

Appendix 1



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

TABLE OF CONTENTS

1. Definitions and interpretation	4
2. Supply of Goods and Services.....	9
3. Term.....	10
4. Representatives.....	10
5. Contractor as trustee	10
6. Not used.....	11
7. Quality and description of the Goods	11
8. Quality and description of the Services	11
9. Inspection and information.....	12
10. Plant and equipment.....	12
11. Price.....	13
12. Invoicing and payment.....	13
13. GST.....	14
14. Work Health and Safety.....	15
15. Construction Contracts Act	16
16. Title and risk in the Goods	16
17. Delivery of the Goods	17
18. Performance of the Services.....	17
19. Inspection and acceptance of the Goods	18
20. Variations	18
21. Extension of time.....	19
22. Media	20
23. Independent contractor.....	21
24. Warranties	21
25. Insurance	22
26. Liability and indemnities.....	23
27. Intellectual property	24
28. Confidential information	24
29. Taxes	25
30. Force Majeure	25
31. Default.....	25
32. Termination	26
33. Suspension	27
34. Dispute resolution.....	27
35. Expert determination.....	28
36. Assignment and sub-contracting.....	29

37. Personal Property Securities Act 2009 (Cth).....	29
38. Priority	30
39. Record Keeping Requirements	30
40. Notices	31
41. Entire agreement.....	32
42. Industrial arrangements	32
43. Other matters	32
44. Governing law	32
45. Counterparts.....	33

Supply Contract General Conditions

1. Definitions and interpretation

1.1 In this Supply Contract unless the contrary intention appears:

Annexure means an annexure to this Supply Contract.

Authorised Representative means any person appointed by a party from time to time to act as an authorised representative for the purposes of this Supply Contract and includes the Contractor's Representative in the case of the Contractor and the Principal's Representative in the case of the Principal.

Best Industry Practices means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by the best skilled and experienced operators engaged in the same type of undertaking, under the same or similar circumstances and conditions.

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

Civil Liability Act means the *Civil Liability Act 2002* (WA).

Commencement Date means the date on which this Supply Contract is signed by the last party to do so unless otherwise specified in the Contract Specifics.

Consequential Loss means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the above types of loss arising from an interruption to a business or activity.

Contract Specifics means the section included in the Letter of Acceptance headed "Contract Specifics".

Contractor Background IP means Intellectual Property Rights owned by or licensed to the Contractor (including know-how and technical information) which exist prior to the date of this Supply Contract or are developed or acquired by the Contractor independently of this Supply Contract, which are used by the Contractor in the provision of the Goods and/or performance of the Services or otherwise made available to the Principal under or in connection with this Supply Contract, but does not include the Project IP.

Contractor's Personnel means the Contractor and its Workers including subcontractors and the directors, officers, employees, representatives, volunteers and agents of each of them.

Contractor's Representative means, as at the date of this Supply Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Contractor in accordance with clause 4.2.

Controller has the meaning it has in the Corporations Act.

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

CPI means the index published by the Australian Bureau of Statistics known as the table 1 index – 6401.0, or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

CPI Number means the relevant number shown by the CPI for the "All Groups CPI, Index Number (Perth)" at the end of the relevant period.

Current CPI Number means, in respect of a Review Date, the CPI Number last published by the Australian Statistician before that Review Date.

Date for Completion means the date(s) for completion of the Services as specified in the Contract Specifics and as extended or reduced in accordance with clause 21.

Date for Delivery means the date(s) on which the Contractor is to deliver the Goods as specified in the Contract Specifics and as extended or reduced in accordance with clause 21.

Defective Goods means goods which are not in conformity with this Supply Contract (including the warranties and representations in clause 24.1) or are defective in design, performance, workmanship or makeup.

Defective Services means Services or the result of the Services which are not in conformity with this Supply Contract (including the warranties and representations in clause 24.2) or are of inferior quality or are otherwise unsatisfactory to the Principal.

Delivery means delivery of the Goods in accordance with clause 17.

Delivery Point means the place(s) where the Goods are to be delivered as specified in the Contract Specifics.

Dispute means any dispute, difference of opinion or disagreement whatsoever between the parties arising under, out of or in connection with the supply of the Goods and/or the performance of the Services and/or this Supply Contract.

Event of Force Majeure means an event or circumstance which is beyond the control and without the fault or negligence of the party affected by the event or circumstance and which by the exercise of reasonable diligence the party affected is unable to prevent or overcome, which event or circumstance prevents, hinders or delays a party from performing any of its obligations under this Supply Contract, provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) any act of God, flood, bush fire, drought, earthquake, landslide, cyclone or other natural disaster, but excluding weather conditions regardless of severity;
- (e) strikes at a national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, but excluding any industrial dispute which is specific to the performance of this Supply Contract; and
- (f) maritime disasters.

Excluded Information means Principal's Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this Supply Contract or an obligation of confidence owed to the Principal or the Principal's Personnel;
- (b) the Contractor can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal or the Principal's Personnel (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Contractor acquires from a source other than the Principal or any of the Principal's Personnel where such source is entitled to disclose it.

Expert means an independent person appointed in accordance with clause 35.2 to determine a Dispute between the parties.

First Option Period means the period (if any) specified in the Contract Specifics.

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

General Conditions means the general conditions comprising clauses 1 to 45 of this Supply Contract.

General Conditions of Responding means the general conditions of responding issued by the Principal in relation to the supply of the Goods and/or performance of the Services the subject of this Supply Contract.

Goods means the goods or any part of the goods specified in the Contract Specifics.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

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

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the financier reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due;
- (h) in the case of a natural person, it commits an act of bankruptcy or an order is made for the sequestration in bankruptcy of the estate of the Contractor, or the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction.

Initial Contract Period means the period specified in the Contract Specifics, subject to any extension under clause 3.2.

Intellectual Property means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, designs or circuit layouts including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other work or subject matter in which copyright subsists and may in the future subsist;
- (c) trade secrets, know-how and confidential information;
- (d) trade and service marks (whether registered or unregistered); and
- (e) all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation in 1967 as amended from time to time.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of Intellectual Property.

Invoice means an invoice relating to a supply made under this Supply Contract during the period of the invoice, which meets all the requirements of a valid tax invoice for GST purposes.

Law means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Agency, whether currently in force or coming into force on or after the date of this Supply Contract and any common law and equity.

Letter of Acceptance means the formal notification issued by the Principal to the Contractor notifying of acceptance of quotation.

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the supply of the Goods and/or Services under this Supply Contract.

Notifiable WHS Incident means:

- (a) a "notifiable incident", "serious injury or illness", or "dangerous incident" as defined in Part 3 of the *Work Health and Safety Act 2020* (WA) or any associated regulations; and/or
- (b) any other safety incident that must be reported to a WHS Regulator or other third-party.

Other Warranties means the other warranties in relation to the Goods and/or Services as specified in the Letter of Acceptance.

Pandemic Event means a public health order or state of emergency or restriction imposed by a Government Agency in response to a pandemic or epidemic as declared by the Australian Commonwealth Department of Health which is beyond the control and without the fault or negligence of the party affected by the event or circumstance and which by the exercise of reasonable diligence the party affected is unable to prevent or overcome, which event or circumstance prevents, hinders or delays a party from performing any of its obligations under this Supply Contract.

party means the Contractor or the Principal as the context requires.

parties means both the Contractor and the Principal.

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

Previous CPI Number means, in respect of a Review Date, the CPI Number published by the Australian Statistician before the previous Review Date or, in the case of the first Review Date, before the date of this Supply Contract.

Price means the price specified in the Contract Specifics and the Letter of Acceptance, subject to any increases or decreases as may be made in accordance with this Supply Contract.

Principal Information means all information supplied to the Contractor by or on behalf of the Principal, regardless of its material form, for the purposes of this Supply Contract.

Principal's Background IP means Intellectual Property Rights owned by or licensed to the Principal (including know-how and technical information) which exist prior to the date of this Supply Contract or are developed or acquired by the Principal independently of this Supply Contract, which are made available to the Contractor under or in connection with this Supply Contract, but does not include the Project IP.

Principal's Confidential Information means all information (in whatever form) or documentation disclosed to the Contractor or any of the Contractor's Personnel, under or in connection with this Supply Contract, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal or any of the Principal's Personnel, or which the Contractor or the Contractor's Personnel ought reasonably to know to be confidential;
- (b) information which relates to the Supply Contract or the business, affairs or activities of the Principal;
- (c) information derived or produced partly or wholly from the information referred to in (a) or (b) including any calculation, conclusion, summary or computer modelling; and
- (d) information which is capable of protection at law or equity as confidential information,

whether the information was disclosed:

- (e) orally, in writing or in electronic or machine readable form;
- (f) before, on or after the date of this Supply Contract; or
- (g) by the Principal or any of the Principal's Personnel or by any third person.

