordance with clause 4.1 of this Agreement and, subject to the terms of this Agreement, will hold the source code on behalf of the Customer and the Contractor.
   2. The Escrow Agent agrees to take all reasonable steps to ensure the preservation, care, maintenance, safe custody and security of the source code while it is in its possession, custody or control, including storage in a secure receptacle and in an atmosphere which does not harm the source code and supporting material.
   3. The Escrow Agent will bear all risks of loss, theft, destruction of or damage to the source code while it is in Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by the negligence, default, wilful or damage or recklessness of the Escrow Agent or its employees or agents, or the failure of the Escrow Agent or its employees or agents to otherwise comply with any specific obligations set out in this Agreement.
   4. If the source code is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent must, obtain from Contractor a further copy of the source code. If the loss, theft, destruction or damage to the source code is the result of a breach by the Escrow Agent of its obligations under this Agreement, or is in any event embraced by clause 5.3, the Escrow Agent must bear the costs of paying for a further copy of the source code pursuant to this clause 5.4.
   5. The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the source code lodged with it.
5. Escrow Fee and Expenses
   1. The escrow fee will be paid as set out in Attachment 1 to the Escrow Agreement.
   2. All expenses and disbursements incurred by the Escrow Agent in connection with this Agreement will be borne by the Escrow Agent.
   3. All expenses and disbursements incurred by the Contractor in connection with the contract will be borne by the Contractor.
6. Testing and Verification
   1. The Customer may, in the presence of and under the supervision of the Contractor, analyse and conduct tests in relation to the source code and supporting material to verify that the source code and supporting material consists of the material specified in Attachment 2 and Attachment 3 of this Escrow Agreement.
   2. The Customer may engage an independent assessor who, upon proof of their engagement, will have the same rights of access to the source code and supporting material as the Escrow Agent to undertake analysis and tests of the source code and supporting material for verification purposes, on its behalf.
   3. The Escrow Agent agrees to release the source code and supporting material to an independent assessor, upon presentation of a release form signed by the Customer and the Contractor stating the material to be released and identifying the person to whom that material may be released.
   4. At the completion of the testing and clarification process, the Customer or the independent assessor (as the case may be) must return the source code and supporting material to the Escrow Agent. The Escrow Agent will advise all parties in writing that the source code has been returned to its custody.
   5. The cost of verification pursuant to this clause will be borne by the Customer unless the verification process reveals a discrepancy, in which case the cost will be borne by the Contractor without prejudice to any other rights or remedies of the Customer arising in such circumstances.
7. Release of the Source Code and Supporting Material
   1. The Escrow Agent agrees to not release, or allow access to, the source code and supporting material except in accordance with this Agreement.
   2. Subject to Clause 8.3, the Escrow Agent agrees to release the source code to the Customer upon receipt of written notice from the Customer that:
8. the Contractor has become subject to any form of insolvency administration;
9. the Contractor has ceased for any reason to maintain or support the Licensed Software;
10. the license agreement has been terminated by the Customer for breach of Contract by the Contractor; or
11. the contract is terminated following the default of the Contractor.
    1. The Escrow Agent will not release the source code to the Customer pursuant to Clause 8.2 if, and to the extent that, the Contract Documents stipulates an alternative procedure to be adopted upon the occurrence of one or more of the events described in Clause 8.2.
    2. Where the Contract has been terminated by the Contractor or where the Customer has agreed to the release of the source code and so advises the Escrow Agent in writing, the Escrow Agent will, upon written request from the Contractor release the source code and supporting material to the Contractor.
12. Termination
    1. The Escrow Agent may, by giving 3 months prior written notice to the Customer and Contractor, terminate this Agreement subject to a pro-rata refund of any advance payment of the escrow fee.
    2. The Customer and Contractor may jointly terminate this Agreement immediately if the Escrow Agent:
13. has become subject to any form of insolvency administration; or
14. is in breach of any obligation under this Agreement so that there is a substantial failure by the Escrow Agent to perform or observe this Agreement.
    1. If this Agreement is terminated in accordance with this clause 9 while the licence of the Licensed Software remains in force, the Customer and Contractor will enter into a new escrow agreement on the same terms and conditions as are set out in this Agreement, with an alternative escrow agent who is acceptable to both the Customer and the Contractor.
    2. The Customer and Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Agreement but no refund of advance payment of the escrow fee will be payable in such circumstances.
15. Confidentiality
    1. The Escrow Agent must not, except as permitted by the contract, make public or disclose to any person any information about this Agreement, the Contract or the source code.
    2. The Escrow Agent must not reproduce a copy of the source code or any part thereof.
    3. The obligations under this clause 10 will survive termination of this Agreement.
16. Compliance With Laws

In carrying out this Agreement, the Escrow Agent, must, comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State or local authority.

