



Government of **Western Australia**
Department of **Finance**

Request Conditions and General Conditions of Contract

December 2024

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PART A – REQUEST CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions Generally

In the Request:

Addendum means any addendum issued by the Contract Authority or the Customer in relation to the Request and which is available at Tenders WA [www.tenders.wa.gov.au].

Closing Time means the time and date specified on the front of the Request as the closing time for the submission of Offers.

Contract means either:

- (a) the head agreement between the Contract Authority and the successful Respondent, the terms and conditions of which are contained in the Head Agreement Documents; or
- (b) the customer contract between the Customer and the successful Respondent for the supply of the Goods and/or Services by the successful Respondent, the terms and conditions of which are contained in the Customer Contract Documents,

as the context requires.

General Conditions mean Part B of this document.

Offer means the offer submitted by the Respondent in response to the Request.

Offer Information means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request.

Offer Validity Period means the period specified in the Request.

Offered Price means the price, or the price determined by applying the formula or method, specified in the Offer.

Respondent means any person who submits an Offer.

Request Conditions means this Part A.

Section means a section of the Request.

1.2 Interpretation

In the Request and these Request Conditions:

- words defined in the General Conditions also apply to these Request Conditions; and
- unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (c) a reference to a gender includes other genders;

- (d) a reference to a person includes a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Respondent consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;
 - (ii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
 - (iii) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent;
- (g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Contract Authority, the Customer or the Respondent;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;
- (j) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Contract Authority, the Customer and the Respondent;
- (k) headings are included for convenience and do not affect the interpretation of the Request;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (m) no rule of interpretation is to be applied to disadvantage the Contract Authority, the Customer or the Respondent on the basis that it was responsible for preparing the Request;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to a monetary amount means that amount in Australian currency, and
- (v) a reference to time means the time observed by the general community from time to time in Western Australia.

2. CONDITIONS

2.1 Submission of Offer

Any Offer which:

- (a) is not submitted before the Closing Time;
- (b) is incomplete at the Closing Time; or
- (c) is not submitted in accordance with the provisions of clause 1.2 in Part A of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

For the purposes of the Request, mishandling will only have occurred where:

- (a) in the case of submission of the Offer by hand or by post, the Offer was received by the Contract Authority or Customer prior to the Closing Time but the Offer was not transferred by the Contract Authority or Customer to the tender box by the Closing Time; or
- (b) in the case of submission of the Offer by facsimile, the Offer was received by the Contract Authority or Customer prior to the Closing Time but the Offer was not transferred by the Contract Authority or Customer to the tender box by the Closing Time.

If the Respondent submits the Offer by facsimile, then the Offer must be received in full by the Contract Authority or Customer prior to the Closing Time. If the Respondent submits the Offer by facsimile, the Respondent agrees that:

- (a) receipt of the Offer will be determined by the date and time which the Contract Authority's or Customer's facsimile machine records that the facsimile was successfully received; and
- (b) facsimile transmission is not a reliable method of submitting Offers and the Respondent submits the Offer entirely at its own risk in respect of transmission failures and transmission errors howsoever caused.

The Offer must be received in full by the Contract Authority or Customer prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

- (a) receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Contract Authority's or Customer's computer records that the Offer was received;
- (b) if any files uploaded as part of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Contract Authority or Customer all

- costs incurred by the Contract Authority or the Customer arising from, or in connection with, the virus;
- (c) electronic lodgement of the Offer may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;
 - (d) neither the Contract Authority nor the Customer will be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;
 - (e) if the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Contract Authority or Customer may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;
 - (f) if the Contract Authority or Customer requests the provision of another copy of the Offer, then the Respondent must:
 - (i) provide the copy in the form or forms requested within the period specified by the Contract Authority or Customer;
 - (ii) provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and
 - (iii) provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

An Offer is not assignable by the Respondent without the prior written consent of the Contract Authority or Customer.

If an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.

An Offer is, upon submission, the absolute property of the Contract Authority or Customer and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the Contract Authority or Customer may make such copies of the Offer as the Contract Authority or Customer requires for the proper evaluation of the Offer.

2.2 Cancellation And Variation

The Contract Authority or Customer reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.

If the Contract Authority or Customer cancels, varies, supplements, supersedes or replaces the Request, then;

- (a) the Contract Authority or Customer will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
- (b) the Respondent shall not have any recourse against the Contract Authority or Customer whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

2.3 Contract Authority's Rights

The Contract Authority or Customer is not obliged to accept the Offer containing the lowest Offered Price.

If the Respondent's Offer makes reference to information on its website, or on any other website, the Contract Authority or the Customer will not take into account that information when evaluating an Offer.

The Contract Authority or Customer is under no obligation to accept any Offer and may reject any Offer or all Offers, in the Contract Authority's or Customer's discretion, including:

- (a) **(failure to comply with Request Conditions)** if an Offer fails to comply with these Request Conditions;
- (b) **(failure to comply with requirements)** if an Offer fails to comply with any of the requirements set out in Part B of the Request;
- (c) **(false or misleading)** if an Offer contains information or representations that are false or misleading;
- (d) **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the Corporations Act;
- (e) **(change of consortium membership)** in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
- (f) **(change of policy or commercial reasons)** if the Contract Authority or Customer decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Contract Authority or Customer may:

- (a) request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
- (b) request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Contract Authority or Customer.

In evaluating an Offer, the Contract Authority or Customer may take into account any information regarding the Respondent that the Contract Authority or Customer has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a State Agency.

The Contract Authority or Customer reserves the right to conduct site visits as it deems appropriate.

2.4 Selection of Preferred Respondent

The Contract Authority or Customer may select, but is not obliged to select, one or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Conditions, including clause 2.3, continue to apply until such time as a Contract is awarded or the Request is terminated.

The Respondent agrees that, if it is selected as a preferred Respondent, then:

- (a) its Offer will remain open for acceptance by the Contract Authority or Customer at any time prior to the expiry of the Offer Validity Period;
- (b) the Contract Authority or Customer may choose to negotiate any aspect of the Offer; and
- (c) the Contract Authority or Customer may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Contract Authority or Customer.

At any time during the negotiations either the Contract Authority, the Customer or a preferred Respondent may terminate the negotiations for any reason.

If negotiations are terminated, the Contract Authority or Customer may:

- (a) accept the Respondent's original Offer; or
- (b) select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause 2.4; or
- (c) terminate the Request.

2.5 Discretion

Whenever the consent of the Contract Authority or Customer is required under the Request, that consent may be given or withheld by the Contract Authority or Customer in the Contract Authority's or Customer's absolute discretion and may be given subject to such conditions as the Contract Authority or Customer may determine.

2.6 Agreement with These Request Conditions

In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Conditions.

2.7 Agreement by Respondent

In submitting an Offer, the Respondent agrees that:

(information true and correct) all information in its Offer and all Offer Information is true and correct at the time of its submission;

(relies on own enquiries) other than in respect of information provided by the Contract Authority or Customer to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, the Request Conditions and the General Conditions;

(understood Request) it has examined and understood the Request, the Request Conditions, the General Conditions and any other information available to the Respondent in respect of the Request;

(understood Addenda) prior to the Closing Time the Respondent must log on to Tenders WA [www.tenders.wa.gov.au] to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the Request as by

submitting its Offer it will be deemed to have examined and understood each Addendum;

(made reasonable enquiries) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;

(does not rely on warranties) other than in respect of information provided by the Contract Authority or Customer to the Respondent in writing, it does not rely on any warranty or representation of the Contract Authority, the Customer or any person actually or ostensibly acting on behalf of the Contract Authority or the Customer;

(no reference to information on websites) it must not make reference to any information contained on the Respondent's website or on any other website. Any information on the Respondent's website or on any other website which the Respondent wishes the Contract Authority or Customer to rely on must be set out in full in the Respondent's Offer;

(no secret commission) it has not paid or received and will not pay or receive any secret commission in respect of the Request;

(no collusion) it has not colluded and will not collude with any other person in respect of the Request;

(no inflation or deflation of Offered Price) its Offered Price is not inflated or deflated to advantage another Respondent;

(no unlawful arrangement) it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

(no improper influence) it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

(own cost and expenses) it will pay its own costs and expenses in connection with:

- (a) the preparation and submission of its Offer; and
- (b) any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Contract Authority or Customer, whether before or after the submission of any Offer,

irrespective of whether its Offer is accepted or not.

2.8 Withdrawal of Offer

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Contract Authority or Customer in writing.

2.9 Offer Validity

Unless the Respondent withdraws its Offer under clause 2.8, the Respondent agrees that its Offer will remain open for acceptance by the Contract Authority or Customer for the Offer Validity Period.

The Offer Validity Period may be extended or further extended by the Contract Authority or Customer by advising each Respondent in writing at any time or times.

2.10 Disclosure of Offer Information

- (a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the Freedom of Information Act and may also be disclosed by the Contract Authority, the Customer or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- (b) By submitting an Offer, the Respondent releases the Contract Authority, the Customer and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Offer and its Offer Information under this clause by the Contract Authority, the Customer or the State.
- (c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006 (WA)* and the *Auditor General's Act 2006 (WA)* are not affected in any way by the Request.
- (d) Subject to this clause and to the provisions of the *Financial Management Act 2006 (WA)* and the *Auditor General's Act 2006 (WA)*, the Contract Authority and the Customer will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the Contract Authority or Customer may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

2.11 Conflict of Interest

The Respondent must, prior to any acceptance of its Offer by the Contract Authority or Customer, disclose to the Contract Authority or Customer any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

The Contract Authority or Customer may, in its discretion, accept or reject the Respondent's Offer if the Contract Authority or Customer considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

2.12 No Bribe, Inducement or Offer of Employment

The Respondent must not, without the prior written consent of the Contract Authority or Customer, directly or indirectly approach or communicate with any officer or employee of the Contract Authority or the Customer having any connection or involvement with the Request, with respect to:

- (a) an offer of employment; or
- (b) availability of employment,

with the Respondent or any related entity.

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Contract Authority or the Customer in connection with the Request.

PART B – GENERAL CONDITIONS

1. RECITALS

This Part B is the December 2024 version of the WA Government's General Conditions of Contract for the Supply of Goods and/or Services.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these General Conditions, unless the context otherwise requires:

Acceptance means sign off by the Customer in acknowledgment that agreed acceptance test criteria or alternative acceptance formalities have been satisfied in respect of the Goods and/or Services.

Adjustment has the same meaning as in the GST Act.

Adjustment Note has the same meaning as in the GST Act.

Annexure means any annexure to a Customer Contract or a Head Agreement.

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

Authorised Body has the same meaning as in the Procurement Act.

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

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

Buying Rules means the defined processes used by the Customer to purchase items under a Common Use Arrangement or Panel Arrangement (if any), which may be changed from time to time during the Term in the Contract Authority or Customer's discretion. The Buying Rules at the date of the Common Use Arrangement or Panel Arrangement (if any) are set out in Schedule 6.

Commencement Date means the commencement date specified in the Head Agreement or Customer Contract as the context requires.

Common Use Arrangement means:

- (a) a whole of government standing offer arrangement; or
- (b) a multi-user standing offer arrangement,

awarded to a single supplier or a panel of suppliers for the provision of specific goods or services commonly used within Government. Common Use Arrangements are aggregated supply arrangements that enable Potential Customers to source Goods and/or Services.

Confidential Information means information in respect of the Customer Contract or a Head Agreement that:

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

Consultancy Services means the consultancy services (if any) described in the Customer Contract.

Contract Authority means the person specified as the contract authority in the Head Agreement.

Contract Authority's Representative means a person appointed by the Contract Authority whose functions and powers are set out in clause 33.2.

Contractor means the person specified as the contractor in the Customer Contract or the Head Agreement.

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

Contractor's Representative means a person appointed by the Contractor whose functions and powers are set out in clause 33.3.

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

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

Customer means the person (if any) specified as the Customer in the Customer Contract.

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

Customer Contract Details means the relevant Schedule to the Request, describing the specific requirements of the Customer in respect of Goods and/or Services to be delivered by the Contractor.

Customer Contract Documents means:

- (a) the Letter or, when buying off a Common Use Arrangement, or a Panel Arrangement, an Order;
- (b) when buying off a Common Use Arrangement or a Panel Arrangement, the price list in the Head Agreement;
- (c) when buying off a Common Use Arrangement or a Panel Arrangement, the letter awarding the Head Agreement;
- (d) the Customer Contract Details;
- (e) the Offer;
- (f) the Request, including any addenda; and
- (g) these General Conditions.

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

Customer's Representative means a person appointed by the Customer whose functions and powers are set out in clause 33.1.

Defective means:

- (a) in respect of Goods, any Goods that do not comply with the Customer Contract or are otherwise defective in any manner; and
- (b) in respect of Services, any Services that do not comply with the Customer Contract or are otherwise defective in any manner.

Deliverable means any deliverable referred to in the Request.

Delivery Date means the date for delivery of the Goods specified in the Customer Contract/Order.

Delivery Place means the place for delivery of the Goods specified in the Customer Contract/Order.

Delivery Time means the time for delivery of the Goods specified in the Customer Contract/Order.

Developed Software means the software (if any) to be created by the Contractor under the Customer Contract.

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

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

- (a) the Contractor breaches an obligation under the Customer Contract or any Head Agreement that cannot be remedied; or
- (b) the Contractor breaches any other obligation under the Customer Contract or any Head Agreement and that breach is not remedied within 10 Business Days after the Contract Authority or the Customer gives a notice to the Contractor requiring the breach to be remedied; or
- (c) the Contractor commits 3 breaches of its obligations under the Customer Contract or any Head Agreement over any 12 month period, whether or not the Contract Authority or the Customer has given the Contractor notice of any such breaches and whether or not the Contractor has rectified such breaches; or
- (d) a representation or warranty made by the Contractor under the Customer Contract or any Head Agreement is or becomes untrue or is breached; or
- (e) an Insolvency Event occurs in respect of the Contractor; or
- (f) the Contractor ceases, or threatens to cease, to carry on business; or
- (g) the Contractor or any person included in the Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention; or
- (h) if the Contractor is a body corporate, the Contractor is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000;
- (i) the Contractor becomes a debarred supplier as defined in section 32 Procurement Act 2020;
- (j) if in the reasonable opinion of the Contract Authority or the Customer, the reputation of the Contract Authority, the Customer, the State of Western Australia or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Contractor; or
- (k) a Probity Event.

Existing Material means a work (as defined in the Copyright Act), a product or any other material, which satisfies all of the following criteria:

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

Freedom of Information Act means the *Freedom of Information Act 1992 (WA)*.

General Conditions means these general conditions of contract.

Good Industry Practice means:

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

Goods means the deliverables, goods, hardware, products or software (if any) described, and in the quantity specified, in the Head Agreement or Customer Contract.

Goods and/or Services means:

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

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

GST has the same meaning as in the GST Act.

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

Hardware means the hardware (if any) to be supplied by the Contractor under the Customer Contract as described, and in the quantity as specified, including plans and/or any supporting documentation.

Hardware Maintenance Services means the maintenance services (if any) described in the Customer Contract.

Head Agreement means any head agreement entered into between the Contract Authority and the Contractor under a Common Use Arrangement or a Panel Arrangement.

Head Agreement Details means the relevant Schedule to the Request, describing the specific requirements of the Contract Authority in respect of Goods and/or Services to be delivered by the Contractor under Customer Contracts.

Head Agreement Documents means:

- (a) the letter or other instrument issued by the Contract Authority accepting the Contractor's Offer, which letter may also specify:
 - (i) any amendments to these General Conditions, the Head Agreement or the Customer Contract Details or any of them;
 - (ii) any other terms and conditions which are to form part of the Head Agreement, the Customer Contract or both; andwhich the Contract Authority and the Contractor have agreed;
- (b) the Head Agreement Details;
- (c) the Offer;
- (d) the Request, including any addenda; and
- (e) these General Conditions.