Principal's Personnel means the officers, employees, representatives, agents and contractors (other than the Contractor and the Contractor's Personnel) of the Principal.

Principal's Representative means, as at the date of this Supply Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Principal in accordance with clause 4.4.

Project IP means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of, or in connection with, the supply of the Goods and/or performance of the Services in accordance with this Supply Contract, but does not include the Contractor Background IP or the Principal Background IP.

Progress Claim means a document in a form approved by the Principal evidencing the delivery of Goods and/or performance of Services and which includes the information set out in the Contract Specifics.

Quotation means the offer submitted by the Contractor in accordance with the General Conditions of Responding following an invitation of the Principal to supply the Goods and/or Services under this Supply Contract and includes associated documentation.

Recipient Created Tax Invoice has the meaning it has in the GST Act.

RCTI Agreement means an agreement in the form provided by the Principal pursuant to which the parties have agreed that the Principal shall issue Recipient Created Tax Invoices in respect of all Goods and/or Services under this Supply Contract.

Regulations means the *Local Government (Functions and General) Regulations 1996 (WA)*.

Review Date means the commencement of the First Option Period or the Second Option Period, as applicable.

Schedule of Rates means the schedule of rates set out in the Letter of Acceptance. **Second**

Option Period means the period (if any) specified in the Contract Specifics. **Services** mean the services or any part of the services specified in the Contract Specifics.

Services Start Date means the date for commencement of the performance of the Services by the Contractor under this Supply Contract, as set out in the Contract Specifics.

Site means the site where the Goods are to be delivered and/or Services are to be performed.

Special Conditions means the special conditions set out in the Letter of Acceptance.

Specifications means the specifications in relation to the Goods and/or Services as set out in the Letter of Acceptance.

Standards means all industry standards and government regulations applicable to the Goods and/or Services, including standards issued by Standards Australia and the standards specified in the Letter of Acceptance.

Supply Contract means this contract for the supply of Goods and/or Services comprising the Letter of Acceptance, the Contract Specifics, the Special Conditions (if any), the General Conditions, and any Annexures.

Taxes means all present and future sales, use, personal property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on the Principal's income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable, but does not include GST.

Technical Materials includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Supply Contract.

Term has the meaning given in clause 3.

Trust means the trust established under the Trust Deed of which the Contractor is trustee.

Trust Deed means the deed of trust by which the Trust is established, a copy of which will be referenced in the Letter of Acceptance.

Variation means any change to the Goods and/or Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Goods and/or Services.

Warranty Period means the relevant period set out in the Contract Specifics, commencing on the date on which Delivery of the relevant Goods occurs or the date on which the relevant Services were completed in accordance with the terms of this Supply Contract (as applicable).

WHS means work health and safety.

WHS Legislation means all WHS legislation that applies to the Services, including but not limited to the *Work Health and Safety Act 2020 (WA)* and the *Work Health and Safety (General) Regulations 2022 (WA)*.

WHS Regulator means the Western Australian Department of Mines, Industry Regulation and Safety, WorkSafe Western Australia, or any other statutory authority or department with power to investigate and/or regulate WHS matters under WHS Legislation.

WHS Requirements means the WHS Legislation and WHS guidance material that applies to the Services from time to time, including but not limited to:

- (a) any relevant Australian Standards;
- (b) any relevant Codes of Practice or guidance material published by the Western Australian Department of Mines, Industry Regulation and Safety, or other relevant WHS Regulator or authority; and
- (c) any licences, terms or conditions imposed by any government, or relevant WHS Regulator or authority.

Worker has the same meaning as defined in the *Work Health and Safety Act 2020* (WA).

1.2 In this Supply Contract unless the contrary appears:

- (a) a reference to this Supply Contract or another instrument includes any variation or replacement of either of them;
- (b) 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;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (g) a reference to a clause is a reference to a clause in this Supply Contract;
- (h) not used;
- (i) a reference to a third person or a third party is a reference to a person who is not a party to this Supply Contract;
- (j) a reference to "dollar" or "\$" is a reference to Australian dollars; and
- (k) the words "including" and "include" are a reference to "including, but not limited to".

Headings are inserted for convenience only and do not affect the interpretation of this Supply Contract.

2. Supply of Goods and Services

2.1 The Contractor must supply the Goods and/or Services detailed in the Letter of Acceptance to the Principal in accordance with, and as specified in, this Supply Contract.

2.2 The Contractor shall be deemed to have:

- (a) examined carefully this Supply Contract and any other information made available by the Principal to the Contractor in connection with the Quotation or this Supply Contract;
- (b) examined the Site and its surroundings (if applicable);
- (c) satisfied itself as to the correctness and sufficiency of its Quotation and that the Price covers the entire cost of complying with all of its obligations under this Supply Contract and of all matters and things necessary for the due and punctual performance and completion of this Supply Contract; and
- (d) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Quotation and which was provided or obtainable by the making of reasonable enquiries.

2.3 Failure by the Contractor to do all or any of the things it is deemed to have done under clause 2.2 shall not relieve the Contractor of its obligation to perform and complete this Supply Contract in accordance with its terms.

3. Term

- 3.1 The term of this Supply Contract will commence on the Commencement Date and, subject to clause 3.2, will continue until the later of the expiry of the Initial Contract Period, unless it is terminated earlier in accordance with its terms.
- 3.2 The Principal may:
- (a) extend the Initial Contract Period by the First Option Period by advising the Contractor in writing not less than three months prior to the end of the then current term; and
 - (b) if the Principal exercises the option in clause 3.2(a), further extend the Initial Contract Period by the Second Option Period by advising the Contractor in writing not less than three months prior to the end of the then current term.

4. Representatives

- 4.1 The person nominated by the Contractor as such in the Contract Specifics will be the Contractor's Representative. Subject to clause 4.5, the Contractor's Representative has authority to issue notices to the Principal and receive notices from the Principal and to perform any other functions specifically identified as being its responsibility or within its authority under this Supply Contract.
- 4.2 The Contractor may change the Contractor's Representative at any time by notice in writing to the Principal and the Contractor is responsible for all acts and omissions of the Contractor's Representative.
- 4.3 The person nominated as such by the Principal in the Contract Specifics is the Principal's Representative. Subject to clause 4.5, the Principal's Representative has authority to issue directions, notices and certificates to the Contractor and to receive notices from the Contractor and to perform any other functions specifically identified as being its responsibility or within its authority under this Supply Contract.
- 4.4 The Principal may at any time change the Principal's Representative by notice to the Contractor.
- 4.5 The Contractor's Representative does not have authority to give notices on behalf of the Contractor, and the Principal's Representative does not have authority to give notices on behalf of the Principal, under clause 31, 32, 34 or 35.

5. Contractor as trustee

- 5.1 If the Contractor enters into this Supply Contract in its capacity as the trustee of a trust, the following provisions of this clause 5 apply.
- 5.2 The Contractor represents and warrants to the Principal that:
- (a) the Contractor is the only trustee of the Trust;
 - (b) no action has been taken or proposed to remove it as trustee of the Trust;
 - (c) the copy of the Trust Deed delivered to the Principal prior to the execution of this Supply Contract as set out in Annexure A discloses all the terms of the Trust and there has been no other amending deed, instrument of appointment, vesting deed or other instrument of any description whatsoever that affects the terms of the Trust;
 - (d) the Contractor has power under the Trust Deed to enter into and observe its obligations under this Supply Contract and it has entered into this Supply Contract in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
 - (e) the Contractor has the right to be fully indemnified out of the property or fund of the Trust in respect of obligations incurred by it under this Supply Contract without any impairment and without any set off on account of any liability owed by it to the beneficiaries of the Trust in respect of any breach of trust or otherwise;
 - (f) the property and fund of the Trust is sufficient to satisfy the right of indemnity referred to in clause 5.2(e) and all other obligations in respect of which the Contractor has a right to be indemnified out of the property and fund of the Trust;
 - (g) the Contractor is not in default under the Trust Deed; and
 - (h) the Contractor has in full force and effect the authorisations necessary to make and enter into this Supply Contract, perform obligations under it and allow it to be enforced (including, without limitation, under the Trust Deed and the Contractor's constituent documents).

- 5.3 The Contractor acknowledges that it enters into this Supply Contract both in its own capacity and in its capacity as trustee of the Trust.
- 5.4 At the request of the Principal, the Contractor agrees to exercise its right of indemnity from the property and fund of the Trust and to the beneficiaries of the Trust in respect of obligations incurred by the Contractor under this Supply Contract.
- 5.5 The Contractor agrees to observe its obligations as trustee of the Trust.
- 5.6 The Contractor must not, without the consent of the Principal, do anything that:
- (a) effects or facilitates the retirement, removal or replacement of the Contractor as trustee of the Trust;
 - (b) could restrict the Contractor's right of indemnity from the property and fund of the Trust in respect of obligations incurred by the Contractor under this Supply Contract; or
 - (c) effects or facilitates the termination of the Trust, the variation of the Trust Deed or the resettlement of the property and fund of the Trust.

