



GENERAL CONDITIONS OF CONTRACT

**FOR THE SUPPLY OF
GOODS AND / OR SERVICES**

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GENERAL CONDITIONS OF CONTRACT

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**GENERAL CONDITIONS OF CONTRACT
FOR THE SUPPLY OF
GOODS AND/OR SERVICES**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Conditions, unless the context otherwise requires:

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

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

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

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

Confidential Information means information in respect of the Contract 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 Contract Documents; or
- (c) the Contractor knows or ought to know is confidential.

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

Contract Authority means the person specified as the contract authority in the Contract Documents.

Contract Documents means:

- (a) the Letter;
- (b) the Offer;
- (c) the Special Conditions of Contract;
- (d) the Request, including any addenda; and
- (e) these General Conditions.

Contract Material means a Good and/or Service supplied under the Contract.

Contract Price means the price that is:

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

Contractor means the person specified as the contractor in the Contract Documents and, where the context permits, references to the Contractor include Personnel.

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

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

Delivery Date means the date for delivery of the Goods specified in the Contract Documents.

Delivery Place means the place for delivery of the Goods specified in the Contract Documents.

Delivery Time means the time for delivery of the Goods specified in the Contract Documents.

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

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

- (a) the Contractor breaches an obligation under the Contract that cannot be remedied; or
- (b) the Contractor breaches any other obligation under the Contract and that breach is not remedied within 10 Business Days after the Contract Authority gives a notice to the Contractor requiring the breach to be remedied; or
- (c) the Contractor commits 3 breaches of its obligations under the Contract over any 12 month period, whether or not the Contract Authority 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 Contract Documents 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; or
- (i) if in the reasonable opinion of the Contract Authority, 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.

Faulty Goods means any Goods that do not comply with the Contract or are otherwise defective in any manner.

General Conditions means these general conditions of contract for the supply of Goods and/or Services.

Goods means the goods (if any) described, and in the quantity specified, in the Contract Documents.

Goods and/or Services means:

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

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.

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 2001 (Cth)*) 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;
- (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 2001 (Cth)*; 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 2001 (Cth)*; 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 2001 (Cth)* 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 Owner means:

- (a) the person or persons specified in the Contract Documents for the purposes of clause 11 of these General Conditions; or
- (b) if no person is specified in the Contract Documents, the Crown in right of the State of Western Australia.

Intellectual Property Rights means:

- (a) patents, copyright, moral rights, performance rights (as described in Part XIA of the *Copyright Act*), rights in circuit layouts, plant breeder's rights, registered designs, trade marks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of those rights.

Letter means the letter, if any, signed by the Contract Authority that:

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

which the Contract Authority and the Contractor have agreed.

Moral right 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.

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

Pre-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 was created prior to the commencement of the Contract;

- (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.

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

- (a) are identified in the Contract Documents; 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.

Public Authority has the same meaning as in the *State Supply Commission Act 1991*.

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.

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

Services means the services (if any) described in the Contract Documents.

Special Conditions of Contract means the special conditions of contract specified in the Contract Documents.

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

Specified Personnel means the Personnel specified in the Contract Documents.

Term means the term of the Contract specified in the Contract Documents.

1.2 Interpretation

In these General Conditions, 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 Public Authority, 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 Contract binds each person who comprises the Contractor jointly and severally;
 - (ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under the Contract to be undertaken;
 - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and
 - (iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;
- (g) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the 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 Contract;
- (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 month is to a calendar month and a reference to 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; and
- (u) a reference to a monetary amount means that amount in Australian currency.

2. ORDER OF PRECEDENCE

- (a) The Contract Documents shall be read in the order of precedence specified in the Contract Documents.
- (b) If no order of precedence is specified in the Contract Documents, then the Contract Documents shall be read in the following order of precedence:
 - (i) the Letter;
 - (ii) the Offer;
 - (iii) the Special Conditions of Contract;
 - (iv) the Request, including any addenda; and
 - (v) these General Conditions.
- (c) Where any inconsistency occurs between the provisions contained in two or more Contract Documents, the 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 Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

3. NON-CUSTOMER CONTRACT

If the Contract Authority has requested Goods and/or Services on its own behalf (and not on behalf of a Customer), then references to:

- (a) “the Customer”;
- (b) “the Contract Authority and the Customer”;
- (c) “the Contract Authority or the Customer”,
- (d) “the Contract Authority, the Customer and”;
- (e) “the Contract Authority, the Customer or”;
- (f) “the Contract Authority, the Customer or both”,

in these General Conditions are to be read as references to “the Contract Authority” only.