Insolvency Event means the happening of any of these events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
 - (i) is wound up or dissolved; or
 - (ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
 - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate; or
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or

- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or
- (g) a body corporate:
 - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
 - (ii) stops or suspends payment of all, or a class of, its debts; or
 - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
 - (A) insolvent or unable to pay its debts when they fall due; or
 - (B) the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act; or
 - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- (h) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property Rights means:

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

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

- (a) acts, ordinances, regulations, by laws, orders, awards and proclamations of the State, the Commonwealth of Australia, any other Australian state or territory, or a local authority;
- (b) Authorisations;
- (c) principles of common law or equity;
- (d) standards and codes; and
- (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in (a) to (d) of this definition,

whether or not existing at the Commencement Date.

Letter means the letter signed by the Customer that:

- (a) accepts the Offer; and

- (b) may also specify:
- (i) any amendments to these General Conditions or the Customer Contract Details or both;
 - (ii) any other terms and conditions which are to form part of the Customer Contract; and

which the Customer and the Contractor have agreed.

Licensed Software means the software (if any) specified in the Customer Contract which is to be supplied by the Contractor to the Customer and in respect of which:

- (a) ownership does not pass to the Customer; and
- (b) the Customer's rights of use are subject to the conditions specified in clause 11.

Managed Services means the managed services (if any) described in the Customer Contract.

Material means Existing Material and New Material.

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

Moral Rights has the same meaning as in the Copyright Act.

Offer means the offer submitted by the Contractor in response to the Request.

Order means a purchase order for Goods and/or Services made by the Customer under a Customer Contract or under a Head Agreement.

Panel means the panel of suppliers of the Goods and/or Services established under clauses 4.18 to 4.20 inclusive, where each supplier must provide Goods and/or Services to Customers in accordance with the Head Agreement and the relevant Customer Contract.

Panel Arrangement means the arrangement for the supply of Goods and/or Services by members of the Panel to Customers.

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

Potential Customer means:

- (a) any State Agency; and
- (b) any Authorised Body listed on the Department of Finance's list of authorised bodies, accessible at wa.gov.au.

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

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

Premises means any premises which are owned or occupied by the Customer and:

- (a) are identified in the Customer Contract; or

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

and includes anything on those premises.

Price means the price that is:

- (a) specified in the Customer Contract or Head Agreement; or
- (b) determined by applying any formula or method that is specified in the Customer Contract or Head Agreement.

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

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

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor, any Related Body Corporate of the Contractor or any Contractor Personnel;
- (b) relates to the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel, and has or may have a material adverse effect on the public interest, or public confidence, in the Goods and/or Services and other activities of the Contractor in connection with the Head Agreement or a Customer Contract;
- (c) involves a breach by the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel of any:
 - (i) Law of an Australian State or Territory, or the Commonwealth of Australia; and/or
 - (ii) any equivalent of a Law in a foreign jurisdiction,in relation to bribery, anti-corruption, dishonesty offences or trust in public office offences;
- (d) involves a material failure of the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Contractor or any Contractor Personnel to carry out and observe its obligations in connection with the Head Agreement or a Customer Contract; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in, or associated with, a State procurement or project;
- (e) involves adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (f) involves the commencement of legal, regulatory or disciplinary action involving the Contractor, a Related Body Corporate of the Contractor or any Contractor Personnel that may adversely impact on compliance with government policy, the Law or the reputation of any State Agency, the State or the Government of Western Australia.

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

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

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

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

Request means the request issued by the Contract Authority or the Customer for the supply of the Goods and/or Services.

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

Schedule means a schedule to the Request.

Services means the services (if any) described in the Customer Contract or Head Agreement.

Software means Developed Software, Licensed Software, Good or Third Party Software, as the context dictates.

Software Development Services means the software development services (if any) described in the Customer Contract.

Software Support Services means the software support services (if any) described in the Customer Contract, in respect of any of Developed Software, Licensed Software or Third Party Software.

Specification means the specification of the Goods and/or Services specified, or referred to, in the Customer Contract or Head Agreement.

Specified Personnel means the Contractor Personnel specified in the Customer Contract.

State means the State of Western Australia.

State Agency has the same meaning as given in the Procurement Act.

System means the system which is the subject of the Systems Integration Services, as described in the Customer Contract.

Systems Integration Services means the systems integration services (if any) described in the Customer Contract.

Telecommunications Services means the telecommunications services (if any) described in the Customer Contract.

Term means the initial term of the Customer Contract or Head Agreement or both of them as the context requires and includes any extension of that initial term.

Third Party Software means software which is owned by a person other than the Crown in right of the State of Western Australia the Customer or the Contractor and which is the subject of a Service.

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

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

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

2.2 Interpretations

In these General Conditions, subject to any express stipulation to the contrary or unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Contractor consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Contractor under the Head Agreement or the Customer Contract binds each person who comprises the Contractor jointly and severally;
 - (ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under the Head Agreement or the Customer Contract to be undertaken;
 - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and
 - (iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;
- (g) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Head Agreement or the Customer Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Contract Authority, the Customer or the Contractor;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, these General Conditions;
- (j) all the provisions in any schedule, attachment or appendix to these General Conditions are incorporated in, and form part of, these General Conditions and bind the Contract Authority, the Customer and the Contractor;
- (k) headings are included for convenience and do not affect the interpretation of these General Conditions;

- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (m) no rule of interpretation is to be applied to disadvantage the Contract Authority, the Customer or the Contractor on the basis that it was responsible for preparing the Customer Contract or Head Agreement;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (p) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to time means the time observed by the general community from time to time in Western Australia;
- (v) a reference to a monetary amount means that amount in Australian currency;
- (w) where the context permits or requires reference to the Contractor includes the Contractor Personnel; and
- (x) where the context permits or requires reference to the Customer includes the Customer’s Personnel.

3. SCOPE OF CUSTOMER CONTRACT AND HEAD AGREEMENT

3.1 Goods and/or Services

If this is a Common Use Arrangement or a Panel Arrangement the Head Agreement constitutes a standing offer whereby Customers and Potential Customers may acquire Goods and/or Services specified in the Head Agreement from the Contractor.

If this is not a Common Use Arrangement or a Panel Arrangement, the Customer Contract is for the Goods and/or Services specified in the Customer Contract Documents.

3.2 Pricing

The Price is:

- (a) in the case of a Common Use Arrangement or a Panel Arrangement, determined by reference to the Head Agreement and any Order; or
- (b) if not a Common Use Arrangement or a Panel Arrangement, determined by reference to the Customer Contract.

3.3 Term of Customer Contract

The Customer Contract is for the Term.

3.4 Extension of Customer Contract

The Customer has the option or options (exercisable in its absolute discretion) to extend the Term for the period or periods (as applicable) specified in the Customer Contract.

If the Customer wishes to exercise an option under this clause, then the Customer must give the Contractor a notice:

- (a) by the date or dates specified in the Customer Contract; or
- (b) if no period is specified in the Customer Contract, at least 20 Business Days before the expiry of the Term,

stating that the Customer Contract is to be extended and the period of the extension.

If the Customer exercises an option under this clause, then references to "the Term" in these General Conditions are to be read as including the period of extension of the Term.

3.5 Standards and Codes

Goods

The Contractor must supply the Goods in accordance with the Specification.

All Goods delivered by the Contractor must conform:

- (a) with all samples provided by the Contractor to the Contract Authority or the Customer; and
- (b) if no standards for the Goods are specified in the Specification:
 - (i) to all relevant and current standards published by the Standards Association of Australia; or
 - (ii) if the Request specifies that it is a "Covered Procurement", to all relevant and current international standards.

Services

- (a) The Contractor must supply the Services in accordance with the Specification.
- (b) If no standards for the Services are specified in the Specification, then the Contractor must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.

3.6 Scope of the Head Agreement

The Contract Authority and the Contractor agree that:

- (a) the Contractor must maintain an offer throughout the Term to supply the Goods and/or Services to Customers and Potential Customers, which offer may be accepted by a Customer or Potential Customer at any time during the Term, on the terms and conditions set out in the Head Agreement; and
- (b) the Head Agreement only confers on the Contractor the right to enter into a Customer Contract:
 - (i) for the supply of the Goods and/or Services described in the Head Agreement; and
 - (ii) that conform to:
 - (A) the price list contained in the Head Agreement;
 - (B) the Customer Contract Details; and
 - (C) the General Conditions.

3.7 Term of Head Agreement

The Head Agreement is for the Term.

3.8 Extension of Head Agreement

The Contract Authority has the option or options (exercisable in its absolute discretion) to extend the Term for the period or periods (as applicable) specified in the Head Agreement.

If the Contract Authority wishes to exercise an option under this clause, then the Contract Authority must give the Contractor a notice:

- (a) by the date or dates specified in the Head Agreement; or
- (b) if no period is specified in the Head Agreement, at least 20 Business Days before the expiry of the Term,

stating that the Head Agreement is to be extended and the period of the extension.

If the Contract Authority exercises an option under this clause, then references to “the Term” in these General Conditions are to be read as including the period of extension of the Term.

4. FORMATION OF CUSTOMER CONTRACT AND HEAD AGREEMENT

In this clause 4:

- (a) if this is a Common Use Arrangement then sub-clauses 4.3 to 4.17 are part of a Head Agreement;
- (b) if this is a Panel Arrangement and a Common Use Arrangement, then sub-clauses 4.18 to 4.20 are part of a Head Agreement; and
- (c) if this is a Panel Arrangement and not a Common Use Arrangement then sub-clauses 4.12 to 4.20 are part of a Head Agreement and Customer Contract.

4.1 Formation of Customer Contract

A Customer Contract comes into existence when the Contractor receives a Letter or an Order.

Subject to clause 4.3, the terms of a Customer Contract are contained in the Customer Contract Documents.

4.2 Formation of Head Agreement

A Head Agreement comes into existence when the Contract Authority accepts the Contractor's Offer in respect of a Common Use Arrangement or a Panel Arrangement, whether by letter or other instrument.

The terms of a Head Agreement are contained in the Head Agreement Documents.

4.3 Constitution of Customer Contract

The Contract Authority and the Contractor agree that:

- (a) the following documents constitute a contract between the relevant Customer and the Contractor:
 - (i) an Order;
 - (ii) the price list contained in the Head Agreement;
 - (iii) the letter awarding the Head Agreement;
 - (iv) the Offer;
 - (v) the Head Agreement Details;
 - (vi) the Request; and
 - (vii) the General Conditions;
- (b) a Customer Contract will commence on the date the Goods and/or Services are ordered; and
- (c) each Customer Contract must be for the supply of the Goods and/or Services described in the Head Agreement.

4.4 Orders

The Contract Authority and the Contractor agree that:

- (a) a Potential Customer or a Customer (as applicable) may submit an Order to the Contractor at any time during Term; and
- (b) any order submitted by a Customer to the Contractor is deemed to be an Order for the purposes of the Head Agreement and the Customer Contract, whether or not all details have been included in the order and whether or not the order is identified as an Order.

4.5 Supply of Goods and/or Services to Customers

The Contract Authority and the Contractor agree that:

- (a) if the Contractor receives an Order it must provide Goods and/or Services in accordance with the Order and the Head Agreement;
- (b) unless the Contract Authority otherwise agrees, the Contractor will not provide any Goods and/or Services to any Customer or Potential Customer which are capable of being provided under a Customer Contract unless those Goods and/or Services are provided under the terms and conditions of the Head Agreement; and
- (c) unless the Contract Authority otherwise agrees and notwithstanding any agreement or arrangement between the Contractor and the Customer or Potential Customer to the contrary, any Goods and / Services provided to a Potential Customer which are capable of being provided under the Head Agreement are deemed to be provided pursuant to, and on the terms and conditions of, the Head Agreement and the Potential Customer will be a Customer for the purposes of the Head Agreement and the deemed Order.

4.6 Variation of Order

The Contract Authority and the Contractor agree that an Order can be varied on the condition that the variation is within the scope of the Head Agreement and that it does not erode, undermine or in any way conflict with the Head Agreement.

4.7 Contract Authority's liability under the Head Agreement

The Contract Authority and the Contractor agree that the Contract Authority is not and will not be liable to the Contractor:

- (a) to perform any obligation, or satisfy any liability, of a Customer; or
- (b) to rectify any breach or default of a Customer; or
- (c) in respect of any claim, loss, liability or damage which the Contractor suffers or incurs as a consequence of, or in connection with, an Order or the Contractor's dealings with a Customer.

4.8 Effect of Expiration or Termination of the Head Agreement

The Contract Authority and the Contractor agree that:

- (a) expiration or termination of the Head Agreement will not affect any existing Order;
- (b) if the Head Agreement expires or is terminated, then the Contractor may not enter into any new Orders after the date of expiration or termination; and
- (c) the Contractor will not be entitled to any compensation for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Head Agreement.

4.9 Effect of Expiration or Termination of Orders

The Contract Authority and the Contractor agree that:

- (a) expiration or termination of an Order will not affect the Head Agreement; and

- (b) the Contractor will not be entitled to any compensation from the Contract Authority for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of an Order.

4.10 Dealing with Head Agreement

If the Head Agreement is assigned or novated from the Contractor to a third party, then:

- (a) the Customer and the Contractor agree that the Customer Contract is deemed to be assigned or novated from the Contractor to the third party; and
- (b) the Customer appoints the Contract Authority as its agent to do all things necessary or convenient to give effect to the deemed assignment or novation.

4.11 Agency

The Customer appoints the Contract Authority as its agent to exercise all functions conferred on the Contract Authority under the Customer Contract.

The Contract Authority is not personally liable for any claim, loss, liability or damage which the Contractor suffers or incurs as a consequence of, or in connection with, any function undertaken by the Contract Authority while acting as agent for the Customer.

4.12 Application of this clause

If the Head Agreement relates to a Panel Arrangement or Common Use Arrangement for the supply of:

- (a) Goods; or
- (b) Goods and/or Services;

then clauses 4.13 to 4.17 form part of the Head Agreement.

4.13 Addition of Goods

The Contractor must promptly notify the Contract Authority in writing when it offers to supply:

- (a) a new good which is similar in nature to, or has the same function as, a Good ("**New Good**"); or
- (b) a good which is an improved version of a Good ("**Improved Good**"), on a general commercial basis or otherwise to the public or other customers.

If required by the Contract Authority, the Contractor must add the New Good or the Improved Good (as applicable) to the list of Goods offered to Customers under the Head Agreement.

4.14 Deletion of Goods

The Contractor may, with the Contract Authority's prior written consent, remove a Good ("**Deleted Good**") from the list of Goods offered to Customers under the Head Agreement.

4.15 Substitution of Goods

The Contractor may, with the Contract Authority's prior written consent, permanently or temporarily substitute another good ("**Substitute Good**") for a Good which is offered to Customers under the Head Agreement ("**Substituted Good**"), whether the Substitute Good is:

- (a) different in nature from, or has a different function to, the Substituted Good;
- (b) supplied or sourced from a different country of origin than the Substituted Good; or
- (c) manufactured by a manufacturer other than the manufacturer of the Substituted Good.

4.16 Effective Date of Addition, Deletion or Substitution

- (a) The Contractor must:
 - (i) offer the New Good, the Improved Good or the Substitute Good; or
 - (ii) cease offering the Deleted Good or the Substituted Good,(as applicable) to Customers and Potential Customers on and from a date approved by the Contract Authority.
- (b) On and from the date approved:
 - (i) the Head Agreement is deemed to be amended to remove the Deleted Good or the Substituted Good or to include the New Good, the Improved Good or the Substitute Good (as applicable);
 - (ii) references to "Goods" in the Head Agreement exclude the Deleted Good or the Substituted Good and include the New Good, the Improved Good or the Substitute Good (as applicable);
 - (iii) Customers and Potential Customers may no longer submit Orders for the Deleted Good or the Substituted Good (as applicable);
 - (iv) Customers and Potential Customers may submit Orders for the New Good, the Improved Good or the Substitute Good (as applicable); and
 - (v) all Contracts and outstanding Orders submitted by Customers and Potential Customers are deemed to be amended to:
 - (A) delete references to the Deleted Good; and
 - (B) delete references to the Substituted Good and substitute references to the Substitute Good,as applicable.