6. Not used

7. Quality and description of the Goods

- 7.1 If the Contractor is required to supply Goods under this Supply Contract, the Goods must comply with all requirements set out in this Supply Contract including the Specifications, the Standards and any performance criteria.
- 7.2 If the Contractor gave the Principal a sample of the Goods before the Principal entered into this Supply Contract, the quality of the Goods must, as a minimum, correspond with the sample unless otherwise specified by the Principal in writing.
- 7.3 The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose which the Principal has made known to the Contractor.
- 7.4 The Goods must be of merchantable quality and must be new unless otherwise specified by the Principal in writing.
- 7.5 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods, and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf if the Principal so requests.
- 7.6 If this Supply Contract is for the supply of Goods, reference to:
- (a) 'Variable Quantities' means the Principal shall not be required to purchase all or any Goods listed except such of the Goods as may be ordered by the Principal;
 - (b) 'Approximate Quantities' means the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25% above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods; or
 - (c) 'Fixed Quantities' means the Principal shall purchase the actual quantity shown.
- 7.7 If this Supply Contract does not specify, as set out in clause 7.6, the type of required quantity, the parties agree that the quantity shall be deemed to be a Variable Quantity.

8. Quality and description of the Services

- 8.1 If the Contractor is required to perform Services under this Supply Contract, the Services must comply with all requirements set out in this Supply Contract including the Specifications and the Standards.
- 8.2 If the Contractor gave the Principal a demonstration of the Services before the Principal entered into this Supply Contract, the quality of the Services must, as a minimum, correspond with the demonstration unless otherwise specified by the Principal in writing.
- 8.3 The Services must be performed with due care and skill by appropriately qualified and trained personnel.
- 8.4 The Services must be fit for the purpose for which Services of the same kind are commonly acquired and for any other purpose which the Principal has made known to the Contractor.
- 8.5 Any items which the Contractor uses or supplies in connection with the Services must be of merchantable quality and must be new unless otherwise specified by the Principal in writing and be fit for their usual purpose and any other purpose which the Principal has made known to the Contractor.

9. Inspection and information

9.1 The Contractor must provide to the Principal at its request:

- (a) copies of all Technical Materials relating to the Goods and/or Services which are to be supplied and/or performed under this Supply Contract;
- (b) a detailed program for the design, manufacture, testing and delivery of the Goods and/or the performance of the Services which are to be supplied and/or performed under this Supply Contract; and
- (c) progress reports setting out in such detail as the Principal requires the status of the design, manufacture, testing and delivery of the Goods and/or the performance of the Services which are to be supplied and/or performed under this Supply Contract.

9.2 At all reasonable times, the Principal has the right to:

- (a) inspect and examine the Goods and witness any tests carried out in respect of the Goods at the Contractor's premises and the premises of any of the Contractor's subcontractors and suppliers; and
- (b) review, examine and witness the performance of the Services.

9.3 The Contractor must ensure that the Principal is provided with access to the:

- (a) Contractor's premises or the premises of its subcontractors and suppliers to inspect, examine and witness the testing of the Goods in accordance with clause 9.2(a); and
- (b) Site to allow it to review, examine and witness performance of the Services in accordance with clause 9.2(b).

9.4 The Contractor must give the Principal and the Principal's Representative at least 10 days' notice of the date upon which each of the following events will occur:

- (a) the carrying out of any performance tests prior to delivery of the Goods; and
- (b) delivery of the Goods.

9.5 If, as a result of the Principal's review, inspection, examination or witnessing of testing, the Principal is not satisfied that the Goods and/or the Services will comply in all respects with this Supply Contract and the Principal informs the Contractor in writing of its dissatisfaction, the Contractor agrees to take such steps (at the Contractor's sole cost and expense) as are necessary to ensure compliance with this Supply Contract.

9.6 Any review, inspection, examination or witnessing of testing that the Principal undertakes does not relieve the Contractor of its responsibilities under this Supply Contract.

9.7 The Contractor must ensure that the Principal's rights set out in this clause 9 are included in any supply or other subcontract entered into by the Contractor in respect of the Goods or the performance of the Services.

10. Plant and equipment

10.1 Unless otherwise provided in this Supply Contract, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or any other property and items the Contractor requires to comply with its obligations under this Supply Contract.

10.2 Any plant, equipment, tools, appliances or any other property and items listed in the Contract Specifics which the Principal provides to the Contractor to enable the Contractor to perform its obligations under this Supply Contract will remain the Principal's property and must only be used by the Contractor for the purpose of complying with its obligations under this Supply Contract.

10.3 The Contractor must keep the Principal's property in good order and condition.

10.4 All plant, machinery and equipment used in connection with the performance of the Services must be maintained in a fully serviced and safe condition in accordance with all relevant Laws and the Principal's requirements. The Contractor must remove immediately from the Site and repair, replace or improve at its own expense any vehicle or piece of plant, machinery or equipment which in the opinion of the Principal's Representative does not meet the requirements of this clause 10.4 or is unroadworthy or otherwise incapable of satisfactorily performing the Services.

11. Price

11.1 The Principal agrees to pay the Contractor the Price for the Goods and/or Services in accordance with clause 12.

11.2 Except as otherwise expressly provided in this Supply Contract, the Price is inclusive of all direct and indirect costs incurred by the Contractor in complying with its obligations under this Supply Contract, including:

- (a) all charges for packaging, packing and delivery;
- (b) fees and levies;
- (c) labour, machines and materials;
- (d) mobilisation, demobilisation and establishment charges;
- (e) office costs;
- (f) transportation, travel, vehicles and equipment;
- (g) costs of insurances and other securities; and
- (h) all Taxes.

11.3 Unless otherwise stated in this Supply Contract, the Price shall be fixed and firm and not subject to rise and fall.

11.4 On each Review Date, the Contractor shall be entitled to adjust the Price for the Goods and/or Services in accordance with clause 11.5.

11.5 If the Current CPI Number at a Review Date exceeds the Previous CPI Number, the Price is to be adjusted from and including that Review Date in accordance with the following formula:

$$NP = CP \times C/P$$

Where:

NP = the new Price payable on and from the Review Date. CP

= the Price payable immediately prior to the Review Date. C =
the Current CPI Number.

P = the Previous CPI Number.

12. Invoicing and payment

12.1 As soon as reasonably practicable following the end of each calendar month during the Term (or as otherwise agreed by the parties), the Contractor must provide to the Principal a Progress Claim or, if the Principal directs, an Invoice.

12.2 Upon approval of a Progress Claim by the Principal:

- (a) if the Contractor has entered into an RCTI Agreement, the Principal must generate a Recipient Created Tax Invoice. References to "Invoice" in the remainder of this clause 12 shall be taken to include a Recipient Created Tax Invoice ("RCTI") where applicable; or
- (b) if the Contractor has not entered into an RCTI Agreement, the Contractor must submit an Invoice, in respect of the Goods and/or Services that are the subject of the approved Progress Claim.

12.3 A Progress Claim and any Invoice must include, as a minimum, details of the supply of Goods and/or Services to which it relates, together with the information required in the Contract Specifics (if any).

12.4 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices that comply with clause 12.3 within 30 Business Days (or such other period as the Principal's Representative and the Contractor's Representative agree) of their generation or receipt (as the case may be), except where the Principal:

- (a) is required by applicable legislation to pay within a shorter time frame, in which case the Principal must pay within that time frame;
- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or

(c) disputes the Invoice, in which case:

- (i) to the extent permitted by law, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute in accordance with this Supply Contract; and
- (ii) if the resolution of the dispute referred to in clause 12.4(c)(i) determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of the dispute.

12.5 The Principal has the right to withhold or retain any payment of money due to the Contractor under this Supply Contract until such time as the Goods and/or Services comply with the terms of this Supply Contract.

12.6 A payment made pursuant to this Supply Contract will not be taken or construed as proof or admission that the Goods delivered or the Services performed (or any part thereof) were to the satisfaction of the Principal and will only be taken to be payment on account.

12.7 Where specified in the Contract Specifics, the Principal has the right to withhold or retain 5% of the Price for the Warranty Period (which sum must, subject to the Principal's other rights under this Supply Contract, be released by the Principal at the end of the Warranty Period).

12.8 The Principal may withhold, retain or set off from any payment due to the Contractor under this Supply Contract amounts the Principal deems necessary to protect it against any costs, charges, expenses or damages for which the Contractor may be liable to the Principal under or in connection with this Supply Contract. This right of set off does not limit the Principal's right to recover those amounts in any other way.

12.9 Failure by the Principal to pay an amount payable under this Supply Contract when due shall not be grounds to invalidate or avoid this Supply Contract.