4. TERM AND EXTENSION

4.1 Term

The Contract is for the Term.

4.2 Extension

- (a) The Contract Authority has the option or options to extend the Term for the period or periods (as applicable) specified in the Contract Documents.
- (b) If the Contract Authority wishes to exercise an option under clause 4.2(a), then the Contract Authority must give the Contractor a notice:
 - (i) by the date or dates specified in the Contract Documents; or
 - (ii) if no period is specified in the Contract Documents, at least 20 Business Days before the expiry of the Term,stating that the Contract is to be extended and the period of the extension.
- (c) If the Contract Authority exercises an option under clause 4.2(a), then references to “the Term” in these General Conditions are to be read as including the period of extension of the Term.

5. SUPPLY OF GOODS

5.1 Application of this clause

If the Contract is for the supply of:

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

then this clause 5 forms part of the Contract.

5.2 Supply of Goods

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

5.3 Orders

- (a) If the Contract Documents refer to the giving of Orders for the Goods, then the Contractor must supply the Goods in accordance with Orders given by the Customer.
- (b) The Customer may give the Contractor an Order at any time.
- (c) The Customer may give the Contractor any number of Orders.
- (d) An Order must specify:
 - (i) the Goods;
 - (ii) the quantity of the Goods; and
 - (iii) the date, time and place for delivery of the Goods if different from the Delivery Date, Delivery Time or Delivery Place.
- (e) An Order is subject to the terms and conditions of the Contract but to the extent of any inconsistency between the Order and the Contract, the Contract applies rather than the Order.

5.4 Quality of Goods

- (a) The Contractor must supply the Goods in accordance with the Specification.
- (b) All Goods delivered by the Contractor must conform:
 - (i) with all samples provided by the Contractor to the Contract Authority or the Customer; and
 - (ii) if no standards for the Goods are specified in the Specification, to all relevant and current standards published by the Standards Association of Australia.

5.5 Inspection and Testing

- (a) At any time during the Term, the Customer may inspect and test any Goods at the Contractor's premises.
- (b) The Contractor must do everything necessary to enable the inspection and testing to be carried out.

5.6 Sources of Supply

If the Customer requests, the Contractor must 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.

5.7 Packing

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

5.8 Delivery

- (a) 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.
- (b) If no Delivery Date or Delivery Time is specified in the Contract Documents or in an Order, then:
 - (i) the Contractor must give notice to the Customer at least 2 Business Days before the delivery of Goods; and
 - (ii) the Contractor must deliver the Goods during Business Hours.
- (c) 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.
- (d) The Contractor must comply with all reasonable directions from the Customer or any other person who has control of the Delivery Place.

5.9 Variation of Delivery

- (a) The Customer may at any time, including at the time of actual delivery, vary the Delivery Place, the Delivery Date or the Delivery Time.
- (b) When possible, the Customer will use reasonable endeavours to inform the Contractor of the variation a reasonable time before delivery is due.
- (c) 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 clause 5.9(a).

5.10 Delay in Delivery Date - Contractor Caused

- (a) 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.

(b) A notice from the Contractor under clause 5.10(a) does not release the Contractor from its obligations relating to delivery of the Goods or from any other obligation under the Contract.

(c) If:

(i) the Customer receives a notice under clause 5.10(a); or

(ii) the Goods are not delivered by the Delivery Date,

and the Customer requires the Goods by the Delivery Date, then the Contract Authority or the Customer may purchase from another supplier substitute goods which in the opinion of the Contract Authority or the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Goods.

(d) If the Contract Authority or the Customer purchases substitute goods:

(i) the Customer does not have to take delivery of, or pay the Contract Price for, the Goods; and

(ii) the Contractor must reimburse the Contract Authority or the Customer (as applicable) for:

(A) any amount by which the cost of substitute goods exceeds the Contract Price for the Goods; and

(B) the Contract Authority's and the Customer's reasonable costs and expenses resulting from having to purchase substitute goods,

within 5 Business Days from the date on which the Contract Authority or the Customer (as applicable) gives the Contractor an invoice for those costs.