4.17 Provision of information

The Contractor must promptly provide any information requested by the Contract Authority in respect of the proposed New Good, Improved Good or Substitute Good and must promptly provide samples of the proposed New Good, Improved Good or Substitute Good if requested by the Contract Authority.

4.18 Generally

(a) In this clause:

Panel means the panel of Panel Members.

Panel Arrangement means the arrangement for the supply of Goods and/or Services by Panel Members to the Customer.

Panel Member means a successful Respondent or other entity who has been appointed as a member of the Panel.

- (b) This clause applies to a Panel Arrangement established by the Contract Authority or Customer for the supply of Goods and/or Services to the Customer.
- (c) The Contract Authority or Customer reserves the right:
- (i) to appoint as many Panel Members as it sees fit; and
 - (ii) at any time and from time to time, to supplement the Panel with additional Panel Members.
- (d) Each Panel Member acknowledges that, without limiting the Buying Rules:
- (i) the Customer may request Goods and/or Services from any Panel Member;
 - (ii) neither the Contract Authority nor the Customer makes any representation that the Customer will procure or seek to procure the Goods and/or Services, or any particular volume of Goods and/or Services, from a Panel Member;
 - (iii) the Customer will request Goods and/or Services from a Panel Member by submitting an Order to proceed to that Panel Member;
 - (iv) a Panel Member may not receive any Orders from the Customer during the Term; and
 - (v) appointment to a Panel does not give a Panel Member an exclusive right to provide the Goods and/or Services to the Customer.
- (e) On termination of a Panel Member's contract under clause 35, that Panel Member is immediately removed from the Panel and is prohibited from rejoining the Panel under sub-clause (c)(ii).

4.19 Consequences of being appointed to Panel

The Contractor acknowledges that:

- (a) Customers and Potential Customers may submit Orders to the Contractor or to any other member of the Panel; and

- (b) appointment to a Panel does not give the Contractor an exclusive right to provide the Goods and/or Services to the Contract Authority, a Customer or a Potential Customer.

4.20 Change Panel

The Contract Authority or Customer reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Panel or any member of the Panel.

Generally

4.21 No assurance of Orders

The Contractor acknowledges that the Contractor may not receive any Orders from any Customer or any Potential Customer during the Term.

None of the Contract Authority, any Customer nor any Potential Customer makes any representation that it will procure or seek to procure any particular volume of Goods and/or Services from the Contractor.

4.22 Order of Precedence – Customer Contract Documents

The Customer Contract Documents shall be read in the order of precedence:

- (a) specified in the Customer Contract Documents; or
- (b) if no order of precedence is specified in the Customer Contract Documents, then the Customer Contract Documents shall be read in descending order of precedence as listed in the definition of Customer Contract Documents in clause 2.1.

Where any inconsistency occurs between the provisions contained in two or more Customer Contract Documents, the Customer Contract Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Customer Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

4.23 Order of Precedence – Head Agreement Documents

The Head Agreement Documents shall be read in the order of precedence

- (a) specified in the Head Agreement Documents; or
- (b) if no order of precedence is specified in the Head Agreement Documents, then the Head Agreement Documents shall be read in descending order of precedence as listed in the definition of Head Agreement Documents in clause 2.1.

Where any inconsistency occurs between the provisions contained in two or more Head Agreement Documents, the Head Agreement Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If

the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Head Agreement Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

4.24 Variations – Customer Contract

The Customer and the Contractor may vary the Customer Contract or any other technical requirements of the Customer by completing and signing a change order in the form specified in Schedule 12 to the Request.

If there is no Schedule 12 to the Request, the Customer Contract may only be varied in writing executed by the Customer and the Contractor.

4.25 Variations – Head Agreement

The Head Agreement may only be varied in writing executed by the Contract Authority and the Contractor.

5. RELATIONSHIP

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

The Contractor must not represent that the Contractor or any of its Contractor Personnel are the employees, agents, partners or joint venturers of the Contract Authority or the Customer.

6. SERVICE SPECIFIC ISSUES - SUPPLY OF CONSULTANCY AND CONTRACTING SERVICES

6.1 Application of this clause

If the Customer Contract is for the supply of:

- (a) Services; or
- (b) Goods and/or Services,

then this clause 6 forms part of the Customer Contract.

6.2 Supply of Services

The Contractor must supply the Services during the Term in accordance with the Customer Contract.

6.3 Orders

If the Customer Contract refers to the giving of Orders for the Services, then the Contractor must supply the Services in accordance with Orders given by the Customer.

The Customer may give the Contractor an Order at any time.

The Customer may give the Contractor any number of Orders.

An Order must specify:

- (a) the Services;
- (b) the scope of the Services; and
- (c) the date, time and place for performance of the Services (if applicable).

6.4 Additional Work

If, at the written request of the Customer, the Contractor performs work that is additional to the Services, then the Customer must pay the Contractor for the additional work:

- (a) at the rate specified in the Customer Contract; or
- (b) if no rate is specified in the Customer Contract, at the rate agreed between the Customer and the Contractor; or

if no rate is agreed under this clause 6.4 within 10 Business Days from the date of the Customer's request, at the reasonable rate determined by the Customer.

6.5 Specified Personnel

If the Customer requires Specified Personnel, then the Contractor:

- (a) must ensure that all Specified Personnel are available to carry out, and do carry out, the Services; and
- (b) must not allow the Services to be carried out by any other person without the prior written consent of the Customer.

The Contractor must remove any person included in the Specified Personnel from the supply of the Services if the Customer reasonably requires by notice in writing to the Contractor that the person be removed. If requested, the Customer must give the Contractor the reason for the removal of the person included in the Specified Personnel.

If the Customer gives a notice to the Contractor under this clause 6.5, then the Contractor must promptly:

- (a) remove the person included in the Specified Personnel; and
- (b) replace the person included in the Specified Personnel with additional Contractor Personnel of similar skills and experience reasonably acceptable to the Customer.

If Specified Personnel are replaced with additional Contractor Personnel under this clause 6.5, then references to Specified Personnel are taken to include such additional Contractor Personnel.

6.6 Unsatisfactory Services

If the Customer finds that any of the Services are Defective, then, without limiting any other remedy available to the Customer, the Customer may by notice to the Contractor require the Contractor to re-supply the Defective Services and the Contractor must re-supply the Defective Services at no cost to the Customer.

If the Contractor receives a notice under this clause 6.6 and the Contractor does not re-supply the DefectiveServices within a reasonable time, then the Customer may purchase from another supplier substitute services which in the opinion of the Customer (as applicable) are most suitable, even though such services may be of a different kind, quantity and quality from the Services.

If the Customer purchases substitute services, then:

- (a) the Customer does not have to pay the Price for the DefectiveServices; and
- (b) the Contractor must reimburse the Customer (as applicable) for:
 - (i) any amount by which the cost of substitute services exceeds the Price for the DefectiveServices; and
 - (ii) the Customer's reasonable costs and expenses resulting from having to purchase substitute services,within 5 Business Days from the date that the Customer (as applicable) gives the Contractor an invoice for those costs.

7. HARDWARE/GOOD SPECIFIC ISSUES

7.1 Application of this clause

If the Customer Contract is for the supply of:

- (a) Goods; or
- (b) Goods and/or Services;

then this clause 7 forms part of the Customer Contract or the Head Agreement.

7.2 Supply of Goods

The Contractor must supply the Goods during the Term in accordance with the Customer Contract or the Head Agreement.

7.3 Orders

If the Customer Contract or the Head Agreement refers to the giving of Orders for the Goods, then the Contractor must supply the Goods in accordance with Orders given by the Customer.

The Customer may give the Contractor an Order at any time during the Term.

The Customer may give the Contractor any number of Orders.

An Order must specify:

- (a) the Goods;
- (b) the quantity of the Goods; and
- (c) the date, time and place for delivery of the Goods if different from the Delivery Date, Delivery Time or Delivery Place.

7.4 Inspection and Testing

Subject to the Customer:

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

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

The Contractor must do everything reasonably necessary to enable the inspection and testing to be carried out.

7.5 Sources of Supply

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

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

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

7.6 Packing

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

7.7 Delivery

Unless the Customer specifies otherwise in an Order, the Contractor must deliver the Goods to the Delivery Place on the Delivery Date at the Delivery Time.

If no Delivery Date or Delivery Time is specified in the Customer Contract or in an Order, then:

- (a) the Contractor must give notice to the Customer at least 2 Business Days before the delivery of Goods; and
- (b) the Contractor must deliver the Goods during Business Hours.

If a period of days is specified as the Delivery Time, then the Contractor must deliver the Goods within Business Hours on any day in that period.

The Contractor must comply with all reasonable directions from the Customer or any other person who has control of the Delivery Place.

7.8 Variation of Delivery

The Customer may at any time, including at the time of actual delivery, vary the Delivery Place, the Delivery Date or the Delivery Time.

When possible, the Customer will use reasonable endeavours to inform the Contractor of the variation a reasonable time before delivery is due.

The Customer must reimburse the Contractor for the Contractor's reasonable costs and expenses resulting from a variation to the Delivery Place, Delivery Date or Delivery Time under this clause 7.8.

7.9 Delay in Delivery Date - Contractor Caused

If delivery of the Goods is likely to be delayed until after the Delivery Date due to an act or omission of the Contractor, then the Contractor must notify the Customer of the likely delay as soon as the Contractor becomes aware of it.

A notice from the Contractor under this clause 7.9 does not release the Contractor from its obligations relating to delivery of the Goods or from any other obligation or liability under the Customer Contract.

If:

- (a) the Customer receives a notice under this clause 7.9; or
- (b) the Goods are not delivered by the Delivery Date, and the Customer requires the Goods by the Delivery Date, then the Customer:
 - (i) must give notice to the Contractor if it intends to purchase substitute goods from another supplier under this clause 7.9 no later than 5 Business Days before the purchase of the substitute goods; and
 - (ii) may purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods.

If the Customer purchases substitute goods:

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

7.10 Delay in Delivery Date - Customer Caused

If delivery of the Goods is likely to be delayed until after the Delivery Date due to an act or omission of the Customer and that act or omission justifies an extension of the Delivery Date, then the Contractor must, within 10 Business Days after the act or omission of the Customer giving rise to the delay, notify the Customer in writing of:

- (a) the strategies that the Contractor has developed and will implement to avoid, minimise or manage the consequences of the delay;
- (b) the period, or likely period, of delay;
- (c) the likely effect of the delay on the Customer Contract;

- (d) the additional costs which the Contractor will reasonably incur, and
- (e) request an extension of time that is reasonable in the circumstances.

After receiving a request for an extension of time under this clause 7.10, the Customer must:

- (a) promptly consent to a reasonable extension of time; and
- (b) pay all reasonable additional costs incurred by the Contractor within 30 days of receiving the request,

unless there are reasonable grounds for refusing its consent.

Clauses 8 to 15 apply to Information, Communications and Technology (ICT) Contracts only

8. SERVICE SPECIFIC ISSUES - SUPPLY OF HARDWARE MAINTENANCE SERVICES

8.1 Application of this clause

If the Customer Contract is for the supply of Hardware Maintenance Services, then, without limiting clause 9, this clause 8 forms part of the Customer Contract.

8.2 Commencement of Maintenance

Except to the extent stated to the contrary in the Customer Contract (including, if applicable, Schedule 9 to the Request), any rectification of defects in the Hardware, which are required during the warranty period, will be provided to the Customer by the Contractor free of charge.

The Hardware Maintenance Services will commence on the date specified in the Customer Contract and will be renewable as specified in the Customer Contract.

For the removal of doubt, if the Services relate to Hardware purchased under the Customer Contract, then the initial term of the Hardware Maintenance Services will not commence until the expiry of any relevant warranty period for the Hardware, unless specified to the contrary in the Customer Contract.

8.3 Preventative Maintenance

If so provided in the Customer Contract, the Contractor will provide Hardware Maintenance Services in the form of preventative maintenance and will ensure that:

- (a) preventative maintenance is carried out in accordance with the requirements of the Customer Contract (including, if applicable, Schedule 9 to the Request); and
- (b) preventative maintenance is carried out at the times specified in the Customer Contract (including, if applicable, Schedule 9 to the Request) or otherwise at times when the equipment is either not operational or else at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer.

The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide preventative maintenance to the required standard.

8.4 Remedial Maintenance

If so provided in the Customer Contract, the Contractor will provide Hardware Maintenance Services in the form of remedial maintenance. Where the Contractor is required to provide remedial maintenance, it will, after being notified of a fault condition or possible fault condition in the equipment, promptly restore the equipment to good working order and will, as necessary:

- (a) replace or repair parts;
- (b) comply with any response times specified in the Customer Contract (including, if applicable, Schedule 9 to the Request);
- (c) to the extent practical, implement measures to minimise disruption to the Customer's operations during maintenance work as specified in the Customer Contract (including, if applicable, Schedule 9 to the Request); and
- (d) comply with any other requirements as specified in the Customer Contract (including, if applicable, Schedule 9 to the Request).

The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide remedial maintenance to the required standard.

8.5 Storage of Contractor Materials

Unless provided to the contrary in the Customer Contract (including, if applicable, Schedule 9 to the Request), the Contractor may store manuals, tools and test equipment on the Premises as required for the purposes of the Customer Contract. The Customer agrees not to use any such manuals, tools or test equipment without the Contractor's consent.

8.6 Maintenance Records

Where required in the Customer Contract (including, if applicable, Schedule 9 to the Request), the Contractor will keep full records of its Hardware Maintenance Services and will provide copies of those records to the Customer within 5 Business Days of request or within any other period specified in the Customer Contract.

8.7 Third Party Equipment

For the removal of doubt, equipment which is the subject of the Hardware Maintenance Services may consist wholly or partly of hardware or office machines which have not been supplied by the Contractor under the Customer Contract or at all.

9. SERVICE SPECIFIC ISSUES - SUPPLY OF MANAGED SERVICES

9.1 Application of this clause

If the Customer Contract is for the supply of Managed Services, then, without limiting clause 8 this clause 9 forms part of the Customer Contract.

9.2 General Obligations of Successful Respondent

Where the Customer Contract states that the Contractor is to provide Managed Services:

- (a) the Contractor agrees to commence the Managed Services on the service commencement date specified in the Customer Contract and to meet the Specification and service levels for the Managed Services during the Term;
- (b) the Contractor will be deemed to have knowledge of information that the Contractor could reasonably have obtained during due diligence which it had the opportunity to conduct prior to the service commencement date (as specified in the Customer Contract), whether or not the Contractor in fact conducted such due diligence;
- (c) without limiting the preceding paragraph, the Contractor will be deemed to have made use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the service commencement date (as specified in the Customer Contract); and
- (d) unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other government customers at the same time and in similar circumstances.

9.3 Transition In

If a transition plan is contained in the Customer Contract (including, if applicable, Schedule 11 to the Request), then the Contractor will, as necessary:

- (a) comply with obligations specified in the transition plan contained in the Customer Contract (including, if applicable, Schedule 11 to the Request) regarding the transfer or management of third party contracts;
- (b) comply with the requirements of the transition plan concerning the future role of the Customer's existing officers, employees and agents, including making offers of employment to such officers, employees and agents;
- (c) ensure it is able to deliver the Managed Services from the date stated in the transition plan;
- (d) ensure (to the extent practical) that all third party software licences and other relevant third party agreements entered into by the Contractor from the commencement of the transition in process incorporate a term requiring the licensor or third party supplier to consent to novation or assignment of the licence to an alternative service provider or to the Customer itself upon termination of the Managed Services for any reason, with the cost of any

increased charges resulting from the inclusion of that term to be borne by the Customer (subject to prior notification to the Customer), unless agreed by the parties to the contrary; and

- (e) prepare a procedures manual which, once agreed by the Customer, will form part of the Customer Contract and which, in addition to any other requirements specified in the Customer Contract, will describe how the Contractor will manage the delivery of the Managed Services, including:
 - (i) how compliance with the service levels and other performance factors will be measured and met;
 - (ii) procedures to identify and rectify failures in the quality of the Managed Services;
 - (iii) the acceptance procedure for deliverables supplied pursuant to the Managed Services;
 - (iv) how changes to the Managed Services or method of delivery will be identified and met;
 - (v) proposed audit requirements; and
 - (vi) staffing, reporting, planning and supervisory activities normally undertaken in respect of similar services in similar circumstances.