12.10 Unless the parties otherwise agree, any money payable under this Supply Contract is to be paid in Australian dollars.

12.11 The Principal has the right to conduct an audit of the basis of the Contractor's charges set out in an Invoice using the Contractor's records. This right continues for 12 months after the Principal pays the relevant Invoice.

13. GST

13.1 Unless expressly stated otherwise, the consideration specified in this Supply Contract does not include any amount for GST.

13.2 If a supply under this Supply Contract is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

13.3 The additional amount referred to in clause 13.2 is payable at the same time as the consideration for the supply is payable or to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice for the supply.

13.4 If the additional amount differs from the amount of GST payable by the Supplier, the parties must adjust the additional amount accordingly.

13.5 If a party is entitled to be reimbursed or indemnified under this Supply Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

13.6 In this clause 13 the following words have the following meanings:

"Amount of the Consideration" means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a Supply, the GST Exclusive Market Value of that consideration as reasonably determined by the supplier.

"GST Exclusive Value", "Input Tax Credit", "recipient", "supply", and "Tax Invoice" have the meanings given to them in the GST Act.

"supplier" means the person making a supply.

14. Work Health and Safety

14.1 The Contractor acknowledges that the Principal does not have skill and experience in the Services and is relying on the Contractor to perform the Contract safely and in accordance with the WHS Requirements.

14.2 The Contractor must ensure that the Contractor's Personnel:

- (a) are competent and have the necessary skills, qualifications, licences and experience to perform their work safely;
- (b) understand and will comply with the WHS Requirements when providing the Goods or Services.

14.3 The Contractor must ensure it has adequate oversight of the Contractor's Personnel to monitor if they are working safely and in accordance with the WHS Requirements when providing the Goods or Services.

14.4 The Contractor warrants that it:

- (a) if required as specified under the Contract Specifics, has a workplace health and safety management system accredited under a recognised Australian or International Standard (**WHSMS**); and
- (b) has, or will within 30 days of the date of this Supply Contract develop, a health and safety management plan specific to the provision of the Goods or Services (**SSMP**) that complies with WHS Requirements; and
- (c) will maintain and update the SSMP to ensure it is, and remains, fit for purpose over the life of the Contract; and
- (d) will ensure WHS when providing the Goods or Services is managed in accordance with the WHSMS, SSMP and WHS Requirements.

14.5 If clause 14.4(a) applies, the Contractor must during the Term:

- (a) maintain accreditation of its WHSMS; and
- (b) immediately notify the Principal's Representative if it loses accreditation in relation to the WHSMS.

14.6 The Contractor must notify the Principal's Representative of:

- (a) each Notifiable WHS Incident; and/or
- (b) any investigation or enforcement action taken by a WHS Regulator or other third-party, including:
 - (i) the issue of any improvement, prohibition or any other statutory notice related to WHS; and/or
 - (ii) proceedings under WHS Legislation; and/or
- (c) any loss of, or damage or destruction to, any property in the performance of the Services or provision of the Goods.

14.6 The Contractor must give the Principal's Representative a copy of any notification sent to a WHS Regulator or other third party because of a Notifiable WHS Incident within 24 hours of sending the notification to the WHS Regulator.

14.7 If requested by the Principal, the Contractor must give the Principal's Representative a copy of:

- (a) all documents the Contractor is required to provide to a WHS Regulator or other third party in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party;
- (b) all documents a WHS Regulator or other third party sends to the Contractor in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party; and
- (c) any other document in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party.

14.8 The Principal may, but is not required to:

- (a) investigate any Notifiable WHS Incident; and/or
- (b) participate in an investigation of a Notifiable WHS Incident conducted by the Contractor.

14.9 The Contractor must cooperate with the Principal and help facilitate the Principal's investigation, if the Principal chooses to independently investigate any Notifiable WHS Incident. This includes but is not limited

to, providing the Principal with full access to conduct the investigation, including access to any premises, plant, equipment or records.

14.10 The Principal may, but is not required to, request the Contractor to provide evidence that the Contractor is complying with its WHS obligations, and to assist the Principal to comply with its WHS obligations, including:

- (a) providing the Principal with a copy of the SSMP, WHSMS or any WHS plan, procedure, incident report, Safe Work Method Statement, investigation or other document, data, or report; and
- (b) allowing the Principal to audit the Services; and
- (c) providing, at the Contractor's expense, an independent audit or review of WHS management in relation to the Services.

14.11 The Principal may, but is not required to, give directions to the Contractor about WHS matters, including a direction to stop providing the Services if the Principal reasonably believes the provision of the Service is unsafe or in breach of the WHS Requirements, and the Contractor and the Contractor's Personnel must comply with those directions.

15. Construction Contracts Act

15.1 This clause 15 applies where this Supply Contract is subject to the Construction Contracts Act.

15.2 The Contractor must:

- (a) promptly give the Principal and the Principal's Representative a copy of any notice the Contractor receives from a subcontractor under section 26, 27 or 42 of the Construction Contracts Act; and
- (b) ensure that each subcontractor promptly gives the Principal and the Principal's Representative a copy of any notice that the subcontractor receives from any other person under any of sections 26, 27 or 42 of the Construction Contracts Act.

15.3 If the Contractor becomes aware that a subcontractor is entitled to suspend work under section 42 of the Construction Contracts Act, the Principal may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the supply of the Goods and/or the performance of the Services, and any amount paid by the Principal is recoverable from the Contractor as a debt due and payable by the Contractor to the Principal on demand.

15.4 Any loss, cost, damage, liability or expense of any nature (including legal costs) suffered or incurred by the Principal arising out of or in connection with:

- (a) a suspension by a subcontractor of work which forms part of the supply of the Goods and/or performance of the Services under section 42 of the Construction Contracts Act; or
- (b) failure by the Contractor to comply with this clause 15, will be recoverable from the Contractor as a debt due and payable by the Contractor to the Principal on demand.

15.5 Where this Supply Contract is subject to the Construction Contracts Act, the appointor for the purposes of the Construction Contracts Act is The Institute of Arbitrators & Mediators Australia.

16. Title and risk in the Goods

16.1 If the Contractor is required to supply Goods under this Supply Contract, title to and risk in the Goods does not pass to the Principal until:

- (a) the Principal takes delivery of the Goods; and
- (b) the Principal inspects and accepts the Goods.

16.2 The Contractor warrants that at the time of delivery of the Goods:

- (a) the Contractor has full ownership of the Goods free of any liens, charges and encumbrances and is supplying the Goods to the Principal on that basis; and
- (b) the Principal will be entitled to legal title and full, unencumbered and quiet possession of the Goods.

17. Delivery of the Goods

- 17.1 If the Contractor is required to supply Goods under this Supply Contract, it must ensure that the Goods are properly packed and delivered to the Delivery Point by the Date for Delivery.
- 17.2 The Contractor must include a packing list in each package of Goods delivered to the Principal and provide all other shipping documents requested by the Principal from time to time.
- 17.3 The Goods must be clearly marked with the identification marks specified in this Supply Contract (if any). These identification marks must also be shown on drawings and dispatch and shop lists.
- 17.4 The Contractor must clearly mark each package of Goods to be delivered to the Principal with its gross dead weight and with such marks and shipping numbers as are specified in this Supply Contract (if any) or as otherwise requested by the Principal by notice in writing to the Contractor.
- 17.5 The Contractor must complete all documentation and provide all reasonable assistance required by the Principal to obtain reimbursement of, or exemption from, any Taxes imposed on the Goods.
- 17.6 The Contractor agrees that the Principal's signing of delivery receipts before inspection does not constitute acceptance of the Goods.
- 17.7 If the Contractor is unable or fails (for whatever reason) to provide the Goods in accordance with this Supply Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Price which relates to the Goods), obtain or acquire such goods as it requires from a third party ("Alternative Goods").
- 17.8 If the Principal exercises its rights under clause 17.7 to source Alternative Goods then the Contractor is responsible for any incremental costs to the Principal associated with sourcing the Alternative Goods, except where the reason for the inability to supply the Goods was:
 - (a) due to an Event of Force Majeure; or
 - (b) as a direct result of any default of the Principal.
- 17.9 If the Contractor is unable or fails (for whatever reason) to provide the Goods to the Principal by the Date for Delivery (or such other date as agreed in writing between the parties), the Principal may reject delivery of the Goods and cancel any associated purchase order by providing written notice to the Contractor without being liable in any way to the Contractor (including for that part of the Price which relates to the Goods). The Principal's rights under clause 17.9 are in addition to, and do not in any way limit, the Principal's rights under clause 17.7.