5.11 Delay in Delivery Date - Customer Caused

(a) 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:

(i) the strategies that the Contractor has developed and will implement to avoid, minimise or manage the consequences of the delay;

(ii) the period, or likely period, of delay;

(iii) the likely effect of the delay on the Contract; and

- (iv) the additional costs which the Contractor will reasonably incur, and request an extension of time that is reasonable in the circumstances.
- (b) The Customer must after receiving a request for an extension of time under clause 5.11(a):
 - (i) promptly notify the Contractor as to whether it consents to that request; and
 - (ii) consent to an extension of time and pay all reasonable additional costs incurred by the Contractor, unless there are reasonable grounds for refusing its consent.

5.12 Payment before Acceptance

Despite any other provision of the Contract, if the Customer pays the Contract 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 5.13; or
- (b) the Customer rejects the Goods, in which case the Contractor will immediately refund the Contract Price for the rejected Goods to the Customer.

5.13 Acceptance of Goods

- (a) Neither the delivery of the Goods by the Contractor to the Customer nor payment of the Contract Price by the Customer to the Contractor constitutes acceptance of the Goods by the Customer.
- (b) The Customer may reject the Goods if:
 - (i) the Goods are Faulty Goods; or
 - (ii) the Goods are not supplied in full; or
 - (iii) the Customer is entitled to reject the Goods under the *Sale of Goods Act 1895*.
- (c) The Customer is taken to have accepted the Goods only if the Customer:
 - (i) notifies the Contractor that the Goods have been accepted; or
 - (ii) does not 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.

5.14 Property, Delivery and Risk

- (a) Risk in the Goods passes to the Customer on delivery of the Goods to the Customer in accordance with the Contract.

- (b) Property in the Goods passes to the Customer on acceptance of the Goods by the Customer under clause 5.13.
- (c) 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.

5.15 Defects in Goods

- (a) If, before or after acceptance of the Goods under clause 5.13, the Customer finds that any Goods are Faulty Goods, then the Customer may by notice in writing to the Contractor:
 - (i) reject the Faulty Goods, in which case:
 - (A) the Customer must provide a reason or reasons for rejection, if requested by the Contractor;
 - (B) the Contractor must immediately remove the Faulty Goods and refund the Contract Price for the Faulty Goods if already paid; and
 - (C) the Customer may purchase substitute goods in accordance with clauses 5.10(c) and 5.10(d); or
 - (ii) require the Contractor to replace the Faulty Goods with goods of the same kind and quality as the Goods; or
 - (iii) require the Contractor to repair or rectify the Faulty Goods.
- (b) Clause 5.15(a) does not apply if:
 - (i) the Customer examined the Goods before acceptance of the Goods under clause 5.13;
 - (ii) that examination ought to have revealed that the Goods were Faulty Goods; and
 - (iii) the Customer accepted the Faulty Goods under clause 5.13.

5.16 Reasonable Time

If the Customer requires the Contractor to replace, repair or rectify the Faulty Goods under clauses 5.15(a)(ii) or 5.15(a)(iii), 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 Faulty Goods are being replaced, repaired or rectified.

5.17 Remedies for Defects in Goods

If the Contractor fails to comply with the Customer's notice under clause 5.15, then the Customer may do any one or more of the following:

- (a) return the Faulty Goods to the Contractor;
- (b) hold the Faulty Goods as security for the performance of the Contractor's obligations under clause 5.15;
- (c) sell the Faulty 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 Contract; and
 - (ii) pay the balance of the net sale proceeds to the Contractor; and
- (d) purchase substitute goods in accordance with clauses 5.10(c) and 5.10(d).

Neither the Contract Authority nor the Customer is liable to the Contractor for any loss or damage to Faulty Goods resulting from the exercise of any right under this clause.

5.18 Sale of Goods Act 1895

The Contract Authority, the Customer and the Contractor acknowledge that:

- (a) the *Sale of Goods Act 1895* applies to the Contract; and
- (b) to the extent that there is any inconsistency between the *Sale of Goods Act* and the Contract, and to the extent permitted by law, the Contract applies rather than the *Sale of Goods Act*.

6. SUPPLY OF SERVICES

6.1 Application of this clause

If the Contract is for the supply of:

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

then this clause 6 forms part of the Contract.

6.2 Supply of Services

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

6.3 Orders

- (a) If the Contract Documents refer to the giving of Orders for the Services, then the Contractor must supply the Services in accordance with Orders given by the Customer.
- (b) The Customer may give the Contractor an Order at any time.