If no transition plan is contained in the Customer Contract, then the Contractor will comply with the obligations regarding the transfer or management of third party contracts which are agreed between the Customer and the Contractor.

9.4 Service Delivery and Service Level Agreement

Unless the Customer agrees otherwise in writing, the Managed Services will be performed in Australia and, in addition:

- (a) from the service commencement date specified in the Customer Contract, the Contractor agrees to provide the Managed Services in accordance with the service level documentation and any other performance measures attached to or specified in the Customer Contract;
- (b) the Contractor agrees to report to the Customer at monthly intervals (or such other intervals as are specified in the Customer Contract) and in conformity with any agreed format, as to the effectiveness of service delivery, including the extent to which the Managed Services are being or have been adapted to meet the Customer's changing business needs; and
- (c) the Contractor will advise the Customer if it considers the Specification or service levels should be revised to take account of new functions performed by the Customer that are outside the scope of the Customer Contract (such revisions to be implemented, if at all, in accordance with the change control procedure set out in the Customer Contract).

If the Contractor fails to meet performance requirements for the Managed Services as specified in the service level documentation or fails to meet other performance measures specified in Schedule 8 to the Request, the Contractor will promptly:

- (a) investigate the underlying causes of the problem and use all commercially reasonable efforts to preserve any data indicating the cause of the problem; and

- (b) advise the Customer of the status of remedial efforts being undertaken with respect to the underlying cause of the problem.

Compliance by the Contractor with this clause 9.4 will not deprive the Customer of a right to pursue any other remedy under the Customer Contract arising from the Contractor's failure to meet its obligations under the Customer Contract.

9.5 Transition Out

On termination of the Managed Services for any reason, and subject to any qualification or provision to the contrary in the Customer Contract, the Contractor will, if requested by the Customer, assist the Customer in transferring responsibility for providing the Managed Services either to an alternative service provider or to the Customer itself and this will include making arrangements for:

- (a) the novation or assignment (to the extent practical) of software licences and any other relevant third party agreements from the Contractor to an alternative service provider or to the Customer itself, or if the Contractor is managing third party licences or agreements on behalf of the Customer, the transfer of management responsibility in respect of such licences and/or agreements from the Contractor to an alternative service provider or to the Customer itself, with the cost of any new or increased charges to be borne by the Customer (subject to prior notification to and agreement from the Customer) unless agreed by the parties to the contrary;
- (b) an offer to sell to the alternative service provider or to the Customer itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Managed Services;
- (c) the transfer of the Customer's data to an alternative service provider and/or to the Customer itself; and
- (d) the granting by the Contractor to an alternative service provider and/or to the Customer itself of access to all material developed specifically for the Customer as part of the Managed Services regardless of the manner of storage.

For the purposes of clause 9.5:

- (a) the Contractor is not required to assign any Intellectual Property Rights in such material; and
- (b) the Customer must agree to comply with any reasonable security and confidentiality requirements specified by the Contractor in respect of access to such material.

Throughout the transition out process, the Contractor will continue to provide the Managed Services at the Customer Contract Price if and to the extent requested by the Customer.

If and to the extent specified in the Customer Contract, the Contractor's assistance under this clause 9.5 will be the subject of a transition charge.

This clause 9.5 survives termination or expiry of the Customer Contract.

10. SERVICE SPECIFIC ISSUES - SUPPLY OF SOFTWARE DEVELOPMENT SERVICES

10.1 Application of this clause

If the Customer Contract is for the supply of Software Development Services, then this clause 10 forms part of the Customer Contract.

10.2 Preparation of Project Plan

The Contractor will prepare a project plan in relation to the Software Development Services (including relevant milestones) and submit it to the Customer for approval by the date specified in the Customer Contract.

10.3 Approval of Project Plan

The Customer will promptly review the project plan submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the requirements of the Customer Contract.

The Customer must approve the project plan when satisfied that it is consistent with the requirements of the Customer Contract. The project plan must be approved by the date specified in the Customer Contract or, if applicable, before the expiry of any extended period which is specified in the Customer Contract or which is otherwise agreed between the parties.

The Customer is not required to approve the project plan if it is inconsistent with the requirements of the Customer Contract. The Customer will provide the Contractor with details as to why it considers the project plan is inconsistent with the requirements of the Customer Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the project plan is due.

The project plan will, when approved by both parties, become part of the Specification.

10.4 Preparation of Design Specification

The Contractor will prepare a detailed specification in relation to the Developed Software ('Design Specification') and submit it to the Customer for approval by the date specified in the Customer Contract. The Design Specification will give a technical explanation of how the functions in the Specification will be met. To the extent reasonably required, the Customer will assist the Contractor in the preparation of the Design Specification.

10.5 Approval of Design Specification

The Customer will promptly review the Design Specification submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the Specification.

The Customer must approve the Design Specification when satisfied that either it conforms with the Specification or that any departures from the Specification are

reasonable in the circumstances. The Design Specification must be approved by the date specified in the Customer Contract or, if applicable, before the expiry of any extended period which is permitted in the Customer Contract or which is otherwise agreed between the parties.

The Customer is not required to approve the Design Specification if it is inconsistent with the requirements of the Customer Contract. The Customer will provide the Contractor with details as to why it considers the Design Specification is inconsistent with the requirements of the Customer Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the Design Specification is due.

The Design Specification will, when approved by both parties, become part of the Specification.

10.6 Methodology

The Contractor will fully document the development process and will:

- (a) manage the Software Development Services;
- (b) take timely corrective action prior to Acceptance, where this is required, in accordance with the agreed methodology;
- (c) take timely corrective action prior to Acceptance where the Developed Software is not performing in accordance with the Specification;
- (d) ensure concurrent development and supply of user documentation as specified in the Customer Contract; and
- (e) ensure that the Developed Software is written and documented in a way which would enable future modification by a competent developer without further reference to the Contractor.

10.7 Source Code

Where the Customer Contract states that ownership of the Developed Software is to be retained by the Contractor, the Contractor agrees if so requested by the Customer to enter into an escrow arrangement in the form specified in Schedule 14 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), unless it is expressly stated in the Customer Contract that the source code is not to be placed in escrow.

Where the Customer Contract states that ownership of the Developed Software is to pass to the Intellectual Property Owner, the Contractor will deliver the source code to the Intellectual Property Owner in accordance with the project plan. For the removal of doubt, the Contractor must in these circumstances supply the Intellectual Property Owner with all documentation that was developed in conjunction with the Developed Software and provide the Intellectual Property Owner with the source code and other materials required to support the Software and otherwise ensure that it may be modified by a competent software developer without further reference to the Contractor in the future.

10.8 Use Prior to Acceptance

The Customer may not use the Developed Software in production prior to Acceptance unless so specified in the Customer Contract.

11. SERVICE SPECIFIC ISSUES - SOFTWARE LICENSING

11.1 Application of this clause

If the Customer Contract is for the licensing of Software, then this clause 11 forms part of the Customer Contract.

11.2 Licence Rights

Unless otherwise stated in the Customer Contract, the Contractor grants the Customer a non-exclusive licence at the charges specified in the Customer Contract to:

- (a) copy the Licensed Software into machine readable form to the extent permitted under the Copyright Act;
- (b) use the Licensed Software on the hardware platform/operating system combination, subject to any licence conditions specified in the Customer Contract;
- (c) use the documentation supplied by the Contractor with the Licensed Software;
- (d) make such number of copies of the Licensed Software as is specified in the Customer Contract; and
- (e) transfer the licence to one or more State Agencies which are carrying out the same functions as the Customer, subject to prior written notice to the Contractor and subject further to the other agency consenting to the terms of the licence.

Subject to clause 11.2(e), the licence granted to the Customer is non-transferable unless specified to the contrary in the Customer Contract.

The licence terms specified in this clause 11.2 will be supplemented (and, to the extent of any inconsistency, overridden) by licence terms contained in Schedule 15 to the Customer Contract. Such licence terms contained in Schedule 15 to the Customer Contract will not, however, have the effect of supplementing or overriding any provision of the Customer Contract apart from the provisions of this clause 11.2. For the removal of doubt, if the Contractor seeks to supplement or override any clause other than clause 11.2 by reference to licence terms contained in or appended to the Customer Contract, the Customer Contract referable to the other clauses must make specific reference to the relevant provisions of those licence terms.

11.3 Period of Licence

Unless earlier terminated in accordance with the Customer Contract or otherwise surrendered by the Customer, the licence remains in force for the period specified in the Customer Contract.

11.4 Protection and Security

The Customer will:

- (a) if and to the extent required by the Customer Contract, maintain records of the location of all copies of the Licensed Software;
- (b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property Rights which accompanies the Licensed Software; and
- (c) ensure that, prior to disposal of any media, any Licensed Software contained on it has been erased or destroyed.

11.5 Change of Designated Equipment

The Customer Contract may specify that use of the Licensed Software by the Customer is restricted to a particular processor.

If use of the Licensed Software is restricted to a particular processor, the Customer may, subject to any alternative licence conditions specified in the Customer Contract and subject further to obtaining the prior written consent of the Contractor (such consent not to be unreasonably withheld):

- (a) transfer the Licensed Software to an alternative processor of substantially the same capacity and performance standards; and
- (b) use the Licensed Software on any back-up hardware while the specified hardware is for any reason temporarily inoperable.

11.6 Protection of Contractor's Rights

The Customer agrees not to do anything that would prejudice the Contractor's right, title or interest in the Licensed Software.

11.7 Termination of Licence

Within 30 days (or such other period as may be specified in the Customer Contract) after termination of the licence, the Customer will destroy or return to the Contractor all copies of the Licensed Software and all related documentation, save that the Customer may (unless specified to the contrary in the Customer Contract) retain a copy of the Licensed Software and its related documentation for archival purposes only. The use of Licensed Software for archival purposes will be subject to the restrictions specified in the Customer Contract.

11.8 Escrow of Source Code

If so specified in the Customer Contract, the Contractor will enter into an escrow arrangement in respect of the source code of the Licensed Software, substantially in the form set out in Schedule 14 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), and with the escrow agent named (if any) in the Customer Contract.

11.9 No application to Software Leasing

The Customer Contract does not apply in relation to the leasing of software to the Customer.

11.10 Third Party Software

Unless and to the extent stated to the contrary in the Customer Contract, where the Customer acquires Third Party Software in connection with the Customer Contract:

- (a) the Customer will enter into a licence direct with the third party licensor as required; and
- (b) the Contractor will not be liable for loss or damage suffered by the Customer arising out of a deficiency in the Third Party Software or a breach by the third party of its obligations under the third party licence, except to the extent that the Customer acquired the Third Party Software on the Contractor's recommendation as part of a Service, solution or other deliverable supplied by the Contractor pursuant to the Customer Contract.

12. SERVICE SPECIFIC ISSUES - SUPPLY OF SOFTWARE SUPPORT SERVICES

12.1 Application of this clause

If the Customer Contract is for the supply of Software Support Services, then this clause 12 forms part of the Customer Contract.

12.2 Commencement of Support

The Software Support Services will commence on the date specified in the Customer Contract and will be renewable as specified in the Customer Contract.

For the removal of doubt, if the Services relate to Software supplied under the Customer Contract, then the initial term of the Software Support Services will not commence until the expiry of the relevant warranty period for the Software unless specified to the contrary in the Customer Contract.

Defect correction, the implementation of updates and new releases and the provision of help desk services will be provided free of charge during the warranty period unless specified to the contrary in the Customer Contract (including, if applicable, Schedule 10 to the Customer Contract).

12.3 Correction of Defects

Where the Customer identifies and reports a defect in the Licensed Software subsequent to the commencement of the Software Support Services, the Contractor will as soon as possible (and, where relevant, within the response times specified in the Customer Contract, including, if applicable, Schedule 10 to the Customer Contract) provide either defect correction information, a work-around or other remedial services as are necessary to restore the Licensed Software to compliance with its Specification.

12.4 Other Support Services

Unless specified to the contrary in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the Software Support Services will include, in addition to defect correction pursuant to clause 12.3, ensuring:

- (a) by responding to the Customer's notification of defects or by acting in a manner otherwise specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), that the Software remains in conformity with the operating specifications or any other specifications, standards or service levels described in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract);
- (b) the provision of a help desk service, full particulars of which will be as specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract); and
- (c) subject to any qualification expressed in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the correction of documentation so that it is at all times up to date.

12.5 Service Response Times

The Contractor will respond to a request from the Customer for Software Support Services within the timeframes, and subject to any conditions, specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract).

12.6 Exclusions

Unless specified to the contrary in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the Software Support Services do not include services involving correction of defects caused by:

- (a) operation of the Software in a manner which contravenes the Customer's obligations as specified in the Customer Contract;
- (b) failure by the Customer to operate the Software in accordance with its Specification or any other specifications or standards which have been made known by the Contractor to the Customer;
- (c) use by the Customer of the Software in an information technology environment other than that provided for in the Specification;
- (d) failure by the Customer to use the Software in conformity with user documentation provided by the Contractor under the Customer Contract;
- (e) correction of errors or defects caused by the reproduction or adaptation of the Software by the Customer pursuant to the Copyright Act section 47E or 47F;
- (f) equipment maintenance; or
- (g) any other service expressly excluded in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract).

For the removal of doubt, the Customer Contract (including if applicable, Schedule 10 to the Customer Contract) may expand, reduce or otherwise vary the foregoing list of excluded services.

12.7 Updates and New Releases

Updates and new releases will be made available by the Contractor to the Customer on the terms specified in the Customer Contract. Notwithstanding the foregoing, the Contractor will provide any update or new release at no cost where the Contractor or third party owner makes such updates or new releases generally available to other government customers under similar circumstances at no cost. Where there is a cost, the charges and level of support applicable to the update or new release will be as specified in the Customer Contract.

The Customer is not obliged to accept an update or new release offered by the Contractor pursuant to this clause. If the Customer rejects the offer of an update or new release, the Contractor must continue to maintain the version of the Licensed Software which immediately precedes the most recent update or new release issued by the Contractor from time to time for a period commencing on the date upon which the rejected update or new release was formally offered by the Contractor to the Customer and ending on the expiry of the Term or any earlier date specified by the Customer.

13. SERVICE SPECIFIC ISSUES - SUPPLY OF SYSTEMS INTEGRATION SERVICES

13.1 Application of this clause

If the Customer Contract is for the supply of Systems Integration Services, then this clause 13 forms part of the Customer Contract.

13.2 Hardware Componentry

To the extent that the System comprises equipment, the equipment will be supplied in accordance with the requirements of clause 7, unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

13.3 Software Componentry

To the extent that the supply of the System involves the development of Software, such development will take place in accordance with clause 10 unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

To the extent that the supply of the System requires the licensing of Software from the Contractor to the Customer, the Software will be supplied in accordance with the provisions of clause 11 unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

To the extent that the supply of the System requires the licensing of Third Party Software from a third party licensor direct to the Customer, and except as specified to the contrary in the Customer Contract (including if applicable, Schedule 1 to the Customer Contract), the Contractor will procure for the Customer a non-exclusive, non-transferable licence to use such Third Party Software on terms consistent with the Customer's requirements as set out in the Customer Contract.