18. Performance of the Services

- 18.1 If the Contractor is required to perform Services under this Supply Contract, the Contractor must commence the Services on the Services Start Date.
- 18.2 The Contractor must perform the Services:
 - (a) exercising due care, skill and judgment and using its best endeavours;
 - (b) in accordance with Best Industry Practices;
 - (c) in an efficient, professional and cost effective manner in accordance with all applicable Standards; and
 - (d) in accordance with this Supply Contract and all guidelines, procedures and directions made by the Principal under this Supply Contract.
- 18.3 The Contractor must perform the Services with due diligence so as to complete the Services by the Date for Completion.
- 18.4 The Contractor must and must procure that the Contractor's Personnel, comply with all applicable Laws and the requirements of any Government Agency and must ensure that the Contractor's Personnel possess all relevant authorisations, permits and Licences to perform the obligations under this Supply Contract.
- 18.5 Without limiting clauses 14 and 18.4, the Contractor must comply with:
 - (a) all applicable occupational health, safety and environmental laws, guidelines and codes of practice including, without limitation, the WHS Requirements;

- (b) all occupational health, safety and environmental guidelines, rules and procedures provided to the Contractor by the Principal, including under clause 14;
 - (c) any performance instructions set out in the Contract Specifics or in the Letter of Acceptance; and
 - (d) the Specifications including all safety, health and environmental guidelines, rules and procedures set out in the Specifications.
- 18.6 The Contractor must promptly comply with any directions given by the Principal's Representative, including directions with respect to the Site, security and environment.
- 18.7 The Principal may, at any time, request the Contractor to provide the Principal with evidence of compliance with its obligations under clauses 18.4 and 18.5 and the Contractor must comply with such request as soon as reasonably practical after receipt.
- 18.8 If the Contractor is unable or fails (for whatever reason) to perform the Services in accordance with this Supply Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Price which relates to the Services), obtain or acquire such services as it requires from a third party ("Alternative Services").
- 18.9 If the Principal exercises its rights under clause 18.8 to source Alternative Services, the Contractor is responsible for any incremental costs to the Principal associated with sourcing the Alternative Services, except where the reason for the inability to supply the Services was:
- (a) due to an Event of Force Majeure; or
 - (b) as a direct result of any default of the Principal.

19. Inspection and acceptance of the Goods

- 19.1 If the Contractor is required to supply Goods under this Supply Contract, the Principal will not be deemed to have accepted any Goods until it has had a reasonable time to inspect the Goods after Delivery.
- 19.2 If upon inspection the Principal finds any Goods to be Defective Goods, the Principal may:
- (a) reject the Defective Goods by returning them to the Contractor; or
 - (b) repair or make good the Defective Goods.
- 19.3 At the Principal's option and request, the Contractor agrees to:
- (a) refund to the Principal any payments made by the Principal (including any freight charges) in respect of any Defective Goods that the Principal rejects under clause 19.2(a);
 - (b) repair or make good any Defective Goods that the Principal rejects under clause 19.2(a); or
 - (c) reimburse the Principal for any expenses it incurs in repairing or otherwise making good any Defective Goods under clause 19.2(b).
- 19.4 The Principal's inspection, testing or acceptance of some or all of the Goods does not in any way:
- (a) change or affect the Contractor's obligations under this Supply Contract; or
 - (b) affect the Principal's rights to claim for any damage or loss it may suffer because of the Contractor's breach of warranty or failure to fulfil any of its other obligations under this Supply Contract.
- 19.5 If the Principal decides to accept any Goods from the Contractor which do not comply with this Supply Contract, this decision does not bind the Principal to accept future shipments of Goods which do not comply with this Supply Contract or affect the Contractor's obligations, if any, in respect of the performance of Services.

20. Variations

- 20.1 The Contractor must not vary the Goods and/or the Services except as directed by the Principal's Representative in accordance with this clause 20.
- 20.2 Subject always to Regulation 21A of the Regulations, the Principal's Representative may, by notice, direct the Contractor to alter, amend, omit, add to or otherwise vary the Goods and/or Services and the Contractor must carry out and be bound by any such variations, subject to the terms of this clause 20.

- 20.3 Within 5 Business Days of receipt of the notice referred to in clause 20.2, and before the Contractor carries out the variation, the Contractor must provide to the Principal a variation proposal ("Variation Proposal"). The Variation Proposal must specify:
- (a) the effect the Contractor anticipates the proposed variation will have on the Date for Completion and/or Date for Delivery (as applicable) and the Price (if any); and
 - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 20.4 The Principal is not obliged to direct a variation after receiving a Variation Proposal from the Contractor.
- 20.5 If the parties agree on the terms of the Variation Proposal, the Principal's Representative may direct a variation specifying the details of such variation and this Supply Contract shall be varied accordingly.
- 20.6 If the parties are unable to agree on:
- (a) the price for the variation in a Variation Proposal within 10 Business Days of the Principal's receipt of the Variation Proposal, then the variation shall be valued by the Principal's Representative on the basis of the rates and prices (including any Schedule of Rates) set out in the Letter of Acceptance, or if there are no applicable rates or prices set out in the Letter of Acceptance, using reasonable rates or prices having regard to all circumstances the Principal's Representative considers relevant; or
 - (b) the impact of the variation on the Date for Completion and/or Date for Delivery (as applicable), then the Principal's Representative must determine such impact (if any) and any necessary amendment to the Date for Completion and/or Date for Delivery (as applicable),
- and the Principal shall provide such determination by notice in writing to the Contractor, which notice shall constitute a variation to this Supply Contract (subject to clause 20.9).
- 20.7 No variation issued in accordance with this clause 20 vitiates or invalidates this Supply Contract.
- 20.8 A variation under this clause 20 may involve the omission of any part or parts of the Goods and/or Services and the Contractor agrees that the Principal may engage others to supply or perform that part or parts so omitted. The Contractor acknowledges that any one or more omissions do not constitute a basis to allege that the Principal has repudiated this Supply Contract notwithstanding the extent or timing of the omission.
- 20.9 If the Contractor does not accept the determination of the Principal's Representative under clause 20.6, the Contractor may, by notice in writing to the Principal, raise this as a Dispute to be resolved in accordance with the process set out in clauses 34.2 to 34.5, or if the Dispute is not resolved by that process, in accordance with the Expert determination process in clause 35.
- 20.10 The Contractor is not entitled to any payment (pursuant to this Supply Contract or otherwise at common law, equity, statute or code) in relation to any Variation unless the Contractor has been directed to carry out the variation pursuant to clause 20.2.
- 20.11 The Contractor's Representative may request that the Principal's Representative direct a Variation under this clause and the Principal may accept, or may decline to, do so in its sole discretion.

21. Extension of time

- 21.1 This clause 21 applies only where the Goods are subject to a Date for Delivery and/or the Services are subject to a Date for Completion.
- 21.2 Within 5 Business Days of it becoming reasonably evident that:
- (a) delivery of the Goods is likely to be delayed beyond the Date for Delivery; or
 - (b) performance of the Services is likely to be delayed beyond the Date for Completion,
- the Contractor must give notice to the Principal setting out full details of the cause of the delay with supporting documents and stating a reasonable period by which the Contractor believes the Date for Delivery or the Date for Completion (as the case may be) should be extended.
- 21.3 Subject to the other provisions of this clause 21 and this Supply Contract, the Contractor is only entitled to an extension of time to the Date for Delivery or the Date for Completion where a delay to the Date for Delivery or Date for Completion is caused by any of the following events (each a "Qualifying Cause of Delay"):

- (a) any act or omission (other than in accordance with the terms of this Supply Contract), breach or default by the Principal or the Principal's Representative;
 - (b) the execution of a variation under clause 20 (subject always to the terms of that clause), except where that variation is caused by the Contractor's act, omission, breach or default;
 - (c) an Event of Force Majeure; or
 - (d) the occurrence of any event specified in the Contract Specifics as an additional ground for the extension of time.
- 21.4 As soon as practicable after receipt of a notice provided in accordance with clause 21.2, the Principal must notify the Contractor as to the period, if any, by which the Date for Delivery or the Date for Completion (as the case may be) will be extended.
- 21.5 Notwithstanding any other provision in this clause 21, the Principal may at any time extend the Date for Delivery or the Date for Completion by notice to the Contractor. The Contractor acknowledges that the mechanism in this clause 21.5 is a discretionary right of the Principal which may be exercised by the Principal for its sole benefit and does not:
- (a) impose any obligations on the Principal;
 - (b) to the maximum extent permitted by law, give rise to any duty to act in good faith;
 - (c) in any way constitute a waiver or relaxation of any of the requirements under this clause 21 or otherwise under this Supply Contract; or
 - (d) entitle the Contractor to claim any loss of whatever nature arising out of or in connection with any extension of time granted by the Principal in accordance with this clause 21.5.
- 21.6 If the Contractor has reasonably and necessarily incurred or will reasonably and necessarily incur extra cost as a direct consequence of the Qualifying Cause of Delay referred to in clause 21.3, the Contractor must give to the Principal notice of the Contractor's claim for delay costs at the same time as the notice under clause 21.2, including all necessary particulars and supporting documentation.
- 21.7 If the Contractor is granted an extension of time for a delay pursuant to clause 21.4, the Principal agrees, subject to clauses 21.8 and 21.9, to assess and determine as soon as reasonably practicable the extra costs reasonably and necessarily incurred by the Contractor as a consequence of the delay in respect of which an extension of time has been granted.
- 21.8 The Contractor is not entitled to recover any amount representing any Consequential Loss, indirect or special loss or damage of any nature whatsoever, whether based in contract, tort (including negligence) or otherwise arising under, out of, or in connection with, this Supply Contract.
- 21.9 It is a condition precedent to the Contractor's entitlement to any extension of time and to recover any amount representing extra costs reasonably and necessarily incurred under clause 21.7 that the Contractor submits the notices as required under clauses 21.2 and 21.6 and has taken all reasonable steps to mitigate the delay and the effects of the delay.
- 21.10 The sums payable under this clause 21 are the Contractor's sole entitlement to compensation for delay or disruption caused by the Principal whether caused by a Qualifying Cause of Delay or otherwise and are in substitution for and shall exclude the Contractor's rights and remedies at common law, equity, statute or code (including the right to recover damages for breach of this Supply Contract or otherwise).