- (c) The Customer may give the Contractor any number of Orders.
- (d) An Order must specify:
 - (i) the Services;
 - (ii) the scope of the Services; and
 - (iii) (if applicable) the date, time and place for performance of the Services.
- (e) An Order is subject to the terms and conditions of the Contract but to the extent of any inconsistency between the Order and the Contract, the Contract applies rather than the Order.

6.4 Scope and Quality of 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.

6.5 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 Contract Documents; or
- (b) if no rate is specified in the Contract Documents, at the rate agreed between the Contract Authority and the Contractor; or
- (c) if no rate is agreed under clause 6.5(b) within 10 Business Days from the date of the Customer's request, at the reasonable rate determined by the Contract Authority.

6.6 Specified Personnel

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

- (c) If the Customer gives a notice to the Contractor under clause 6.6(b), then the Contractor must promptly:
 - (i) remove the person included in the Specified Personnel; and
 - (ii) replace the person included in the Specified Personnel with additional Personnel of similar skills and experience reasonably acceptable to the Customer.
- (d) If Specified Personnel are replaced with additional Personnel under clause 6.6(c), then references to Specified Personnel are taken to include such additional Personnel.

6.7 Unsatisfactory Services

- (a) If any of the Services have not been supplied in accordance with this clause 6, then, without limiting any other remedy available to the Contract Authority or the Customer, the Customer may by notice to the Contractor require the Contractor to re-supply those Services and the Contractor must re-supply those Services at no cost to the Customer.
- (b) If the Contractor receives a notice under clause 6.7(a) and the Contractor does not re-supply the Services within a reasonable time, then the Contract Authority or the Customer may purchase from another supplier substitute services which in the opinion of the Contract Authority or the Customer (as applicable) are most suitable, even though such services may be of a different kind, quantity and quality from the Services.
- (c) If the Contract Authority or the Customer purchases substitute services, then:
 - (i) the Customer does not have to pay the Contract Price for the Services; and
 - (ii) the Contractor must reimburse the Contract Authority or the Customer (as applicable) for:
 - (A) any amount by which the cost of substitute services exceeds the Contract Price for the Services; and
 - (B) the Contract Authority's and the Customer's reasonable costs and expenses resulting from having to purchase substitute services,

within 5 Business Days from the date that the Contract Authority or the Customer (as applicable) gives the Contractor an invoice for those costs.

7. PAYMENT

7.1 Contract Price

The Customer must pay to the Contractor the Contract Price in accordance with this clause 7.

7.2 Variations to Contract Price

- (a) If a formula or method for variation of the Contract Price is specified in the Contract Documents, then the Contract Price may only be varied in accordance with that formula or method.
- (b) If no formula or method for variation of the Contract Price is specified in the Contract Documents, then the Contract Price is fixed for the Term and cannot be varied unless agreed by the Contract Authority and the Contractor in writing.

7.3 Timing of Invoice

- (a) If the time or times at which the Contractor must submit invoices to the Customer is or are specified in the Contract Documents, then the Contractor must submit invoices at that time or those times.
- (b) If no time or times at which the Contractor must submit invoices to the Customer is or are specified in the Contract Documents, 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 Contract.

7.4 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 Contract Price payable for those Goods and/or Services, minus any Discount; and
- (b) specify the relevant Order (if applicable).

7.5 Payment of Invoice

Subject to clauses 7.4 and 7.8, the Customer must pay the amount specified in an invoice within 20 Business Days after the date the invoice is received if the amount:

- (a) claimed in the invoice is properly payable; and
- (b) specified in the invoice is correctly calculated in accordance with the Contract.

7.6 Method of Payment

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

7.7 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 Contract.

7.8 No Obligation to Pay

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

- (a) if the Contract is for the supply of Goods, the Customer has accepted the Goods under clause 5.13;
- (b) if the 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.

7.9 Incorrect Invoice before Payment

If, before payment of an invoice, the Customer or the Contractor finds that the invoice does not comply with clause 7.4 or 7.5 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.

7.10 Incorrect Invoice after Payment

If, after payment of an invoice, the Customer or the Contractor finds that the invoice did not comply with clause 7.4 or 7.5 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 20 Business Days after the date the Adjustment Note is received; or
- (b) less than the amount that should have been paid and no Adjustment arises, then:
 - (i) the Contractor must immediately issue a correct invoice; and
 - (ii) the Customer must pay the difference to the Contractor within 20 Business Days after the date 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 within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor; or
- (d) more than the amount that should have been paid and no Adjustment arises, then the Contractor must:
 - (i) immediately issue a correct invoice; and
 - (ii) pay the difference to the Customer 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.