13.4 System Warranty

In addition to and notwithstanding warranties otherwise provided by the Contractor to the Customer under the Customer Contract, and notwithstanding any warranties provided by a third party to the Customer under a direct licence from the third party to the Customer or by reason of an assignment of warranty pursuant to clause 19.5, the Contractor warrants that, subject to clause 13.5, for a period of 90 days from Acceptance (or such other period as is specified in the Customer Contract including, if applicable, Schedule 1 to the Customer Contract):

- (a) the System is free from defects;
- (b) all components of the System will interact with each other in accordance with the Specification; and
- (c) the System as installed will interact with the Customer's existing information technology environment as required by the Specification.

13.5 Exclusions from System Warranty

The Contractor does not warrant that:

- (a) the System will perform free of minor errors or uninterrupted;
- (b) the System will operate in combination with other systems or software selected for use by the Customer which are not set out in the Specification;
- (c) functions contained in the System will meet the Customer's requirements unless such requirements are expressly set out in the Specifications; or
- (d) the Contractor will correct all minor and immaterial System errors.

The warranty in clause 13.4 only applies where:

- (a) the System is used in accordance with the documentation provided to the Customer by the Contractor; and
- (b) there have been no unauthorised modifications to the System.

14. SERVICE SPECIFIC ISSUES - SUPPLY OF TELECOMMUNICATIONS SERVICES

14.1 Application of this clause

If the Customer Contract is for the supply of Telecommunications Services, then this clause 14 forms part of the Customer Contract.

14.2 Provision of Services

Where the Customer Contract provides that the Contractor is to supply Telecommunications Services, the Contractor will provide the Telecommunications Services, including related Hardware or Software as specified in the Customer Contract and in accordance with the pricing stated in Schedule 3 to the Customer Contract.

Telecommunications Services supplied by the Contractor pursuant to this clause will be provided in accordance with any additional terms and conditions agreed by the Customer and the Contractor and set out in the Customer Contract.

The Contractor must obtain all permissions, licences and powers necessary in order to provide a Telecommunications Service within the time prescribed by the Customer Contract.

14.3 Interoperability

To the extent specified in the Customer Contract, the Contractor will ensure that the Telecommunications Services provide interoperability and inter-working with and between:

- (a) current and future Customer telecommunications systems and networks;
- (b) other Customer service providers, switch vendors, network managers and Customer premises equipment providers; and
- (c) current and future telecommunications systems including both public and private networks.

15. SERVICE SPECIFIC ISSUES - ACCEPTANCE TESTING

15.1 Application of this clause

If the Customer Contract involves Acceptance testing, then, without limiting clause 10, this clause 15 forms part of the Customer Contract.

15.2 Date of Acceptance

The Customer will accept a Service on the date the tests have been successfully completed in accordance with the requirements for Acceptance testing as specified in the Customer Contract (including if applicable, Schedule 13 to the Request).

Where the Customer Contract does not specify that Acceptance tests are required the Service will be deemed to have been accepted on the date the Contractor delivers or (if installation is involved) installs the Service in accordance with all relevant Customer Contract stipulations.

15.3 Late notification of tests

If no Acceptance tests are specified in the Customer Contract (including if applicable, Schedule 13 to the Request), the Customer may (if so specified in the Customer Contract) stipulate reasonable tests to be conducted prior to Acceptance being deemed pursuant to clause 15.2.

15.4 Customer Cooperation

To the extent specified in the Customer Contract (including, if applicable, Schedule 13 to the Request) and otherwise as reasonably requested by the Contractor, the Customer will provide materials and facilities reasonably

necessary for the conduct of the tests, including power, environment, consumables and data media.

15.5 Delays Caused by the Customer

Should the Customer cause a delay in the performance of the Acceptance tests for any reason, the Customer will agree to an extension of time for completing the tests that is reasonable in the circumstances. The Customer will be responsible for the reasonable additional costs incurred by the Contractor in these circumstances.

15.6 Test Procedures

The parties will conduct the Acceptance tests, and discharge their respective responsibilities, in the manner specified in the Customer Contract (including, if applicable, Schedule 13 to the Request).

15.7 Certificate of Acceptance

Where the Customer Contract provides for Acceptance testing as a condition of payment, the Customer will issue a certificate of Acceptance within 5 Business Days of the date of Acceptance or within any other period specified in the Customer Contract (including, if applicable, Schedule 13 to the Request). The certificate of Acceptance will indicate the actual date of Acceptance and will be in the form specified in the Customer Contract (including, if applicable, Schedule 13 to the Request). The certificate of Acceptance constitutes an acknowledgment that the Customer Contract requirements in respect of the tested Service or Good have been satisfied as at the date of Acceptance.

15.8 Failure

If the Customer concludes that a Service and/or Good has failed an Acceptance test, the Customer must set out the basis of this conclusion in writing. Subject to consideration of any explanation provided by the Contractor in respect of the failure, the Customer may:

- (a) waive the requirement for the test in question to be satisfactorily completed;
- (b) require that further reasonable tests be conducted at the Contractor's expense, such tests to be satisfactorily completed as a condition of Acceptance within 20 Business Days of the scheduled commencement date or within such other period as the parties agree;
- (c) conditionally accept the Service or Good, subject to the Contractor agreeing to deliver a work-around or to otherwise rectify any outstanding deficiency within a set time frame; or
- (d) subject to the Customer having provided the Contractor with at least one opportunity to conduct further tests pursuant to clause 15.8(b), reject the Service or Good concerned, whereupon the Contractor will be in breach of the Customer Contract. Without limiting any other remedy which may be available in these circumstances, the Customer may require the removal of the rejected Good or any materials associated with the rejected Service.

15.9 Supplementary Tests

If the Customer reasonably concludes at any time prior to Acceptance that there is a reasonable likelihood of non-compliance with the Acceptance criteria, it may require the Contractor to carry out supplementary tests to establish whether the relevant Service or Good in fact complies with the Acceptance criteria.

The Contractor will pay the costs of any such supplementary tests which demonstrate the Service or Good does not comply with the Acceptance criteria. Otherwise, the costs of such tests will be borne by the Customer.

The Contractor will not be responsible for delays caused by supplementary tests unless those tests demonstrate the Service or Good does not comply with the Acceptance criteria.

The following clauses apply to all contracts

16. DELIVERY MANAGEMENT

16.1 Customer Supplied Items

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

16.2 Facilities

The Customer warrants that:

- (a) any facilities (including items of equipment and software) which it makes available to the Contractor will comply with the Specifications and any other standards set out in the Customer Contract;
- (b) facilities made available to the Contractor will be maintained in the manner specified (if at all) in the Customer Contract; and
- (c) should a facility which is provided by the Customer under this clause fail at any time to meet the requirements specified in the Customer Contract, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.

16.3 Site Preparation

To the extent specified in the Customer Contract, the Customer will be responsible for site preparation to enable delivery and implementation of a Good and/or the performance of a Service.

17. ACCESS

17.1 Access and Records

Subject to the Contract Authority, the Customer or both (as applicable):

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

the Contractor must allow the Contract Authority, the Customer or both to:

- (a) have reasonable access to any premises used or occupied by the Contractor in connection with the Goods and/or Services;
- (b) have reasonable access to all Records in the custody or control of the Contractor;
- (c) examine, audit, copy and use any Records in the custody or control of the Contractor; and
- (d) photograph, film or otherwise record anything done by the Contractor in supplying the Goods and/or Services, if reasonably required by the Contract Authority, the Customer or both.

The Contractor must keep accurate, complete and current written Records in respect of the Head Agreement and the Customer Contract, including:

- (a) if the Customer Contract is for the supply of Goods:
 - (i) the type and quantity of the Goods supplied to the Customer;
 - (ii) the date and time on which the Contractor supplied the Goods to the Customer; and
 - (iii) the place to which the Contractor delivered the Goods to the Customer; and
- (b) if the Customer Contract is for the supply of Services:
 - (i) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;
 - (ii) the time that the Contractor spent providing the Services on each day during the Term; and
 - (iii) the name and title of all Contractor Personnel who provided the Services or were responsible for supervising the provision of the Services.

The Contractor must comply with the directions of the Contract Authority and the Customer in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.

The Contractor must keep all Records for at least 7 years after the later of the expiry or termination of the Head Agreement, or the last of the Customer Contracts, as the case may be.

The Contractor must do everything necessary to obtain any third party consents which are required to enable the Contract Authority and the Customer to have access to Records under this clause 17.

17.2 Access to Premises

- (a) The Customer will provide the Contractor with access to the Premises to enable the Contractor to fulfil its obligations under the Contract.

- (b) Access may be temporarily denied or suspended by the Customer, at its sole discretion. Where access is temporarily denied or suspended by the Customer (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Contractor or the Contractor Personnel), the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access. Without limiting the foregoing, the Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

17.3 Survival of Clause

This clause 17 survives expiration or termination of the Customer Contract.

18. CONTRACTOR PERSONNEL

18.1 Contractor Personnel Generally

The Contractor must ensure that all Contractor Personnel:

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

18.2 Specified Personnel

- (a) Where Specified Personnel are specified in the Customer Contract as being responsible for the performance of key roles or tasks under the Customer Contract, the Contractor will provide those individuals to fulfil those tasks.
- (b) If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of the key roles or tasks referred to at 18.2(a), the Contractor will within 2 Business Days:
 - (i) advise the Customer of the reason for the absence, expected length of absence; and
 - (ii) propose a substitute or permanent replacement (as appropriate).
- (c) Any substitute Specified Personnel must be:
 - (i) approved by the Customer (the Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under the Customer Contract); and
 - (ii) of at least equivalent skill and experience.

18.3 Awards, Workplace Agreements

- (a) The Contractor must ensure that the remuneration and terms of employment of all Contractor Personnel for the duration of the Customer Contract will be consistent with the remuneration and terms of employment that reflect the

industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

- (b) The Contractor will comply with, and ensure that the Contractor Personnel will comply with, all Laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)).

18.4 Police Clearance

The Contract Authority or the Customer may request the Contractor, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any Contractor Personnel.

The Contractor must comply with that request within thirty (30) Business Days of such request.

If any police clearance evidences that any Contractor Personnel has committed a criminal offence punishable by imprisonment or detention, then the Contract Authority or the Customer may, without prejudice to their other rights under the Customer Contract or Head Agreement, request the Contractor to promptly remove that Contractor Personnel from involvement in the Customer Contract or the Head Agreement as the case requires.

If the Contractor is requested to remove any Contractor Personnel under this clause, the Contractor must, at its own cost, promptly remove that Contractor Personnel from all involvement in the Customer Contract or the Head Agreement as the case may be and arrange for a replacement of that Contractor Personnel.

18.5 Prevention of Paedophilia

The Contractor must ensure that any Contractor Personnel who will be required to, or is likely to, enter a school, completes a confidential declaration before entering the school. The confidential declaration must be in the form provided by the Customer to the Contractor.

The Contractor must ensure that, except with the prior written consent of the Customer, no Contractor Personnel enters a school for the purposes of supplying the Goods and/or Services without first having completed a confidential declaration.

The confidential declaration will be deemed to have been re-made by each of the Contractor Personnel on each and every occasion they enter a school.

18.6 Working with Children

If the Services to be provided by the Contractor under the Customer Contract involve "child-related work" (as that term is defined in section 6 of the *Working with Children (Criminal Record Checking) Act 2004* (WA)) (the **Act**) then:

- (a) all Contractor Personnel who will undertake "child-related work" must provide to the Customer an assessment notice under section 12 of the Act before they commence work under the Customer Contract; and
- (b) the Contractor must otherwise at all times comply, and ensure that all Contractor Personnel comply, with the provisions of the Act.

The Customer may require the Contractor to immediately remove any Contractor Personnel from the Premises who do not have a current assessment notice.

A breach of this clause will be deemed an Event of Default which cannot be remedied.

19. GENERAL WARRANTIES

19.1 Contractor's General Warranties

Except where the Contractor has otherwise disclosed in writing to the Contract Authority and the Customer, and the Contract Authority and the Customer have given their prior written consent to the matter disclosed, the Contractor warrants in favour of the Contract Authority and the Customer that:

- (a) the Contractor has no conflict of interest arising out of the Customer Contract or the Head Agreement;
- (b) the Contractor is properly authorised and has the power to enter into the Customer Contract and the Head Agreement and perform the Contractor's obligations under the Customer Contract and the Head Agreement;
- (c) the Contractor's obligations under the Customer Contract and the Head Agreement are valid and binding and are enforceable against the Contractor;
- (d) all information provided by the Contractor to the Contract Authority, the Customer or both in connection with the Customer Contract and the Head Agreement is true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Contractor which could have a materially adverse effect on the Contractor's ability to supply the Goods and/or Services in accordance with the Customer Contract and the Head Agreement;
- (f) neither the Contractor nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention;
- (g) except where lawfully excused under the Customer Contract or the Head Agreement, there is nothing that prevents the Contractor from complying with any obligation under the Customer Contract and the Head Agreement; and
- (h) none of the Goods have been imported from overseas at less than their normal commercial value.

19.2 General Warranties Made Continuously

The warranties made by the Contractor under clause 19.1 are taken to be made continuously throughout the Term.

19.3 Contractor's Undertakings

The Contractor must:

- (a) properly provide for the care, safety, security and protection of:

- (i) the Goods, if the Customer Contract is for the supply of Goods, until risk in the Goods passes to the Customer under clause 20.3;
 - (ii) all Records (whether created by the Contract Authority, the Customer, the Contractor or any other person) that are in the custody or control of the Contractor; and
 - (iii) all property supplied by the Contract Authority, the Customer or both to the Contractor in connection with the Customer Contract;
- (b) promptly notify the Contract Authority or the Customer, as the case requires, if any warranty under clause 19.1 is breached or becomes untrue;
 - (c) always act ethically in connection with the Head Agreement and the Customer Contract and in accordance with good corporate governance practices;
 - (d) comply with all Laws relevant to the Customer Contract and the Head Agreement;
 - (e) if the Contractor has custody or control of State records, comply with the Contract Authority's and the Customer's record keeping plan to the extent necessary under the *State Records Act 2000 (WA)*;
 - (f) cooperate fully with the Contract Authority and the Customer in respect of the administration of the Customer Contract and the Head Agreement;
 - (g) use its best endeavours to ensure that no Contractor Personnel cause the Contractor to breach the Customer Contract and the Head Agreement; and
 - (h) not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Contract Authority or the Customer in connection with the Customer Contract or the Head Agreement.

19.4 Contractor's Expenses and Equipment

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

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

19.5 Warranties

The Contractor must give, or must ensure that the Contract Authority and the Customer have the benefit of, any warranties specified in the Customer Contract and the Head Agreement.

The Contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties that are obtained by any subcontractor, and must ensure that the Customer has the benefit of those warranties.

A warranty may survive the expiry or termination of the Contract.

19.6 Premises

The Contractor must:

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

19.7 Cooperation with other Service Providers

- (a) Subject to clause 19.7(b), the Contractor must cooperate with any third party service provider appointed by the Customer where this is necessary to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.
- (b) Nothing in clause 19.7 will require the Contractor to disclose its confidential information to a third party service provider.

19.8 Data and Information Security

- (a) The Contractor must at all times and in accordance with Good Industry Practice, maintain and comply with processes for the secure storage and handling of Personal Information and other data and information which it collects or has access to in the course of performing its obligations under the Head Agreement and a Customer Contract.
- (b) Without limiting clause 19.8(a), the Contractor must:
 - (i) comply with all data and information security requirements in respect of access to and use of data and information as specified in the Head Agreement and a Customer Contract, in addition to any statutory obligation relevant to data or information security;

- (ii) with respect to data and information of the type referred to in clause 19.8(a):
 - (A) prohibit and prevent any Contractor Personnel who does not have the appropriate level of security clearance from gaining access to the data and information;
 - (B) without limiting clause 19.8(b)(ii)(A), use reasonable endeavours to prevent any unauthorised person from gaining access to the data and information; and
 - (C) ensure that the data and information is used and disclosed only for the purposes of performing the Contractor's obligations under the Head Agreement or applicable Customer Contract; and
- (iii) if the Contractor becomes aware of any contravention of the data and information security requirements under the Head Agreement or a Customer Contract:
 - (A) notify the Contract Authority and the Customer immediately, and comply with all directions of the Contract Authority and the Customer (as applicable); and
 - (B) do all things necessary to mitigate the consequences of that contravention.