22. Media

- 22.1 The Contractor must refer to the Principal any enquiries from the media concerning the Goods and/or Services or the Principal's business or activities.
- 22.2 The Contractor must not advertise or issue any information, publication, document or article for publication or media release or other publicity (including on social media) relating to the Goods and/or Services, this Supply Contract or the Principal's business or activities without the written approval of the Principal's Representative (which shall not be unreasonably withheld).

23. Independent contractor

- 23.1 Nothing in this Supply Contract constitutes a joint venture, agency or partnership or other fiduciary relationship between the Principal and the Contractor. The Contractor acknowledges that it has no authority to bind the Principal. At all times during the performance of this Supply Contract, the Contractor is an independent contractor and not an employee or agent of the Principal.

24. Warranties

- 24.1 If the Contractor is required to supply Goods under this Supply Contract, it represents and warrants that the Goods will:
- (a) be free from defects in design, materials and workmanship;
 - (b) unless otherwise specified in this Supply Contract, be new and of current manufacture;
 - (c) be fit for purpose;
 - (d) meet the Standards and the Specifications; and
 - (e) comply with all applicable Laws, Australian Standards and codes.
- 24.2 If the Contractor is required to perform Services under this Supply Contract, it represents and warrants that the Services:
- (a) will be performed in accordance with this Supply Contract;
 - (b) will be performed with appropriate skill and care and to a high quality consistent with Best Industry Practices;
 - (c) will be fit for purpose;
 - (d) will meet the Standards and the Specifications; and
 - (e) comply with all applicable Laws, Australian Standards and codes.
- 24.3 The Contractor represents and warrants that as at the date of this Supply Contract, it is not aware of any claim or likely claim for infringement of Intellectual Property Rights or for the breach of any obligations of confidence, arising out of the manufacture, sale or use of the Goods or the performance of the Services.
- 24.4 The Contractor further gives each of the Other Warranties in respect of the Goods supplied by the Contractor and/or the Services performed by the Contractor under this Supply Contract.
- 24.5 The Contractor represents and warrants that all of the statements, representations, facts and information contained in its Quotation were true and accurate and not misleading (including by way of omission) as at the date the Quotation was submitted and the date of this Supply Contract.
- 24.6 If, during the Warranty Period, the Principal finds any of the Goods to be Defective Goods, the Principal may, at its option:
- (a) return the Defective Goods to the Contractor; or
 - (b) repair or make good the Defective Goods.
- 24.7 At the Principal's option and request, during the Warranty Period the Contractor agrees to:
- (a) repair or, at the Principal's option, replace free of charge any Defective Goods that the Principal returns to the Contractor; or
 - (b) reimburse the Principal for any expenses the Principal incurs in repairing and/or making good any Defective Goods or in returning Defective Goods to the Contractor.
- 24.8 Any repairs or replacement goods supplied by the Contractor under this clause 24 will be subject to the same warranty as the original Goods commencing from the date of repair or replacement.
- 24.9 If, during the Warranty Period, the Principal finds any of the Services or the results of the Services to be Defective Services, the Principal may, at its option reject the Defective Services by notifying the Contractor that the Principal is rejecting them.
- 24.10 If the Principal rejects the Defective Services in accordance with clause 24.9, the Principal may at its election:

- (a) require the Contractor to re-perform or make good the Defective Services free of charge to the Principal;
- (b) procure a third party to perform the relevant Services, in which case the Contractor will be responsible for any incremental costs to the Principal associated with obtaining the Services from a third party (which shall be a debt due and payable to the Principal on demand); or
- (c) make good the Defective Services itself, in which case the Contractor will be responsible for any expenses the Principal incurs in making good any Defective Services (which shall be a debt due and payable to the Principal on demand).

24.11 Any Services that are re-performed or made good by the Contractor under this clause 24.10 will be subject to the same warranty as the original Services, commencing from the date of re-performance or the date on which the Services were made good.

24.12 The remedies provided in this clause 24 do not exclude any other remedies provided by law.

25. Insurance

25.1 The Contractor must take out and maintain during the Term (and any additional period specified in this clause 25):

- (a) insurance for the Goods:
 - (i) up to the time they are accepted by the Principal under clause 19; and
 - (ii) for an amount not less than their replacement value;
- (b) a public and products liability policy to cover all sums which the Contractor may become legally liable to pay as compensation consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) loss of, or damage to, property,

happening anywhere in the country in which the Goods are delivered and/or the Services are performed. The limit of liability provided by the public and products liability policy must not be less than the amount specified in the Contract Specifics;
- (c) insurance in respect of all claims and liabilities arising, whether at common law, code or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Contractor in connection with this Supply Contract and the Contractor must ensure that all subcontractors are similarly insured in respect of their employees;
- (d) a policy of insurance against liability, loss and damage (including Consequential Loss) arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of plant, equipment, tools, appliances or other property supplied by the Principal (if any) or owned, rented or hired by the Contractor and used in connection with this Supply Contract;
- (e) professional indemnity insurance with a limit of liability of not less than the amount specified in the Contract Specifics in respect of the performance of the Services; and
- (f) other insurances specified in the Contract Specifics, required by Law or otherwise reasonably required by the Principal.

25.2 The Contractor will ensure that, to the extent allowable, all policies of insurance required to be taken out by the Contractor under this Supply Contract include the Principal as a named insured.

25.3 The Contractor must notify the Principal immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects the Principal's interests.

25.4 If any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be taken out by the Contractor under this clause 25 then the Contractor must:

- (a) notify the Principal within 14 days of that event; and
- (b) ensure that the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

- 25.5 At the Principal's request, the Contractor must produce evidence that the Contractor is maintaining the insurances required by this clause 25.
- 25.6 The Principal has the right to take out and maintain any policy of insurance required by this clause 25 if the Contractor fails to do so.
- 25.7 The Contractor agrees to reimburse the Principal for any expenses the Principal incurs in taking out and maintaining any policy of insurance taken out by the Principal under clause 25.6.

26. Liability and indemnities

- 26.1 The Contractor is liable for and indemnifies the Principal against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty given by the Contractor in this Supply Contract or any of the other terms and conditions of this Supply Contract by the Contractor;
 - (b) the illness, injury or death of any of the Contractor's Personnel arising under, out of or in connection with, this Supply Contract;
 - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property, or any other loss or damage of any kind whatsoever, caused or contributed to by:
 - (i) the Goods and/or Services; or
 - (ii) the entry onto, and the activities undertaken on and in, the Principal's premises by the Contractor and/or the Contractor's Personnel;
 - (d) any negligence or wilful act or omission by the Contractor and/or any of the Contractor's Personnel in connection with this Supply Contract;
 - (e) any claim made against the Principal by any of the Contractor's Personnel in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (f) to the extent permitted by Law, any penalty imposed for breach of an applicable Law in connection with the supply of the Goods or the performance of the Services;
 - (g) any loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Contractor or the Contractor's Personnel and used in connection with this Supply Contract; or
 - (h) any claim that the Goods and/or Services, anything the Contractor does in supplying the Principal with the Goods or performing the Services, or the Principal's use of the Goods and/or Services infringes, or allegedly infringes, the Intellectual Property Rights of any person.
- 26.2 The Contractor will not be liable to the extent that any loss or damage was caused by the wilful misconduct or gross negligence of the Principal or the Principal's Personnel.
- 26.3 Every exemption, limitation, defence, immunity or other benefit contained in this Supply Contract to which the Principal is entitled is also held by the Principal for the benefit of, and extends to protect, each of the Principal's Personnel.
- 26.4 Each indemnity in this Supply Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of this Supply Contract.
- 26.5 It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity conferred by this Supply Contract.
- 26.6 Subject to clause 26.8, neither party is liable to the other party for any Consequential Loss, of any nature whatsoever, whether based on contract, tort (including negligence) or otherwise, arising under, out of, or in connection with, this Supply Contract.
- 26.7 Subject to clause 26.8, the Contractor's total liability under this Supply Contract will not exceed the amount (if applicable) set out in the Contract Specifics as the 'Limit of Liability' plus the amount of any insurance

proceeds that are recoverable by the Contractor under the insurance policies required to be taken out by the Contractor under this Supply Contract.