7.11 Timing of Payment

For the purpose of determining the date of payment under clause 7.12(b) and for the purpose of calculating any Discount applicable under the 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.

7.12 Failure to Pay

- (a) If demanded by the Contractor, the Customer must pay interest on any payment not made by the Customer by the date required by clause 7.5 or any later date for payment agreed by the Contractor.
- (b) Interest under clause 7.12(a) is to be:
 - (i) calculated from the due date for payment determined under clause 7.12(a) until (but not including) the date of payment (as determined under clause 7.11); and
 - (ii) at the rate specified in the Contract Documents or, if no rate is specified in the Contract Documents, at the rate payable under the Rules of the Supreme Court on unpaid judgments.

7.13 GST and other duties, taxes and charges

- (a) In this clause 7.13, 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 Contract are expressed inclusive of GST.
- (c) If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 7.13(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 Contract.
- (e) If a GST-inclusive price is charged or varied under the 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 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.

8. CONTRACTOR'S GENERAL UNDERTAKINGS

8.1 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 Contract;
- (b) the Contractor is properly authorised and has the power to enter into the Contract and perform the Contractor's obligations under the Contract;
- (c) the Contractor's obligations under the Contract are valid and binding and are enforceable against the Contractor;
- (d) all information provided by the Contractor to the Contract Authority, the Customer or both in connection with the Contract Documents 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 Contract;
- (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; and
- (g) there is nothing that prevents the Contractor from complying with any obligation under the Contract.

8.2 General Warranties Made Continuously

The warranties made by the Contractor under clause 8.1 are taken to be made continuously throughout the Term.

8.3 Contractor's Undertakings

The Contractor must:

- (a) properly provide for the care, safety, security and protection of:
 - (i) the Goods, if the Contract is for the supply of Goods, until risk in the Goods passes to the Customer under clause 5.14(a);
 - (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 Contract;

- (b) promptly notify the Customer if any warranty under clause 8.1 is breached or becomes untrue;
- (c) always act ethically in connection with the Contract and in accordance with good corporate governance practices;
- (d) comply with all State and Commonwealth laws relevant to the Contract;
- (e) if the Contractor has custody or control of State records in the supply of the Goods and/or Services, comply with the Customer's record keeping plan to the extent necessary under the *State Records Act 2000*;
- (f) cooperate fully with the Contract Authority and the Customer in respect of the administration of the Contract; and
- (g) ensure that no Personnel cause the Contractor to breach the Contract.

8.4 Conflict of Interest

If a conflict of interest arises in respect of the Contractor, the Contractor must:

- (a) promptly notify the Customer that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with the Customer to remove the conflict.

8.5 Obligations relating to Government Procurement Policies

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

8.6 Contractor's Expenses and Equipment

The Contractor must:

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

8.7 Warranties

- (a) The Contractor must give, or must ensure that the Contract Authority and the Customer have the benefit of, any warranties specified in the Contract Documents.
- (b) The Contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties

that are obtained by any subcontractor, and must ensure that the Contract Authority and the Customer have the benefit of those warranties.

- (c) The Contractor indemnifies the Contract Authority and the Customer against any loss or liability that results from the Contractor not complying with clause 8.7(b).

8.8 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 occupational health, safety and security in connection with the Premises;
- (b) keep the Premises in a clean and tidy state and regularly remove all rubbish and excess materials resulting from the supply of the Goods and/or Services;
- (c) leave the Premises in a clean and tidy state;
- (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 in relation to the Premises; and
- (g) remove any 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 Personnel be removed.

8.9 Personnel

The Contractor must ensure that all 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 a fit and proper manner.

8.10 Awards, Workplace Agreements

The Contractor must ensure that the remuneration and terms of employment of all Personnel for the duration of the 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.

8.11 Use of Lobbyists

The Contractor warrants and represents to the Contract Authority and the Customer that any "Lobbyist" (as that term is defined in Premier's Circular No. 2007/06 ("Premier's Circular") which can be found at <http://www.dpc.wa.gov.au/psmd/pubs/legis/premcirculars/premierscirc.cfm>) that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with this Contract, is duly registered as a "Lobbyist" in terms of that Premier's Circular and has fully complied with its obligations under it.