19.9 Use of Chlorofluorocarbons

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

19.10 Work Health and Safety

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

Services under WHS Laws and provide all information and documents to the Customer and, if relevant, the Contract Authority that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.

20. ACCEPTANCE

20.1 Payment before Acceptance

Despite any other provision of the Customer Contract, if the Customer pays the Price for Goods before the Customer has accepted the Goods, then the Contractor will hold that payment on trust for the Customer until:

- (a) the Customer accepts the Goods under clause 20.2; or
- (b) the Customer rejects the Goods, in which case the Contractor will immediately refund the Price for the rejected Goods to the Customer.

20.2 Acceptance of Goods

Neither the delivery of the Goods by the Contractor to the Customer nor payment of the Price by the Customer to the Contractor constitutes acceptance of the Goods by the Customer.

The Customer may reject the Goods by giving a notice of rejection to the Contractor within 10 Business Days after the delivery of the Goods to the Customer if:

- (a) the Goods are Defective; or
- (b) the Goods are not supplied in full; or
- (c) the Customer is entitled to reject the Goods under the Sale of Goods Act.

The Customer is taken to have accepted the Goods only if the Customer:

- (a) notifies the Contractor that the Goods have been accepted; or
- (b) does not reject the Goods under this clause 20.2.

20.3 Property, Delivery and Risk

Risk in the Goods passes to the Customer on delivery of the Goods to the Customer in accordance with the Customer Contract.

Property in the Goods passes to the Customer on acceptance of the Goods by the Customer under clause 20.2.

Property and risk in any Goods removed by the Contractor or returned to the Contractor re-passes to the Contractor at the time the Goods are removed or returned.

20.4 Defects in Goods

If, before or after acceptance of the Goods under clause 20.2, the Customer finds that any Goods are Defective, then the Customer may by notice in writing to the Contractor:

- (a) reject the Defective Goods, in which case:

- (i) the Customer must provide a reason or reasons for rejection, if requested by the Contractor;
- (ii) the Contractor must immediately remove the Defective Goods at the Contractor's cost and refund the Price for the Defective Goods if already paid; and
- (iii) the Customer may purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods.

If the Customer purchases substitute goods:

- (A) the Customer does not have to take delivery of, or pay the Price for, the Goods; and
- (B) the Contractor must reimburse the Customer (as applicable) for:
 - (i) any amount by which the cost of substitute goods exceeds the Price for the Goods; and
 - (ii) the Customer's reasonable costs and expenses resulting from having to purchase substitute goods,
within 10 Business Days from the date on which the Customer (as applicable) gives the Contractor an invoice for those costs; or
- (b) require the Contractor to replace the Defective Goods with goods of the same kind and quality as the Goods; or
- (c) require the Contractor to repair or rectify the Defective Goods.

Clause 20.4 (a) does not apply if the Goods were subject to Acceptance testing under clause 15 or if:

- (A) the Customer examined the Goods before acceptance of the Goods under clause 20.2;
- (B) that examination ought to have revealed that the Goods were Defective Goods; and
- (C) the Customer accepted the Defective Goods under clause 20.2.

20.5 Reasonable Time

If the Customer requires the Contractor to replace, repair or rectify the Defective Goods under clauses 20.4 (b) or 20.4 (c), then the Contractor must:

- (a) do so within any reasonable time stipulated by the Customer; and
- (b) reimburse the Customer for the Customer's reasonable costs and expenses resulting from not having the use of the Goods while the Defective Goods are being replaced, repaired or rectified.

20.6 Remedies for Defects in Goods

If the Contractor fails to comply with the Customer's notice under clause 20.4, then the Customer may do any one or more of the following:

- (a) return the Defective Goods to the Contractor at the Contractor's cost;

- (b) hold the Defective Goods as security for the performance of the Contractor's obligations under clause 20.4;
- (c) sell the Defective Goods (without being liable to the Contractor in any way for the amount of the sale proceeds) and:
 - (i) keep so much of the net sale proceeds as is necessary to recover the Customer's costs, expenses and losses resulting from the Contractor's breach of the Customer Contract; and
 - (ii) pay the balance of the net sale proceeds to the Contractor,
 - (iii) purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods.

If the Customer purchases substitute goods:

- (A) the Customer does not have to take delivery of, or pay the Price for, the Goods; and
- (B) the Contractor must reimburse the Customer (as applicable) for:
 - (i) any amount by which the cost of substitute goods exceeds the Price for the Goods; and
 - (ii) the Customer's reasonable costs and expenses resulting from having to purchase substitute goods,
within 10 Business Days from the date on which the Customer (as applicable) gives the Contractor an invoice for those.

The Customer is not liable to the Contractor for any loss or damage to Defective Goods resulting from the exercise of any right under this clause.

20.7 Sale of Goods Act

The Customer and the Contractor acknowledge that:

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

21. PAYMENT AND INVOICING

21.1 Price

The Customer must pay to the Contractor the Price in accordance with this clause 21.

21.2 Variations to Price

If a formula or method for variation of the Price is specified in the Customer Contract, then the Price may only be varied in accordance with that formula or method.

If no formula or method for variation of the Price is specified in the Customer Contract, then the Price is fixed for the Term and cannot be varied unless agreed by the Customer and the Contractor in writing.

21.3 Timing of Invoice

If the time or times at which the Contractor must submit invoices to the Customer is or are specified in the Customer Contract, then the Contractor must submit invoices at that time or those times.

If no time or times at which the Contractor must submit invoices to the Customer is or are specified in the Customer Contract, then the Contractor must submit invoices to the Customer at a time or times agreed between the Customer and the Contractor, provided that the Contractor must not submit any invoice later than 20 Business Days after the expiration or termination of the Customer Contract.

21.4 Invoices

An invoice given by the Contractor to the Customer must:

- (a) be set out in a manner that clearly identifies which Goods and/or Services the invoice covers and the amount of the Price payable for those Goods and/or Services, minus any Discount; and
- (b) specify the relevant Order (if applicable).

21.5 Payment of Invoice

- (a) Subject to clauses 21.4 and 21.8, the Customer must pay the amount specified in an invoice within the payment term specified in sub-clause (b) if the amount claimed in the invoice is:
 - (i) properly payable; and
 - (ii) correctly calculated in accordance with the Customer Contract.
- (b) The payment term is:
 - (i) 20 days commencing the day after the date the invoice is received, for any invoice where the amount payable is under \$1 million (GST inclusive); or
 - (ii) 30 days commencing the day after the date the invoice is received, for any invoice where the amount payable is \$1 million (GST inclusive) or greater.

21.6 Method of Payment

The Customer may pay the amount specified in an invoice:

- (a) by cheque;
- (b) by electronic funds transfer to the account with a financial institution nominated by the Contractor; or
- (c) by credit card.

The Contractor must not impose a surcharge on the Customer for payment by credit card.

21.7 Right to Request Further Details

If the Customer requests, the Contractor must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Customer Contract.

21.8 No Obligation to Pay

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

- (a) if the Customer Contract is for the supply of Goods, the Customer has accepted the Goods under clause 20.2 or clause 15.2;
- (b) if the Customer Contract is for the supply of Services, the Services have been supplied in accordance with clause 6; and
- (c) the Customer is satisfied that no Event of Default has occurred and continues unremedied.

21.9 Incorrect Invoice before Payment

If, before payment of an invoice, the Customer or the Contractor finds that the invoice does not comply with clause 21.4 or clause 21.5 and:

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

21.10 Incorrect Invoice after Payment

If, after payment of an invoice, the Customer or the Contractor finds that the invoice did not comply with clause 21.4 or clause 21.5 and the Customer has paid:

- (a) less than the amount that should have been paid and an Adjustment arises, then:
 - (i) the Contractor must immediately issue an Adjustment Note; and
 - (ii) the Customer must pay the difference to the Contractor within 30 days after the date that the Adjustment Note is received; or
- (b) less than the amount that should have been paid and no Adjustment arises, then:
 - (i) the Contractor must immediately issue a correct invoice; and
 - (ii) the Customer must pay the difference to the Contractor within 30 days after the date that the correct invoice is received; or
- (c) more than the amount that should have been paid and an Adjustment arises, then the Contractor must:

- (i) immediately issue an Adjustment Note; and
 - (ii) pay the difference to the Customer (including any interest paid under clause 21.12 in respect of that difference) within 30 days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor; or
- (d) more than the amount that should have been paid and no Adjustment arises, then the Contractor must:
- (i) immediately issue a correct invoice; and
 - (ii) pay the difference to the Customer (including any interest paid under clause 21.12 in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor.

21.11 Timing of Payment

For the purpose of determining the date of payment under clause 21.12 and for the purpose of calculating any Discount applicable under the Customer Contract for settlement of accounts:

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

21.12 Failure to Pay

If demanded by the Contractor, the Customer must pay interest on any payment not made by the Customer by the date required by clause 21.5 or any later date for payment agreed by the Contractor.

Interest under clause 21.12 is to be:

- (a) calculated from the due date for payment determined under clause 21.12 until (but not including) the date of payment (as determined under clause 21.11); and
- (b) at the rate specified in the Customer Contract or, if no rate is specified in the Customer Contract, at the rate payable under the Rules of the Supreme Court on unpaid judgments.

22. TAXES

- (a) In this clause 22, the expressions “consideration”, “recipient”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the GST Act.
- (b) All sums payable, or consideration to be provided, under the Customer Contract are expressed inclusive of GST.
- (c) If GST is imposed on any supply made under the Customer Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 22(c) must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under the Customer Contract.
- (e) If a GST-inclusive price is charged or varied under the Customer Contract, the supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the supplier on any supply made under the Customer Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- (g) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Goods and/or Services are payable by the Contractor.

23. INTELLECTUAL PROPERTY RIGHTS

23.1 Intellectual Property Rights – Owned by State or Customer

- (a) Unless the Customer Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 23.1 forms part of the Customer Contract.
- (b) The Intellectual Property Rights in the New Material will be owned by the State unless the Customer Contract provides that they will be owned by the Customer.
- (c) The Contractor automatically assigns the entire future Intellectual Property Rights in all New Material to the State or the Customer as the case requires upon their creation.
- (d) The State or the Customer grants to the Contractor a revocable, royalty-free, non-exclusive licence to use the New Material to the extent necessary to provide the Services. The licence will terminate on the expiration or termination of the Term.
- (e) Unless specified to the contrary in the Request, copyright and property in all Working Papers vest in the State of Western Australia.
- (f) The Contractor warrants that all Contractor Personnel:

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

23.2 Intellectual Property Rights – Owned by Contractor

- (a) Where the Customer Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 23.2 forms part of the Customer Contract.
- (b) The Customer acknowledges that the entire future Intellectual Property Rights in all New Material are to be owned by the Contractor upon their creation.
- (c) The Contractor:
 - (i) grants to the Customer an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the New Material during the remainder of the duration of the Intellectual Property Rights in that New Material; and
 - (ii) must, if a third party owns Moral Rights in any New Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Customer to use the New Material without regard to the third party's Moral Rights.
- (d) The licence granted under clause 23.2 (c) extends to all Working Papers.

23.3 Existing Material - Licence

Nothing in clause 23.1 or 23.2 (as applicable) affects the ownership of any Intellectual Property Rights in any Existing Material.

The Contractor:

- (a) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to the State or the Customer in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and
- (b) must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Existing Material without regard to the third party's Moral Rights.

23.4 Warranty

The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted under clause 23.3 (a);
- (b) no Intellectual Property Rights or Moral Rights in any Material is or will be owned by any third party unless:
 - (i) if a third party owns any Intellectual Property Rights in the Material, the Contractor has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 23.3 (a); and
 - (ii) if a third party owns Moral Rights in the Material, the Contractor has obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Material without regard to the third party's Moral Rights;
- (c) the Material will not infringe the Intellectual Property Rights or Moral Rights of any third party.

23.5 Intellectual Property Rights Indemnity

The Contractor indemnifies and will keep indemnified the Contract Authority, the Customer, the State of Western Australia and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Contractor's failure to comply with this clause 23, including any breach of warranty under clauses 23.1 (if applicable) and 23.4, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Contractor.

23.6 Continuing obligation

The obligations of the Contractor under this clause 23 are continuing obligations and survive expiration or termination of the Customer Contract.

24. CONFIDENTIALITY

24.1 Contract Disclosure

The Contract Authority, the Customer or both may publicly disclose:

- (a) the identity of the Contractor;
- (b) the value of any Customer Contract; and
- (c) a general description of the Goods and/or Services supplied under any Customer Contract.

In relation to each of:

- (a) a Customer Contract;
- (b) the Head Agreement; and

- (c) information held or compiled by the Contract Authority, the Customer or the State of Western Australia in relation to a Customer Contract or the Goods and/or Services supplied under a Customer Contract,

the Contractor acknowledges that:

- (d) each is subject to the Freedom of Information Act; and
- (e) any or all of them may be disclosed by the Contract Authority, the Customer or the State of Western Australia in response to a request made under section 275 of the *Personal Property Securities Act 2009* (Cth), or otherwise as required by that Act.

24.2 Confidentiality

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

- (a) where necessary for the purpose of supplying the Goods and/or Services; or
- (b) as authorised in writing by the Contract Authority or the Customer (as applicable); or
- (c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Contractor); or
- (d) as required by any Law or Governmental Agency; or
- (e) when required (and only to the extent required) to the Contractor's professional advisers, and the Contractor must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Contractor under this clause 24.2.

24.3 Return of Confidential Information

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

24.4 Publicity

Unless:

- (a) the Contract Authority or the Customer gives its prior written consent; or
- (b) the Contractor is required by Law to do so,

the Contractor must not:

- (a) use a Customer Contract or Head Agreement or the Contract Authority's or the Customer's name or logo; or
- (b) use the name or logo of any State Agency specified in a Customer Contract or Head Agreement for the purposes of this clause; or

- (c) refer to the Contractor's association with the State of Western Australia or the Government of Western Australia which results from a Customer Contract or Head Agreement; or
- (d) make any statement concerning a Customer Contract or Head Agreement, in any publication, advertisement or media release.