26.8 Clauses 26.6 and 26.7 do not limit the Contractor's liability:

- (a) under clauses 26.1(f) and 26.1(h);
- (b) under any other provisions of this Supply Contract which expressly impose a greater liability; or
- (c) in cases of fraud, wilful misconduct or illegal or unlawful acts.

26.9 Part IF of the Civil Liability Act is excluded from operation with respect to any dispute, claim, action or any matter whatsoever arising out of or in connection with this Supply Contract.

27. Intellectual property

27.1 The Contractor:

- (a) retains the Intellectual Property Rights in the Contractor Background IP; and
- (b) grants to the Principal a non-exclusive, royalty free licence to use the Contractor Background IP for the sole purpose of exercising its rights with respect to the Goods and/or Services and this Supply Contract.

27.2 The Principal:

- (a) retains the Intellectual Property Rights in the Principal Background IP; and
- (b) grants to the Contractor a non-exclusive, royalty free licence to use, reproduce, modify and adapt the Principal Background IP for the sole purpose of supply the Goods and/or performing the Services and its other obligations under this Supply Contract.

27.3 The Principal acknowledges and agrees that all Project IP vests in and is owned by the Contractor on creation.

27.4 On creation the Contractor grants to the Principal an irrevocable, royalty-free licence to use the Project IP for any purpose for which the Goods and/or Services are provided under this Supply Contract.

27.5 The Contractor must not infringe any Intellectual Property Rights in supplying the Goods and/or performing the Services.

27.6 The Principal must not infringe any Intellectual Property Rights in providing the Principal Information.

27.7 The Contractor must notify the Principal as soon as the Contractor becomes aware of any suspected, threatened or actual infringement of the:

- (a) Principal Background IP; or
- (b) Project IP.

27.8 The Contractor agrees to provide all reasonable assistance the Principal may request regarding any infringement or alleged infringement of the:

- (a) Principal Background IP; or
- (b) Project IP.

27.9 The Contractor must not use or reproduce documents with the Principal's name, logo or other branding (whether the subject of a registered trade mark or not) without obtaining the prior written approval of the Principal's Representative.

27.10 The obligations in this clause 27 continue after the termination of this Supply Contract.

28. Confidential information

28.1 Subject to clause 28.4, no Principal's Confidential Information may be disclosed by the Contractor to any person except:

- (a) to the Contractor's Personnel requiring the information for the purposes of this Supply Contract;
- (b) with the written consent of the Principal;

- (c) if the Contractor is required to do so by Law, a stock exchange or any regulatory authority; or
 - (d) if the Contractor is required to do so in connection with legal proceedings relating to this Supply Contract.
- 28.2 If the Contractor discloses Principal's Confidential Information under clause (a) or (b), the Contractor must use its reasonable endeavours to ensure that recipients of the Principal's Confidential Information do not disclose the Principal's Confidential Information except in the circumstances permitted in clause 28.1.
- 28.3 The Contractor must not use any Principal's Confidential Information, except for the purpose of performing its obligations under this Supply Contract or as otherwise required by operation of Law.
- 28.4 Clauses 28.1, 28.2 and 28.3 do not apply to the Excluded Information.
- 28.5 The obligations under this clause 28 survive termination or expiry of this Supply Contract.

29. Taxes

- 29.1 The Contractor is responsible for any Taxes which are levied on, in respect of, or in connection with the supply of the Goods and/or the performance of the Services.
- 29.2 The Contractor must promptly on request provide the Principal with documentary evidence of the Contractor's payment of the Taxes referred to in clause 29.1.

30. Force Majeure

- 30.1 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Supply Contract or is delayed in performing those obligations:
- (a) the affected party must, at the first possible opportunity following the happening of the Event of Force Majeure, give notice to the other party setting out (to the extent practicable):
 - (i) full details of the Event of Force Majeure;
 - (ii) the obligations affected by the Event of Force Majeure; and
 - (iii) the manner in which the relevant obligations have been affected by the Event of Force Majeure;
 - (b) the affected obligations identified in the notice referred to in clause 30.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
 - (c) the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 30.2 During the period for which an obligation of the Contractor is suspended pursuant to clause 30.1(b), the Principal may (at the Principal's cost) make alternative arrangements for the performance of the suspended obligations (whether by another person or otherwise), without liability to the Contractor.
- 30.3 When the Event of Force Majeure no longer affects the performance of the obligations referred to in clause 30.1, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 30.4 Subject to clause 21, the Contractor has no entitlement and the Principal has no liability for:
- (a) any costs, losses, expenses, damages, or the payment of any fees incurred, due to an Event of Force Majeure; and
 - (b) any delay costs in any way incurred by the Contractor due to an Event of Force Majeure.
- 30.5 If an Event of Force Majeure which is the subject of a notice under clause 30.1(a) continues for more than 60 days, then either party may terminate this Supply Contract on written notice to the other party, in which case clauses 32.6, 32.7, 32.8 and 32.9 will apply.

31. Default

- 31.1 The Contractor will be in default under this Supply Contract ("Contractor Default") if:

- (a) the Contractor commits, suffers or permits any breach of the terms of this Supply Contract and fails to take action to remedy such breach within 10 Business Days after receipt of written notice from the Principal detailing the breach and the actions required to remedy the breach;
 - (b) any of the Contractor or the Contractor's Personnel are found guilty of any criminal act related to the Goods and/or Services or this Supply Contract;
 - (c) The Contractor or its Personnel commits an act which would likely damage the reputation of the Principal;
 - (d) the Contractor fails, refuses or neglects to comply with any reasonable instruction or direction which the Principal's Representative is entitled to give and that default is not remedied:
 - (i) within 7 Business Days after receipt of written notice from the Principal's Representative; or
 - (ii) within such longer period as the Principal's Representative may determine; or
 - (e) the Contractor becomes Insolvent.
- 31.2 The Principal will be in default under this Supply Contract ("Principal Default") if the Principal commits, suffers or permits any breach of the terms of this Supply Contract and fails to take action to remedy such breach within 30 days after receipt of written notice from the Contractor detailing the breach and the actions required to remedy the breach.
- 31.3 The Contractor acknowledges and agrees that where the Principal has failed to pay the Contractor any amount due and payable to the Contractor but such amount is subject to a Dispute pending determination in accordance with clause 34, that failure will not constitute a Principal Default.

32. Termination

- 32.1 In the event of a Contractor Default that is not remedied in accordance with clause 31.1 (where applicable) or where the Contractor Default is not capable of remedy the Principal may, by giving written notice to the Contractor, immediately terminate this Supply Contract.
- 32.2 In the event of a Principal Default, the Contractor may serve a notice of default on the Principal requiring the Principal to remedy the Principal Default within a specified period of not less than 20 Business Days after service of the default notice to the Principal.
- 32.3 If the Principal fails to remedy the Principal Default within the period specified in the notice of default referred to in clause 32.2, then the Contractor may either:
- (a) cease performance of all or any part of the Services and/or supply of Goods until the Principal's Default is remedied; or
 - (b) terminate this Supply Contract by written notice to the Principal.
- 32.4 The Principal may terminate this Supply Contract immediately by giving written notice to the Contractor if, in the Principal's sole opinion, continued connection or involvement with the Contractor will, or is reasonably likely to, have a detrimental impact on the reputation of the Principal.
- 32.5 The Principal may terminate this Supply Contract for whatever reason by giving the Contractor at least 30 days prior written notice.
- 32.6 In the event of termination of this Supply Contract for any reason the Contractor must:
- (a) cease performance of the Services and/or supply of the Goods;
 - (b) ensure the safety of all Contractor's Personnel;
 - (c) take all reasonable steps to protect property that is in the possession of the Contractor and that the Principal has an interest in, or may acquire an interest in;
 - (d) assign to the Principal or its nominee, to the extent required by the Principal, all the rights and benefits of the Contractor under agreements that the Contractor has with third parties relating to the provision of the Services and/or supply of the Goods;
 - (e) cease using and return to the Principal all of the Principal's property including all Intellectual Property;
 - (f) leave the Site in a clean and tidy state; and

- (g) take any other action that the Principal may reasonably request in relation to the termination.
- 32.7 In the event of termination of this Supply Contract by either party the Principal will be liable to pay the Contractor:
 - (a) all amounts due to the Contractor as shown on any unpaid Invoices (subject to the requirements of clause 12); and
 - (b) for all Services properly completed and/or Goods properly supplied in accordance with this Supply Contract up to the date of termination.
- 32.8 The amounts set out in clause 32.7 represent the only amounts that the Contractor may recover from the Principal following a termination of this Supply Contract.
- 32.9 Any expiration or termination of this Supply Contract does not affect:
 - (a) any rights of the parties which may have accrued before the date of termination; and
 - (b) the rights and obligations of the parties under clauses 1, 12.11, 26, 27, 28, 32, 39, 40 and 43.6, together with any other term which by its nature is intended to do so, which survive termination of this Supply Contract.