8.12 Working with Children

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

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

The Customer may require the Contractor to immediately remove any 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.

9. ACCESS AND CONFIDENTIALITY

9.1 Access and Records

- (a) The Contractor must allow the Contract Authority, the Customer or both to:
 - (i) have reasonable access to any premises used or occupied by the Contractor in connection with the Goods and/or Services;
 - (ii) have reasonable access to all Records in the custody or control of the Contractor;
 - (iii) examine, audit, copy and use any Records in the custody or control of the Contractor; and
 - (iv) photograph, film or otherwise record anything done by the Contractor in supplying the Goods and/or Services.
- (b) The Contractor must keep accurate, complete and current written Records in respect of the Contract, including:
 - (i) if the Contract is for the supply of Goods:

- (A) the type and quantity of the Goods supplied to the Customer;
 - (B) the date and time on which the Contractor supplied the Goods to the Customer; and
 - (C) the place to which the Contractor delivered the Goods to the Customer; and
- (ii) if the Contract is for the supply of Services:
 - (A) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;
 - (B) the time that the Contractor spent providing the Services on each day during the Term; and
 - (C) the name, job status and title of all Personnel who provided the Services or were responsible for supervising the provision of the Services.
- (c) 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.
- (d) The Contractor must keep all Records for at least 7 years after:
 - (i) final payment under the Contract or after the expiry of the Term, whichever is later; or
 - (ii) termination of the Contract, if the Contract is terminated before the end of the Term.
- (e) 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 9.1.
- (f) This clause 9.1 survives expiration or termination of the Contract.

9.2 Contract Disclosure

- (a) The Contract Authority, the Customer or both may publicly disclose:
 - (i) the identity of the Contractor;
 - (ii) the value of the Contract; and
 - (iii) a general description of the Goods and/or Services supplied under the Contract.
- (b) The Contractor acknowledges that:
 - (i) the Contract Documents; and

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

are subject to the *Freedom of Information Act 1992*.

9.3 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, judicial or parliamentary body 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 9.3.

9.4 Return of Confidential Information

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 Contract.

9.5 Publicity

- (a) Unless the Contract Authority or the Customer gives its prior written consent, the Contractor must not:
 - (i) use the Contract or the Contract Authority's or the Customer's name or logo; or
 - (ii) use the name or logo of any person specified in the Contract Documents; or
 - (iii) refer to the Contractor's association with the State of Western Australia or the Government of Western Australia which results from the Contract; or
 - (iv) make any statement concerning the Contract,

in any publication, advertisement or media release.

- (b) The Customer may use the 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 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.

10. AUDITOR GENERAL

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

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Ownership of Intellectual Property Rights in Contract Material

The Contractor automatically assigns the entire future Intellectual Property Rights in all Contract Material to the Intellectual Property Owner upon their creation.

11.2 Pre-existing Material - Licence

- (a) Nothing in clause 11.1 affects the ownership of any Intellectual Property Rights in any Pre-existing Material.
- (b) The Contractor:
 - (i) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights (other than moral rights) in any Pre-existing Material grants, to the Intellectual Property Owner 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 Pre-existing Material during the remainder of the duration of the Intellectual Property Rights in that Pre-existing Material; and
 - (ii) must, if a third party owns moral rights in any Pre-existing Material, obtain a written consent and waiver from the third party owner in relation to his or her moral rights to enable the Intellectual Property Owner to use the Pre-existing Material without regard to the third party's moral rights.

11.3 Warranty

The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted under clause 11.2(b)(i);

- (b) no Intellectual Property Rights in any Contract Material is or will be owned by any third party unless:
 - (i) if the third party owns any Intellectual Property Rights (other than moral rights) in the Contract Material, the Contractor has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 11.2(b)(i); and
 - (ii) if the third party owns moral rights in the Contract 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 Intellectual Property Owner to use the Contract Material without regard to the third party's moral rights;
- (c) the Contract Material will not infringe the Intellectual Property Rights of any third party; and
- (d) all Personnel:
 - (i) who are employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any Contract Material vest in the Intellectual Property Owner on the creation of that Contract Material; and
 - (ii) who are not employed or engaged solely for the purposes of the Contract are employed or engaged under written agreements under which all Intellectual Property Rights (other than moral rights) in any work (as defined in the *Copyright Act*), product or other material created by the Personnel vest in the Contractor on the creation of that work, product or other material.