The Contract Authority may use a Customer Contract and the Contractor's name and logo for reasonable promotional or publicity purposes at the Customer's discretion, but if the Customer uses the Customer Contract or the Contractor's name or logo for such purposes, then the Customer must acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

The Contract Authority may use the Head Agreement and the Contractor's name and logo for reasonable promotional or publicity purposes at the Contract Authority's discretion, but if the Contract Authority uses the Head Agreement or the Contractor's name or logo for such purposes, then the Head Agreement must acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

25. PRIVACY

- (a) The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act to the extent relevant to a Customer Contract and Head Agreement.
- (b) The Contractor also agrees to comply with:
 - (i) such other Commonwealth, State or Territory legislation related to privacy;
 - (ii) any directions made by a Privacy Commissioner;
 - (iii) any privacy procedures; and
 - (iv) any other reasonable direction relating to privacy which is given by the Customer or Contract Authority,in each case, stated in or relevant to the Head Agreement or a Customer Contract.
- (c) Whether or not the Contractor is an organisation which is bound by the Privacy Act or other privacy laws, the Contractor must comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation.
- (d) The Contractor must, in relation to any Personal Information which it collects or has access to in the course of performing its obligations under, or otherwise in connection with:
 - (i) the Head Agreement and a Customer Contract:
 - (A) take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and
 - (B) where any breach of privacy occurs due to the Contractor's failure to comply with any obligation under this clause 25, do all things necessary to mitigate the consequences of that breach;
 - (ii) the Head Agreement:

- (A) not modify or disclose the Personal Information except with the Contract Authority's prior written approval;
 - (B) ensure that the Personal Information is returned to the Contract Authority (or is permanently destroyed if the Contract Authority so elects) when it is no longer required for the performance of the Contractor's obligations under the Head Agreement;
 - (C) co-operate fully with the Contract Authority to resolve any complaint alleging a breach by any party of their respective privacy obligations; and
- (iii) the Customer Contract:
- (A) not modify or disclose the Personal Information except with the Customer's prior written approval;
 - (B) ensure that the Personal Information is returned to the Customer (or is permanently destroyed if the Customer so elects) when it is no longer required for the performance of the Contractor's obligations under the Customer Contract;
 - (C) co-operate fully with the Customer to resolve any complaint alleging a breach by any party of their respective privacy obligations.
- (e) The Contractor must immediately notify the Contract Authority and the Customer (providing full details) if it:
- (i) receives, or otherwise becomes aware of, any complaints concerning its or the Contract Authority's or the Customer's (as applicable) compliance with privacy obligations, including full details of how the Contractor intends to resolve the complaint;
 - (ii) becomes aware that a disclosure of Personal Information described in clause 25(d) above may be required by Law; or
 - (iii) is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.
- (f) The Contractor must co-operate fully with the Contract Authority and the Customer (as applicable) to resolve:
- (i) any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or
 - (ii) any complaint alleging a breach by any party of their respective privacy obligations in connection with,
- the Head Agreement and a Customer Contract (as applicable).

26. INSURANCE

26.1 Customer Contract Insurance Requirements

The Contractor must take out and maintain insurance in relation to all insurable liabilities of the Contractor under the Customer Contract as specified in the Customer Contract.

The insurance required under this clause 26.1 must be on the terms, for the period of time and for the amounts specified in the Customer Contract.

26.2 Head Agreement Insurance Requirements

The Contractor must take out and maintain insurance in relation to all insurable liabilities of the Contractor under the Head Agreement as specified in the Head Agreement.

The insurance required under this clause 26.2 must be on the terms, for the period of time and for the amounts specified in the Head Agreement.

26.3 Insurer Requirements

The Contractor must effect and maintain insurances with an insurer acceptable to the Contract Authority and the Customer that is:

- (a) an Australian Prudential Regulatory Authority authorised insurer; or
- (b) an overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating agency, credit rating of at least A minus (A-); or
- (c) a self-insurer approved under the Laws of an Australian State or Territory, or the Commonwealth of Australia; or
- (d) a State or Commonwealth self-insurance arrangement, established under Law.

26.4 Maintenance of Insurance

The Contractor must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clauses 26.1 and 26.2;
- (b) not vary or cancel any insurance required under clauses 26.1 and 26.2 or as otherwise required under the Customer Contract or the Head Agreement or allow it to lapse during the Term of either of them as the case may be or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (c) without limiting clause 26.4(b), promptly reinstate any insurance required under clauses 26.1 or 26.2 if it lapses or if cover is exhausted.

26.5 Evidence of Insurance

The Contractor must give to the Contract Authority or the Customer as the case requires sufficient evidence of the insurances required under clauses 26.1 or 26.2 as the case requires (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Contract Authority or the Customer as the case requires at any time.

26.6 Failure to Prove Insurance

If the Contractor does not comply with clauses 26.1, 26.3, 26.4 or 26.5 then without limiting any other remedy available to the Contract Authority or the Customer, the Customer may withhold payment of any money due under the Customer Contract to the Contractor until the Contractor has complied.

26.7 Incidents and claims

If the Contract Authority or the Customer or the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clauses 26.1 or 26.2, it must as soon as reasonably practicable notify the Contract Authority, the Customer and the Contractor (as applicable) in writing of that event or incident.

Failure to comply with this clause 26.7 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Customer Contract.

26.8 Continuing obligation

The Contractor must maintain the insurance required under clause 26.1 for the period specified in the Customer Contract.

The Contractor must maintain the insurance required under clause 26.2 for the period specified in the Head Agreement.

If no period is specified in the Customer Contract or the Head Agreement, then:

- (a) the insurances (except for the professional indemnity insurance) required under clauses 26.1 and 26.2 are to be maintained throughout the Term; and
- (b) the professional indemnity insurance (if any) required under clause 26.1 is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Customer Contract.

The obligations of the Contractor under this clause 26 are continuing obligations and survive expiration or termination of the Customer Contract and the Head Agreement for so long as the obligations of the Contractor under this clause 26.8 continue.

26.9 No Limitation of Other Liabilities

Nothing in this clause 26 limits the Contractor's other liabilities under the Customer Contract or the Head Agreement or restricts the Contractor from insuring for sums or risks greater than those required under the Customer Contract or the Head Agreement.

27. GUARANTEES

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

28. LIABILITY

This clause 28 does not apply to the Customer Contract if Schedule 1 to the Request specifies liability and release provisions in respect of the Customer Contract.

The liability of either party for breach of the Head Agreement or the Customer Contract or for any other common law or statutory cause of action arising out of the operation of the Head Agreement or the Customer 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.

29. INDEMNITY

This clause 29 does not apply to the Customer Contract if Schedule 1 to the Request specifies indemnity and release provisions in respect of the Customer Contract.

The Contractor indemnifies the Contract Authority, the Customer, the State of Western Australia and all their respective officers, employees and agents against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made by any third party arising from or in connection with:

- (a) any breach of contract by the Contractor under a Customer Contract or a Head Agreement;
- (b) any wilful, tortious or unlawful act or omission of the Contractor or any Contractor Personnel; or
- (c) any breach of Law relevant to a Customer Contract or a Head Agreement by the Contractor or any Contractor Personnel.

The Contractor's liability under the indemnity in this clause 29 will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Contract Authority, the Customer, the State of Western Australia or their respective officers, employees or agents.

The Contract Authority and the Customer agree to use their best endeavours to cooperate with the Contractor, at the Contractor's cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of the indemnity under this clause 29.

30. CONFLICT OF INTEREST

Without limiting clause 40.1 (*Probity Allegations and Investigations*) or clause 40.2 (*Probity Events*), if an actual or perceived conflict of interest arises or looks likely to arise or to have arisen in respect of the Contractor, the Contractor must:

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

31. PERFORMANCE MANAGEMENT

The parties agree to duly and punctually comply with any performance management requirements contained in the Customer Contract or the Head Agreement.

32. GOVERNMENT POLICY

If any obligations relating to Government procurement policies are specified in the Customer Contract or the Head Agreement, then those obligations form part of the Customer Contract and the Head Agreement as the case may be and the Contractor must comply with them.

33. CONTRACT ADMINISTRATION

33.1 Customer's Representative

Any person described in the Customer Contract as the Customer's Representative may act as the representative of the Customer in relation to the Customer Contract.

The Contractor agrees and acknowledges that the Customer's Representative may administer the Customer Contract and any such administration by the Customer's Representative will be deemed to be administration by the Customer for the purposes of the Customer Contract.

The Customer may by notice to the Contractor at any time:

- (a) vary or terminate the appointment of the Customer's Representative; and
- (b) appoint any other person to act as the Customer's Representative in relation to the Customer Contract.

33.2 Contract Authority's Representative

Any person described in the Head Agreement as the Contract Authority's Representative may act as the representative of the Contract Authority in relation to the Head Agreement.

The Contractor agrees and acknowledges that the Contract Authority's Representative may administer the Head Agreement and any such administration by the Contract Authority's Representative will be deemed to be administration by the Contract Authority for the purposes of the Head Agreement.

The Contract Authority may by notice to the Contractor at any time:

- (a) vary or terminate the appointment of the Contract Authority's Representative; and
- (b) appoint any other person to act as the Contract Authority's Representative in relation to the Head Agreement.

33.3 Contractor's Representative

Any person described in the Customer Contract or the Head Agreement as the Contractor's Representative may act as the representative of the Contractor in relation to the Customer Contract or the Head Agreement as the case may be.

The Contract Authority and the Customer agree and acknowledge that the Contractor's Representative may administer the Customer Contract or the Head Agreement as the case may be and any such administration by the Contractor's Representative will be deemed to be administration by the Contractor for the purposes of the Customer Contract or the Head Agreement.

The Contractor may by notice to the Contract Authority and the Customer at any time:

- (a) vary or terminate the appointment of the Contractor's Representative; and
- (b) appoint any other person to act as the Contractor's Representative in relation to the Customer Contract or the Head Agreement.

33.4 Notices

- (a) Each notice or other communication given under the Customer Contract and the Head Agreement:
 - (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised officer or agent of, that party.
- (b) All notices or other communications must be:
 - (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a PDF file letter to the email address,of the addressee stated in the Customer Contract or Head Agreement or as notified by that party to each other party from time to time.
- (c) Subject to clause 33.4 (d), a notice or other communication is taken to be received by the addressee:
 - (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) If the notice or other communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.
- (e) In connection with notices or other communications sent by email:
 - (i) only the letter in PDF format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the notice or other communication in accordance with this clause 33.4. Any text in the body of the email or the subject line will not form part of the notice or other communication; and
 - (ii) the Contractor must ensure that, in connection with any notices or other communications in connection with the Customer Contract or Head Agreement:

- (A) their firewall and/or mail server (as applicable):
 - (1) allows messages of up to 10 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from the State of Western Australia domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
- (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

34. DISPUTE RESOLUTION

34.1 No litigation pending possible resolution

Subject to clause 34.5, the parties agree that unless and until a party has complied with the requirements of this clause 34, a party may not commence any court proceedings in respect of any dispute.

34.2 Referral to Contract Representatives

If at any time a dispute exists:

- (a) between the Contract Authority, a Customer and the Contractor either party to the dispute may refer the dispute to the relevant contract representatives appointed under clauses 33.1, 33.2 and 33.3 for resolution; and
- (b) the relevant contract representatives will consider the dispute referred to them and in doing so, give due consideration to submissions by the parties in connection with the dispute.

34.3 Further referral

- (a) If a dispute remains unresolved 10 Business Days after the referral of the dispute to the relevant contract representatives under clause 34.2, a party may give a written notice to the other party in accordance with this clause 34.3 (**Dispute Notice**).
- (b) The Dispute Notice must:
 - (i) state that the notice is given under this clause 34.3;
 - (ii) describe the nature of the dispute; and
 - (iii) nominate the party's authorised officer for resolution of the dispute (**Authorised Officer**).
- (c) Within 2 Business Days after receipt of a Dispute Notice, the recipient party must give a written notice to the other party nominating its Authorised Officer.
- (d) The parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the dispute within 7 Business Days after receipt of the Dispute Notice.

- (e) If the parties' Authorised Officers fail to resolve the dispute within 10 Business Days after receipt of the Dispute Notice, the parties' Authorised Officers may agree a dispute resolution process for the resolution of the dispute in which case the dispute will be resolved in accordance with such process.
- (f) Either party may commence litigation if:
 - (i) the parties fail to resolve the dispute in accordance with paragraph (d) and fail to agree a dispute resolution process in accordance with paragraph (e) within 10 Business Days after the receipt of the Dispute Notice;
 - (ii) either party fails to comply with any of the requirements of this Clause 34; or
 - (iii) either party fails to comply with any dispute resolution process agreed in accordance with paragraph (e).

34.4 Continue to perform obligations

The parties must continue to perform their obligations under the Head Agreement or a Customer Contract as the case may be despite the existence of any dispute between the parties.

34.5 No application of clause

This clause does not apply:

- (a) if a party considers it necessary to seek an urgent interim determination; or
- (b) where the Contract Authority or a Customer as the case may be considers that an Event of Default has occurred under the Head Agreement or a Customer Contract.

35. TERMINATION

35.1 Termination – Customer Contract

The Customer may terminate the Customer Contract by notice to the Contractor at any time after an Event of Default occurs except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

35.2 Consequences of Expiration or Termination – Customer Contract

- (a) The expiration or termination of the Customer Contract does not affect any rights, liabilities or obligations of the Customer or the Contractor as a result of anything occurring before the expiration or termination.
- (b) On expiration or termination of the Customer Contract, the Contractor must:
 - (i) complete as soon as practicable, or cease to fulfil, any outstanding Orders as the Customer directs;
 - (ii) deliver to the Customer all Records as required by the Customer as soon as practicable after the later of the completion of all outstanding

- Orders under clause 35.2(b)(i) or the date of expiration or termination of the Customer Contract; and
- (iii) vacate the Premises as soon as practicable after the later of the completion of all outstanding Orders under clause 35.2(b)(i) or the date of expiration or termination of the Customer Contract.
- (c) Without limiting clause 35.2 (b), on termination of the Customer Contract, the Contractor must:
- (i) allow the Customer to use at the Customer's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Premises if required in connection with the Customer Contract, but the Customer must pay the Contractor for any materials or consumables used by the Customer as a result of using that property; and
 - (ii) in every other respect cooperate with the Customer as reasonably required by the Customer in order to minimise any loss, damage or inconvenience to the Customer resulting from the expiration or termination of the Customer Contract.
- (d) The Customer must pay to the Contractor:
- (i) the Price for Goods and/or Services supplied as a result of the Customer directing the completion of an outstanding Order under clause 35.2 (b)(i); and
 - (ii) a reasonable price for the materials or consumables used under clause 35.2 (c)(i).

35.3 Termination – Head Agreement

The Contract Authority may terminate the Head Agreement by notice to the Contractor at any time after an Event of Default occurs except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

35.4 Consequences of Expiration or Termination – Head Agreement

The expiration or termination of the Head Agreement does not affect any rights, liabilities or obligations of the Contract Authority or the Contractor as a result of anything occurring before the expiration or termination.

On expiration or termination of the Head Agreement, the Contractor must:

- (a) deliver to the Contract Authority all Records as required by the Contract Authority;
- (b) not represent that the Contractor is in any way connected to the Contract Authority;
- (c) return all of the Contract Authority' Confidential Information to the Contract Authority; and
- (d) in every other respect co-operate with the Contract Authority as reasonably required by the Contract Authority in order to minimise any loss, damage or

inconvenience to the Contract Authority and Customers resulting from the expiration or termination of the Head Agreement.

35.5 Limited Liability - Customer Contract

Other than where the Customer has repudiated the Customer Contract or damages are not an appropriate remedy, if the Customer breaches the Customer Contract, then the remedies of the Contractor are limited to damages.

35.6 Limited Liability – Head Agreement

Other than where the Contract Authority has repudiated the Head Agreement or damages are not an appropriate remedy, if the Contract Authority breaches the Head Agreement, then the remedies of the Contractor are limited to damages.

35.7 Suspension at Any Time - Customer Contract

- (a) A Customer may at any time by notice to the Contractor temporarily suspend the Customer Contract (except for clauses 2, 5, 19, 23, 24, 25, 26, 27, 28, 29, 30, 35, 36 and 37) for a period not exceeding 3 months except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.
- (b) The Customer does not need to give a reason for temporary suspension of the Customer Contract.
- (c) If the Customer suspends the Customer Contract under this clause and the Contractor is not in default under the Customer Contract, then:
 - (i) the Customer must pay to the Contractor the Contractor's costs and expenses directly resulting from the suspension (excluding loss of profits and revenue);
 - (ii) the Contractor must give the Customer an invoice for the amount payable together with sufficient evidence to support the invoice; and
 - (iii) the Customer must pay any amount under clause 35.7 (c)(i) within 30 days after receiving an invoice under clause 35.7 (c)(ii).

35.8 Ending of Suspension - Customer Contract

The Customer may end the suspension at any time by notice to the Contractor.

At the end of the suspension, the rights and obligations of the Customer and the Contractor under the Customer Contract recommence.

35.9 Suspension at Any Time – Head Agreement

The Contract Authority may at any time by notice to the Contractor temporarily suspend the Head Agreement (except for clauses 2, 5, 19, 23, 24, 25, 26, 27, 28, 29, 30, 35, 36 and 37) for a period not exceeding 3 months except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

The Contract Authority does not need to give a reason for temporary suspension of the Head Agreement.