1. Applicable law

This Agreement will be governed by and construed in accordance with the laws from time to time in force in the State of Western Australia.

1. Variation and waiver
   1. This Agreement will not be varied except by agreement in writing signed by each of the parties.
   2. A waiver by one party of a breach of a provision of this Agreement by another party will not constitute a waiver in respect of any other breach, or of any subsequent breach of this Agreement.
   3. Failure of a party to enforce a provision of this Agreement will not be interpreted to mean that the party no longer regards that provision as binding.
2. Assignment

Neither the Contractor nor the Escrow Agent may assign in whole or in part any responsibilities or benefits under this Agreement without the written consent of the Customer.

1. Notices
   1. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or by facsimile) to the address last advised by one of them to the other.

A notice or other communication is deemed to be received if:

1. sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent; or
2. sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
3. sent by electronic mail, only in the event that the other party acknowledges receipt by any means;
4. sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
5. delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

Address of the Customer

Physical address

Postal address

Phone number

Fax number

Email address

Address of the Contractor

Physical address

Postal address

Phone number

Fax number

Email address

Address of the Escrow Agent

Physical address

Postal address

Phone number

Fax number

Email address

1. This Agreement has been properly executed if the section below has been completed.

Execution – Signed for and on behalf of

Customer’s representative

Name (print)

Position

Signature and date / /

Contractor’s representative

Name (print)

Position

Signature and date / /

Escrow Agent’s representative

Name (print)

Position

Signature and date / /

Attachment 1 - Details of escrow fees

**(Clause 6 of Escrow Agreement)**

[Insert the following details:

* 1. Party responsible for payment
  2. Deposit fee
  3. Storage fee
  4. Retrieval fee
  5. Release fee
  6. Collection fee]

Attachment 2 - **Details of the licences for the Licensed Software covered by this Escrow Agreement**

**(Clause 7 of Escrow Agreement)**

[Insert details of the licenses covered by this Agreement]

Attachment 3 - **Supporting material**

**(Clause 7 of Escrow Agreement)**

[Insert details of any supporting material for the Licensed Software held in escrow]

Schedule 15 – Software Licence Terms *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

[Attach any alternative software licence terms and conditions.]

Schedule 16 - Additional Documents *****[or]* Not Applicable****

***[Delete schedule content if not applicable]***

[Attach all other relevant documents to the Contract here.]

[For a Multi-User Cooperative Procurement Arrangement, if stated in the Head Agreement Details at Item 2 - Potential Customers, the State Agencies and/or Authorised Bodies can be listed here]

Appendix 1 - Pro Bono Legal Services

***[Delete Appendix if not applicable]***

[This Appendix must be included in all Requests for Legal Services – See Schedule 1 Head Agreement Details Clause 22 and Customer Contract Details Clause 31. Contractors who provide legal services to the State of Western Australia are required to provide Pro Bono Legal Services in accordance with this Pro Bono Legal Services Appendix].

1. Interpretation

In this Appendix, unless expressed to the contrary:

* 1. Approved Causes is defined in clause 3(b)
  2. Excluded Services is defined in clause 3(c)
  3. Government means the State of Western Australia
  4. Law Firm means a Contractor that is party to a Panel
  5. Legal Services means the Services
  6. Pro Bono Legal Services is defined in clause 3(a)
  7. Pro Bono Hourly Rate is defined in clause 5

1. Guiding Principles
   1. The Government is committed to the provision of Pro Bono Legal Services as a means to contribute to the administration of justice.
   2. The Government recognises that the provision of Pro Bono Legal Services complement, rather than substitute, Government funded legal aid and legal assistant services.
   3. The Government seeks to strengthen the community legal sector through the provision of Pro Bono Legal Services.
2. Pro Bono Legal Services
   1. Pro Bono Legal Services means:

(i) pro bono legal work provide according to the Australian Pro Bono Centre’s National Pro-Bono Target definition;

(ii) services within the definition of 'Approved Causes' in clause 3(b) and otherwise within the terms of the Pro Bono Guidelines; or

(iii) services as approved from time to time by the Attorney General and notified in writing to the Service Provider by the Executive Contract Manager,

but does not include 'Excluded Services'.

* 1. Approved Causes means the provision of Pro Bono Legal Services:

(i) to individuals in Western Australia who cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial or other hardship;

(ii) which will enhance access to justice for disadvantaged people in Western Australia;

(iii) to Law Access, a community legal centre in Western Australia, the Aboriginal Legal Services of Western Australia, and to bodies whose primary focus is representation of Aboriginal people; or

(iv) by way of secondment of legal staff to Law Access, a community legal centre in Western Australia, the Aboriginal Legal Services of Western Australia, or bodies in Western Australia whose primary focus is representation of Aboriginal people.