11.4 Intellectual Property Rights Indemnity

The Contractor indemnifies and will keep indemnified the Contract Authority, the Customer, the Intellectual Property Owner, 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 11, including any breach of warranty under clause 11.3, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights of any third party by the Contractor.

11.5 Continuing obligation

The obligations of the Contractor under this clause 11 are continuing obligations and survive expiration or termination of the Contract.

12. INSURANCE

12.1 Insurance Requirements

- (a) The Contractor must take out and maintain insurance in relation to all liabilities of the Contractor under the Contract as specified in the Contract Documents, for the benefit of the parties named in the Contract Documents.
- (b) The insurance required under clause 12.1(a) must be on the terms, for the period of time and for the amounts specified in the Contract Documents.

12.2 Reputable and Solvent Insurer

Any policy of insurance taken out by the Contractor under the Contract must be taken out with a reputable and solvent insurer acceptable to the Contract Authority which carries on business in Australia and is authorised by the Australian Prudential Regulation Authority.

12.3 Maintenance of Insurance

The Contractor must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 12.1;
- (b) not vary or cancel any insurance required under clause 12.1 or as otherwise required under the Contract or allow it to lapse during the Term or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (c) without limiting clause 12.3(b), promptly reinstate any insurance required under clause 12.1 if it lapses or if cover is exhausted.

12.4 Evidence of Insurance

The Contractor must give to the Contract Authority sufficient evidence of the insurance required under clause 12.1 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Contract Authority at any time.

12.5 Failure to Prove Insurance

If the Contractor does not comply with clauses 12.1, 12.2, 12.3 and 12.4, 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 Contract to the Contractor until the Contractor has complied.

12.6 Incidents and claims

- (a) 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 clause 12.1, 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.

- (b) Failure to comply with this clause 12.6 will not invalidate or otherwise affect the rights of the Contract Authority or the Customer, or the obligations of the Contractor, under clause 13.

12.7 Continuing obligation

- (a) The Contractor must maintain the insurance required under clause 12.1 for the period specified in the Contract Documents.
- (b) If no period is specified in the Contract Documents, then:
 - (i) the insurances (except for the professional indemnity insurance) required under clause 12.1 are to be maintained throughout the Term; and
 - (ii) the professional indemnity insurance (if any) required under clause 12.1 is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Contract.
- (c) The obligations of the Contractor under this clause 12 are continuing obligations and survive expiration or termination of the Contract for so long as the obligations of the Contractor under this clause 12.7 continue.

12.8 No Limitation of Other Liabilities

Nothing in this clause 12 limits the Contractor's other liabilities under the Contract or restricts the Contractor from insuring for sums or risks greater than those required under the Contract.

13. INDEMNITY

- (a) 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:
 - (i) any breach of an obligation under the Contract by the Contractor;
 - (ii) any wilful, tortious or unlawful act or omission of the Contractor or any Personnel; or
 - (iii) any breach of a State or Commonwealth law relevant to the Contract by the Contractor or any Personnel.
- (b) The Contractor's liability under the indemnity in clause 13(a) 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.

- (c) 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 clause 13(a).

14. SUSPENSION

14.1 Suspension at Any Time

- (a) The Contract Authority may at any time by notice to the Contractor temporarily suspend the Contract (except for clauses 9.3, 11, 12 and 13) for a period not exceeding 3 months.
- (b) The Contract Authority does not need to give a reason for temporary suspension of the Contract.
- (c) If the Contract Authority suspends the Contract under this clause 14.1 and the Contractor is not in default under the Contract, then:
 - (i) the Customer must pay to the Contractor any amount owing under the Contract up to the date of suspension and 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 in accordance with clauses 7.3 and 7.4 together with sufficient evidence to support the invoice; and
 - (iii) the Customer must pay any amount under clause 14.1(c)(i) within 20 Business Days after receiving an invoice under clause 14.1(c)(ii).

14.2 Ending of Suspension

- (a) The Contract Authority may end the suspension at any time by notice to the Contractor.
- (b) At the end of the suspension, the rights and obligations of the Contract Authority, the Customer and the Contractor under the Contract recommence.

15. TERMINATION

15.1 Termination

The Contract Authority may terminate the Contract by notice to the Contractor at any time after an Event of Default occurs.