35.10 Ending of Suspension – Head Agreement

The Contract Authority may end the suspension at any time by notice to the Contractor.

At the end of the suspension, the rights and obligations of the Contract Authority and the Contractor under the Head Agreement recommence.

36. GENERAL

36.1 Assignment, Novation etc – Head Agreement

Unless the Contractor obtains the Contract Authority's prior written consent, the Contractor must not:

- (a) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Head Agreement; or
- (b) subcontract any of its rights or obligations under the Head Agreement.

If the Contractor is a corporation (other than a public company as defined in the Corporations Act) the Contractor is taken to have assigned the Head Agreement if:

- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or
- (b) there is any change in control of the Contractor within the meaning of the Corporations Act.

Any consent given by the Contract Authority under this clause to subcontract the Head Agreement is taken to be subject to the following terms and conditions unless otherwise stated in the consent:

- (a) the Contractor must include in any subcontract provisions consistent with clauses 23, 24, and 26 and this clause 36.1, as if references in those clauses to the Contractor referred instead to the subcontractor;
- (b) the Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- (c) the engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligation to perform the Contractor's obligations under the Head Agreement; and
- (d) the Contractor must, if requested by the Contract Authority, supply to the Contract Authority a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with this clause 36.1.

36.2 Assignment, Novation etc – Customer Contract

Unless the Contractor obtains the Customer's prior written consent, the Contractor must not:

- (a) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Customer Contract; or
- (b) subcontract any of its rights or obligations under the Customer Contract.

If the Contractor is a corporation (other than a public company as defined in the Corporations Act) the Contractor is taken to have assigned the Customer Contract if:

- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or
- (b) there is any change in control of the Contractor within the meaning of the Corporations Act.

Any consent given by the Customer under this clause to subcontract the Customer Contract is taken to be subject to the following terms and conditions unless otherwise stated in the consent:

- (a) the Contractor must include in any subcontract provisions consistent with clauses 23, 24, and 26 and this clause 36.2, as if references in those clauses to the Contractor referred instead to the subcontractor;
- (b) the Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- (c) the engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligation to perform the Contractor's obligations under the Customer Contract; and
- (d) the Contractor must, if requested by the Customer, supply to the Customer a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with this clause 36.2.

36.3 Waiver

- (a) Any waiver by the Contract Authority, the Customer or the Contractor must be in writing and signed by the party waiving the right.
- (b) Any waiver by the Contract Authority, the Customer or the Contractor does not affect its rights in respect of any other breach of the Customer Contract or the Head Agreement as the case may be by another party.
- (c) Subject to clause 36.3 (a), any failure by the Contract Authority, the Customer or the Contractor to enforce any right under the Customer Contract or the Head Agreement as the case may be will not be construed as a waiver of their respective rights under the Customer Contract or the Head Agreement.

36.4 Entire Agreement

The Customer Contract and the Head Agreement as the case may be supersedes all prior negotiations, understandings and agreements between the

Contract Authority, the Customer and the Contractor relating to the matters covered by the Customer Contract and the Head Agreement and constitute the full and complete agreement between the Contract Authority, the Customer and the Contractor relating to the matters covered by the Customer Contract and the Head Agreement.

36.5 Rights Are Cumulative

Unless otherwise stated the rights, powers and remedies in the Customer Contract and the Head Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at Law.

36.6 Counterparts

Unless stated to the contrary in the Customer Contract or the Head Agreement, the Customer Contract and the Head Agreement may be executed in counterparts.

36.7 Applicable Law

The Customer Contract and the Head Agreement are governed by the Laws of the State of Western Australia. The Contract Authority, the Customer and the Contractor irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

36.8 Auditor General

The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of the Customer Contract and the Head Agreement.

The Contractor must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning the Customer Contract and the Head Agreement.

36.9 Consent

- (a) Whenever the consent of the Contract Authority is required under the Head Agreement:
 - (i) that consent may be given or withheld by the Contract Authority in the Contract Authority's absolute discretion and may be given subject to such conditions as the Contract Authority may determine;
 - (ii) the Contract Authority is not required to provide a reason or reasons for giving or refusing its consent; and
 - (iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 36.9 (a)(i) will constitute a breach of a condition by the Contractor under the Head Agreement.
- (b) Whenever the consent of the Customer is required under a Customer Contract:

- (i) that consent may be given or withheld by the Customer in the Customer's absolute discretion and may be given subject to such conditions as the Customer may determine;
- (ii) the Customer is not required to provide a reason or reasons for giving or refusing its consent; and
- (iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 36.9 (b)(i) will constitute a breach of a condition by the Contractor under the Customer Contract.

36.10 Further Assurance

The Contract Authority, the Customer and the Contractor must do everything reasonably necessary, including signing further documents, to give full effect to the Customer Contract or the Head Agreement as the case requires.

36.11 Right of Set Off

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

36.12 Costs

Unless otherwise stated, the Contractor must comply with all obligations of the Contractor at the Contractor's cost.

The Contract Authority, the Customer and the Contractor must pay their own legal and other costs in connection with the preparation and signing of the Customer Contract and the Head Agreement.

The Contractor must pay all stamp duty on the Customer Contract and the Head Agreement.

36.13 Trusts

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

- (a) is taken to enter into the Customer Contract and the Head Agreement both as trustee and in the Contractor's personal capacity and acknowledges that the Contractor is personally liable for the performance of the Contractor's obligations under the Customer Contract and the Head Agreement;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Contract Authority or the Customer for any default by the Contractor;
- (c) warrants that:
 - (i) the Contractor has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Customer Contract and the Head Agreement;

- (ii) the assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 36.13(c)(i) and all other obligations in respect of which the Contractor has a right to be indemnified out of those assets; and
- (iii) the Contractor has the power and authority under the terms of the trust to enter into the Customer Contract or the Head Agreement.

37. PPSA

37.1 Generally

In this clause:

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

37.2 Further Assurance

If the Contract Authority or Customer determines that the Head Agreement or Customer Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Contract Authority or Customer asks and considers necessary for the purposes of:

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

37.3 No Requirement for PPSA Notices

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

37.4 Priority of the Contract Authority or Customer’s Interest

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

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

37.5 Enforcement

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

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

37.6 Negative undertakings

The Contractor must not:

- (a) create any security interest or lien over any of the Contract Authority or Customer's Personal Property whatsoever (other than security interests granted in favour of the Contract Authority or Customer under this Head Agreement or Customer Contract);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Contract Authority or Customer's Personal Property;
- (c) give possession of the Contract Authority or Customer's Personal Property to another person other than the Contract Authority or Customer or where the Contract Authority or Customer expressly authorises it to do so;
- (d) permit any of the Contract Authority or Customer's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Contract Authority or Customer of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;

- (g) move any of the Contract Authority or Customer's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Contract Authority or Customer's Personal Property at any time.

37.7 Contract Authority or Customer's Interest Remains Unaffected

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

37.8 Notices to the Contract Authority or Customer

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

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

37.9 Costs and Expenses Relating to the PPSA and Registration

- (a) Everything the Contractor is required to do under this clause 37 is at the Contractor's expense.
- (b) The Contractor agrees to pay or reimburse, upon demand, all costs and expenses of the Contract Authority or Customer in connection with anything the Contract Authority or Customer is required to do under this clause 37, including preparing, registering and maintaining any financing statement or financing change statement.

38. AUDIT OF EMPLOYMENT AND INDUSTRIAL RELATIONS PRACTICES

- a) An agent or representative of the State may commission an audit of the Contractor's or any Subcontractor's employment or industrial relations practices (including terms of employment) in connection with this Contract and Goods and/or Services performed or provided under or in connection with this Contract, and, upon such commissioning, the following provisions shall apply.

- b) The Contractor shall, and shall ensure that its Subcontractors, fully cooperate with the agent or representative of the State and any auditor appointed by them in any audit including to:
- i) allow an agent or representative of the State access to all employment related Information in the Contractor's or Sub-Contractor's (as the case may be) ownership, possession or control, and allow an agent or representative of the State to conduct audits of all employment and payroll records in the Contractor's or Subcontractor's (as the case may be) ownership, possession or control;
 - ii) allow auditors appointed by the agent or representative of the State to communicate directly with employees of the Contractor or Subcontractors (as the case may be), and to have access to sites and premises in the ownership, possession or control of the Contractor or relevant Subcontractor (as the case may be) for the purpose/s of the audit;
 - iii) ensure that all employment related Information (including access to such Information), in the Contractor's or relevant Subcontractor's ownership, possession or control, is promptly provided to the auditor on request;
 - iv) allow the agent or representative of the State to communicate with (including providing Information to) the employees of the Contractor and relevant Subcontractors; and
 - v) promptly rectify any problem or wrong identified by the auditor and notified to the Contractor or relevant Subcontractors (as the case may be).
- c) The Contractor acknowledges and agrees, and shall ensure that each of its Subcontractors acknowledge and agree, that the agent or representative of the State may refer any problem or wrong identified by the auditor to any State or Commonwealth body or authority having an oversight role in respect to employment or industrial relations matters.
- d) In the preceding provisions of this clause 38:
- "employment related Information" means Information pertaining to employees or the terms and conditions of their employment, or payroll;
- "Information" includes information, facts, data, records and documentation; and
- "Subcontractors" means subcontractors (at any tier) of the Contractor.

39. MODERN SLAVERY

- (a) For the purposes of this clause 39:
- (i) **Modern Slavery** has the meaning given to that term in the *Modern Slavery Act 2018* (Cth) and any analogous conduct prohibited by any other Law which applies to the Contract Authority, the Customer, the Contractor or a subcontractor; and
 - (ii) **Modern Slavery Laws** mean any of the following:
 - (A) *Modern Slavery Act 2018* (Cth);
 - (B) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);

- (C) any Law relating to Modern Slavery; and
 - (D) any other law relating to Modern Slavery which applies to the Contract Authority, the Customer, the Contractor or a subcontractor.
- (b) The Contractor represents, warrants and undertakes that, as at the Commencement Date, neither the Contractor, nor any entity that it owns or controls or, to the best of its knowledge, any of the Contractor Personnel, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.
- (c) The Contractor must:
 - (i) comply with the Modern Slavery Laws; and
 - (ii) not do anything that would constitute Modern Slavery or put the Contract Authority or the Customer in breach of the Modern Slavery Laws (applicable to State Government Agencies).
- (d) Before any subcontractor or supplier is engaged by the Contractor in the operations and supply chains used in the provision of the Goods and/or Services, the Contractor must carry out reasonable due diligence on the subcontractor's historical compliance, and ability to comply, with the Modern Slavery Laws.
- (e) The Contractor must implement and maintain throughout the Term appropriate procedures and processes to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.
- (f) The Contractor must notify the Contract Authority and the Customer in writing as soon as possible after it becomes aware of any actual or potential breach of this clause 39. The notice must set out full details of the actual or potential breach.
- (g) The Contractor must provide the Contract Authority and/or the Customer with all information and assistance reasonably requested by the Contract Authority or the Customer (as applicable) in connection with:
 - (i) the Contractor's compliance with clause 39(c), (d) (e) and (f); and
 - (ii) any reporting obligations of the Contract Authority and/or the Customer under the Modern Slavery Laws (or associated regulatory requirements of the Commonwealth of Australia or the State) in relation to the Goods and/or Services.

40. PROBITY

40.1 Probity Allegations and Investigations

- (a) The Contractor must immediately notify the Contract Authority and the Customer on becoming aware of any allegation that a Probity Event has occurred or is likely to occur.
- (b) The Contractor agrees that the Contract Authority and the Customer may, or may require the Contractor at any time to, conduct an investigation, at the Contractor's cost, into any allegation a Probity Event has occurred in respect of the Contractor, any Related Body Corporate of the Contractor, any

Contractor Personnel or any person who is proposed to become Contractor Personnel.

- (c) The Contractor must obtain all relevant consents from any person in connection with an investigation in respect of an alleged or actual Probity Event.
- (d) Where the Contract Authority or the Customer requires the Contractor to conduct an investigation in accordance with clause 40.1(b), the Contractor must promptly:
 - (i) conduct the investigation;
 - (ii) communicate the findings of that investigation in the form required to the Contract Authority or the Customer (as applicable); and
 - (iii) provide any additional information regarding the Probity Event within three Business Days of any request unless a different timeframe is agreed in writing by the Contract Authority or the Customer (as applicable).
- (e) The Contractor must bear all costs incurred by the Contract Authority and the Customer (as applicable) in connection with a Probity Event or any investigation that finds a Probity Event has occurred.
- (f) The Contract Authority's and the Customer's rights under this clause 40.1 are in addition to and do not otherwise limit any other rights the Contract Authority may have under the Head Agreement or the Customer may have under the Customer Contract.

40.2 Probity Events

- (a) The Contractor must immediately notify the Contract Authority and the Customer on becoming aware that a Probity Event has occurred or is likely to occur.
- (b) The notice issued under clause 40.2(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, the persons involved and the circumstances giving rise to the Probity Event.
- (c) The Contract Authority or the Customer may notify the Contractor in writing that an event is to be considered a Probity Event for the purposes of this clause, and where this occurs, the Contractor must issue a notice (containing the content described in clause 40.2(b)) in relation to the event within three Business Days of being notified unless a different timeframe is agreed in writing by the Contract Authority or the Customer (as applicable).
- (d) Where reasonably requested by the Contract Authority or the Customer, the Contractor must provide the Contract Authority or the Customer (as applicable) with any additional information regarding a Probity Event within three Business Days of the request unless a different timeframe is agreed in writing by the Contract Authority or the Customer (as applicable).

40.3 Probity Remediation Plan

- (a) For the purposes of this clause 40.3:
 - (i) a **Probity Remediation Plan** is a probity remediation plan approved by the Customer pursuant to clause 40.3(e);

- (ii) the **Requesting Party** is the Contract Authority or the Customer (as applicable); and
 - (iii) the **Requesting Party's Representative** is the Contract Authority's Representative or the Customer's Representative (as applicable).
- (b) If requested by a Requesting Party, the Contractor must prepare a draft probity remediation plan and submit that draft plan to the Requesting Party's Representative for approval within 10 Business Days of the request unless a different timeframe is agreed in writing by the Requesting Party.
- (c) A draft probity remediation plan prepared by the Contractor under this clause must include the following information:
 - (i) how the Contractor will address the Probity Event including confirmation that the implementation of the probity remediation plan will not in any way impact on the delivery of the Goods and/or performance of the Services or compliance by the Contractor with its other obligations under the Head Agreement and the Customer Contract (as applicable);
 - (ii) how the Contractor will ensure events similar to the Probity Event do not occur again; and
 - (iii) any other matter reasonably requested by the Requesting Party.
- (d) The Contractor must make any changes to the draft probity remediation plan requested by the Requesting Party and resubmit the draft remediation plan to the Requesting Party for approval within three Business Days of the request unless a different timeframe is agreed in writing by the Requesting Party. This clause 40.3(d) will apply to any resubmitted draft probity remediation plan.
- (e) The Requesting Party is not obliged to accept a draft probity remediation plan. No draft probity remediation plan has any effect on the Head Agreement or the Customer Contract until such time as the draft is approved by the relevant Requesting Party in writing, and signed in accordance with that party's approved delegation authorities.
- (f) Without limiting its other obligations under the Head Agreement or the Customer Contract, the Contractor must comply with the Probity Remediation Plan. The Contractor agrees to promptly provide reports and other information about the Contractor's progress in implementing the Probity Remediation Plan as reasonably requested by the Requesting Party.
- (g) The Requesting Party's rights under this clause 40.3 are in addition to and do not otherwise limit any other rights that party may have under the Head Agreement or the Customer Contract (as applicable).
- (h) The performance by the Contractor of its obligations under this clause 40.3 will be at no additional cost to the Contract Authority or the Customer.

END