* 1. Excluded Services means any services which under this Appendix are not recognised as Pro Bono Legal Services, and include:

(i) giving legal assistance to any person for free, or at a reduced fee, without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;

(ii) free first consultations with clients who are otherwise billed at a Law Firm's normal rates;

(iii) legal assistance provided under a grant of legal assistance from Legal Aid;

(iv) contingency fee arrangements, or other speculative work, which is undertaken with a commercial expectation of a fee;

(v) the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; and

(vi) time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

1. Requirements

Law Firms who provide Legal Services to Government must:

* 1. be a signatory to the Australian Pro Bono Centre's National Pro Bono Target ([www.probonocentre.org.au/provide-pro-bono/target/](http://www.probonocentre.org.au/provide-pro-bono/target/)); and
  2. undertake Pro Bono Legal Services for Approved Causes to the value of at least 10% of the total value of each Law Firm's contract for Legal Services with the Government.

1. Pro Bono Hourly Rates
   1. The Pro Bono Hourly Rate for a Law Firm is calculated as an average of the Law Firm’s hourly rate for lawyers under the relevant contract for Legal Services with Government.
   2. To avoid doubt and by way of illustration if a Law Firm charges the following hourly rates under a contract for Legal Services with Government:

Partner: $700

Senior Associate: $550

Associate: $400

Restricted Partner: $250

then the Pro Bono Hourly Rate for that Law Firm is $475.

* 1. To avoid doubt the Pro Bono Hourly Rate applies to calculating the requirement set out in Requirements clause 4(a)(b) only.

1. Conflicts of Interest

A Pro Bono Coordinator located at the State Solicitor's Office will manage conflicts of interest that may arise for law firms undertaking Pro Bono Legal Services where the Government is the counter-party.

1. Reporting
   1. Law Firms are required to complete the Reporting Template at Table 1 for each contract for Legal Services with the Government by no later than 12 weeks from the end of the financial year in respect of which the Pro Bono amount is calculated and send it to the State Solicitors Office (SSO) at **probono@sso.wa.gov.au**.
   2. Law firms are not required to disclose the names of their pro bono clients in the Reporting Template.
   3. A report using disaggregated data will be tabled in Parliament annually.

Table 1 – Pro Bono Reporting Template

|  |  |  |
| --- | --- | --- |
| Item | Category | Description |
| 1 | Law Firm |  |
| 2 | Department | Department, State Agency or entity the Law Firm has a contract for Legal Services with. Law Firms are required to complete a report for each contract for Legal Services. (I.e. if a Law Firm has two contracts for Legal Services, then it is required to complete two reports). |
| 3 | Signatory to the National Pro Bono Aspirational Target | Yes/No |
| 4 | Total dollar value of the contract for Legal Services for the financial year. | The dollar amount over the relevant financial year. |
| 5 | Total hours of Pro Bono Legal Services (on Approved Causes AND under the Australian Pro Bono Centre’s National Pro Bono Target) | The aggregate sum of hour the Law Firm’s lawyers have provided Pro Bono Legal Services during the financial year.  To avoid doubt, Pro Bono Legal Services on Approved Causes hours can be used to satisfy the requirements of the Australian Pro Bono Centre’s National Pro Bono Target. |
| 6 | Total hours provided on Pro Bono Legal Services for Approved Causes | Aggregate sum of hours for the relevant Law Firm’s lawyers during the financial year. |
| 7 | Total dollar amount on Pro Bono Legal Services on Approved Causes | Calculated as the number of aggregate hours (listed in item 5) multiplied by the Pro Bono Hourly Rate. |
| 8 | Is the amount in Item 7 at least 10% of the total value of Legal Services work provided to Government in the financial year the subject of this report (i.e. the amount listed in item 4). | Yes/No |
| 9 | Total hours provided on Pro Bono Legal Services on Approved Causes for   1. Individuals; and 2. Organisations. | Aggregate sum of hours for the relevant Law Firm’s lawyers during the financial year, broken down into the categories of individuals and organisations (respectively). |
| 10 | Total dollar amount on Pro Bono Legal Services on Approved Causes for:   1. Individuals; and 2. Organisations. | Calculated as the number of aggregate hours (listed in Item 8) multiplied by the Pro Bono Hourly Rate broken down into the categories of individuals and organisations (respectively). |
| 11 | No FTE lawyers (excluding paralegals) |  |
| 12. | Hours provided on Pro Bono Legal Services on Approved Causes per lawyer |  |
| 13. | Internal Pro Bono Legal Services hours per lawyer target | (if any) |
| 14. | Brief overview of Pro Bono activities | Does not need to identify pro bono clients. |