15.2 Consequences of Expiration or Termination

- (a) The expiration or termination of the Contract does not affect any rights, liabilities or obligations of the Contract Authority, the Customer or the Contractor as a result of anything occurring before the expiration or termination.
- (b) On expiration or termination of the Contract, the Contractor must as soon as practicable:
 - (i) deliver to the Customer all Records as required by the Customer;
 - (ii) vacate the Premises;
 - (iii) complete or cease to fulfil any outstanding Order as the Customer directs;
 - (iv) 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 if required in connection with the 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
 - (v) 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 Contract.

15.3 Limited Liability

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

16. CONTRACT AUTHORITY'S REPRESENTATIVE

- (a) Any person described in the Contract Documents as the Contract Authority's representative may act as the representative of the Contract Authority in relation to the Contract.
- (b) The Contractor agrees and acknowledges that the Contract Authority's representative may administer the Contract 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 Contract.
- (c) The Contract Authority may by notice to the Contractor at any time:
 - (i) vary or terminate the appointment of the Contract Authority's representative; and
 - (ii) appoint any other person to act as the Contract Authority's representative in relation to the Contract.

17. NOTICE

Each notice or other communication given under the Contract:

- (a) must be in writing;
- (b) may be given by an authorised officer or solicitor of the Contract Authority, the Customer or the Contractor (as applicable);
- (c) must be:
 - (i) hand delivered or sent by prepaid post to the address of the recipient specified in the Contract Documents; or
 - (ii) sent by facsimile to the facsimile number of the recipient specified in the Contract Documents;
- (d) subject to clause 17(e), is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

18. MISCELLANEOUS

18.1 Consent

- (a) Whenever the consent of the Contract Authority is required under the Contract:
 - (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 18.1(a)(i) will constitute a breach of a condition by the Contractor under the Contract.
- (b) Whenever the consent of the Customer is required under the 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 18.1(b)(i) will constitute a breach of a condition by the Contractor under the Contract.

18.2 No Dealing or Subcontracting

- (a) Unless the Contractor obtains the Contract Authority's prior written consent, the Contractor must not:
 - (i) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Contract; or
 - (ii) subcontract any of its rights or obligations under the Contract.
- (b) If the Contractor is a corporation (other than a public company as defined in the *Corporations Act 2001 (Cth)*) the Contractor is taken to have assigned the Contract if:
 - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or
 - (ii) there is any change in control of the Contractor within the meaning of the *Corporations Act 2001 (Cth)*.
- (c) Any consent given by the Contract Authority under clause 18.2(a) to subcontract the Contract is taken to be subject to the following terms and conditions unless otherwise stated in the consent:
 - (i) the Contractor must include in any subcontract provisions consistent with clauses 9.3, 11 and 12 and this clause 18.2, as if references in those clauses to the Contractor referred instead to the subcontractor;
 - (ii) 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;
 - (iii) 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 Contract; and
 - (iv) 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 clauses 18.2(c)(i) and 18.2(c)(ii).

18.3 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 Contract.

18.4 Relationships - No Partnership

- (a) The Contractor is an independent contractor, and nothing in the Contract may be construed to make the Contractor a partner, agent, employee or joint venturer of the Contract Authority or the Customer.
- (b) The Contractor must not represent that the Contractor or any of its Personnel are the employees, agents, partners or joint venturers of the Contract Authority or the Customer.

18.5 Rights and Remedies

The rights, powers and remedies in the Contract are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

18.6 Right of Set Off

The Customer may set off or deduct any amount claimed by the Contract Authority or the Customer, including any amount claimed under the indemnity in clause 13, from any amount owing by the Customer to the Contractor on any account under the Contract or any other contract between the Contractor and the Contract Authority or the Customer.

18.7 Entire Agreement

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

18.8 Variations

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

18.9 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 Contract by another party.
- (c) Subject to clause 18.9(a), any failure by the Contract Authority, the Customer or the Contractor to enforce any right under the Contract will not be construed as a waiver of their respective rights under the Contract.

18.10 Costs

- (a) Unless otherwise stated, the Contractor must comply with all obligations of the Contractor at the Contractor's cost.
- (b) 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 Contract.
- (c) The Contractor must pay all stamp duty on the Contract.

18.11 Governing Law

The Contract is governed by the laws of the State of Western Australia. The Contract Authority, the Customer and the Contractor irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.