33. Suspension

- 33.1 The Principal may, at any time and for any reason, by notice in writing to the Contractor (stating the reason for and, if it is possible to make such an estimate, the estimated length of, the suspension), direct the Contractor to suspend performance of the whole or any part of the performance of the Services and/or supply of the Goods.
- 33.2 Upon receipt of a notice of suspension from the Principal in accordance with clause 33.1, the Contractor must suspend performance of the relevant obligations until such time as the Principal directs the Contractor to resume performance of those obligations by notice in writing, whereupon the Contractor must promptly recommence the performance of those obligations in accordance with this Supply Contract. The Contractor must do everything possible to minimize any cost or expense to it which is consequent on the suspension.
- 33.3 Unless otherwise agreed, the Principal must, subject to receipt of satisfactory evidence of such costs from the Contractor, pay to the Contractor reasonable compensation reflecting the costs necessarily and reasonably incurred by the Contractor as a direct consequence of the suspension for the period of the suspension under this clause 33, except where the suspension is a result of a Force Majeure Event or a Pandemic Event, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Contractor or any of the Contractor's Personnel, in which case the Contractor is not entitled to any payment or compensation for the suspension. For the avoidance of doubt, the Contractor is not entitled to recover any amount representing any Consequential Loss, indirect or special loss or damage of any nature whatsoever, whether based in contract, tort (including negligence) or otherwise arising under, out of, or in connection with, a suspension under this clause 33.
- 33.4 As soon as the Principal determines that the reason for any suspension under clause 33.1 no longer applies, the Principal shall instruct the Contractor to recommence performance of the relevant obligations suspended under clause 33.1 and the Contractor must promptly recommence performance.
- 33.5 If the Principal suspends the whole or any part of the performance of the Services and/or supply of the Goods under this clause 33 (other than where the suspension is a result of a Force Majeure Event or, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Contractor or any of the Contractor's Personnel), the Date for Delivery and/or the Date for Completion (as the case may be) for the relevant Goods and/or Services will be extended by the period of the suspension.

34. Dispute resolution

- 34.1 If a Dispute arises between the parties, then:
 - (a) a party affected by the Dispute must notify the other party in writing of the nature and extent of the Dispute;
 - (b) the parties undertake in good faith to use their best endeavours to settle the Dispute expeditiously by negotiation; and

- (c) a party must comply with the process set out in clauses 34.2 to 34.3 before commencing court or other proceedings except where that party is seeking urgent interlocutory relief or if a party has unreasonably failed to comply with its obligations under this clause 34.
- 34.2 If the Dispute is not resolved within 10 Business Days of a party advising the other party of a Dispute under this Supply Contract, any party may issue to the other party a written notice requiring the senior representative of each party to meet to settle the Dispute within 10 Business Days of the service of the notice ("Senior Representative Meeting"). The notice must be provided no earlier than 7 Business Days' before the Senior Representative Meeting is to occur.
- 34.3 Each party must procure that a senior representative of that party attends the Senior Representative Meeting and has authority to negotiate the issues in dispute. Each senior representative must negotiate in good faith and use its best endeavours to resolve the Dispute (subject to any necessary corporate or other action required to authorise and bind a party to such resolution).
- 34.4 If the Senior Representative Meeting fails to resolve a Dispute within 15 Business Days of the Senior Representative Meeting (including obtaining any necessary authorisation) or a Senior Representative Meeting has not taken place within the time required under clause 34.2, then, save for where it is a matter requiring referral to an Expert in accordance with clause 35, either party may commence court proceedings in relation to the Dispute.
- 34.5 Despite the parties being in dispute or taking steps to comply with this clause 34, the parties must continue to perform their respective obligations under this Supply Contract in a timely manner (including those pre-existing obligations the subject of the Dispute or disagreement to the extent possible).
- 34.6 Where a Dispute concerns whether the Goods and/or Services comply with the requirements of this Supply Contract and is not resolved following the process set out in clauses 34.2 to 34.3, the parties may, by agreement, refer the Dispute for resolution by an Expert in accordance with the process set out in clause 35.

35. Expert determination

- 35.1 If a Dispute arises which is to be dealt with under this clause 35, then a party may serve a notice on the other party requiring the Dispute to be determined by an Expert.
- 35.2 The parties must endeavour to agree on an independent person to serve as the Expert within 10 Business Days of the service of the notice under clause 35.1. If the parties are unable to agree on an independent person to serve as the Expert, then a party may request the President (for the time being) of the Law Society of Western Australia, or any body which is a successor or equivalent of it, to appoint a suitably qualified person to act as the Expert. The parties may make written submissions to that person on the choice of candidate.
- 35.3 The parties agree that the person appointed as the Expert must:
- (a) be appropriately qualified by their education, experience and training to determine the issues in dispute; and
 - (b) not have any relationship or association with the parties which may affect their impartiality.
- 35.4 The parties agree to instruct the Expert to:
- (a) act as an expert and not an arbitrator;
 - (b) decide the Dispute within the shortest practicable time;
 - (c) give the parties reasonable opportunity to make written representations to the Expert;
 - (d) decide on rules of conduct in their absolute discretion and enquire into the matter to be determined as the Expert thinks fit, including receiving submissions and taking advice from any persons that the Expert considers appropriate and requiring the parties to provide any material in their possession or control which is reasonably relevant to the issues in dispute; and
 - (e) give a written decision (including reasons).

- 35.5 The parties may make submissions to the Expert, including the provision of expert reports, and the parties agree to give every assistance that the Expert requires, including providing copies of relevant documents with a view to reaching a decision without delay.
- 35.6 Each party is to bear its own costs in relation to the Dispute. The Expert must decide the proportions in which the parties will bear the costs of the Expert having regard to the extent to which the parties may have acted unreasonably or been at fault.
- 35.7 The Expert's determination is conclusive and binding on the parties in the absence of manifest error.

36. Assignment and sub-contracting

- 36.1 The Contractor must not assign or novate its rights and obligations under this Supply Contract without the Principal's prior written consent and subject to the requirements of the Regulations, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 36.2 The Principal has the right to assign or novate any or all of its rights and obligations under this Supply Contract, subject to the requirements of the Regulations.
- 36.3 The Contractor must not subcontract any of its obligations under this Supply Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 36.4 Any approval to subcontract given by the Principal will not relieve the Contractor of any of its liabilities or obligations under this Supply Contract.
- 36.5 Notwithstanding any approval given to the Contractor to subcontract, the Contractor will remain liable to the Principal for:
- (a) the due and continued performance of the Services; and
 - (b) all acts, defaults, neglects and omissions of any subcontractor as if they were those of the Contractor.

37. Personal Property Securities Act 2009 (Cth)

- 37.1 For the purposes of this clause 37:
- (a) the "Principal's Personal Property" means all personal property the subject of a security interest granted under this Supply Contract; and
 - (b) words and phrases used that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- 37.2 If the Principal determines that this Supply Contract (or a transaction in connection with it) or a provision within it contains a security interest for the purposes of the PPSA, the Contractor agrees it will do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - (c) enabling the Principal to exercise rights in connection with the security interest.
- 37.3 The Contractor agrees that the Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- 37.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
- (a) if any personal property which does not form part of the Principal's Personal Property or the Goods provided under this Supply Contract becomes an accession to the Principal'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; or
 - (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.
- 37.5 The Contractor must not:

- (a) create or grant any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
- (e) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving the Principal 15 Business Days' notice.

37.6 Everything the Contractor is required to do under this clause 37 will be at the Contractor's expense.

37.7 The Contractor and the Principal agree that this Supply Contract and all related information and document(s) are confidential ("Designated Confidential Information") and will not be disclosed, except to the extent disclosure is permitted or required by this Supply Contract or by Law. The Contractor and the Principal agree that the Contractor will not disclose Designated Confidential Information pursuant to a request under section 275(1) of the PPSA.

38. Priority

38.1 To the extent of any inconsistency between the Special Conditions and any other part of this Supply Contract, the Special Conditions will prevail.

38.2 To the extent of any inconsistency between the Contract Specifics and the General Conditions or the Special Conditions, then the General Conditions or Special Conditions (as applicable) will prevail.

38.3 To the extent of any inconsistency between the General Conditions and any detail in the Letter of Acceptance (including any documents referred to in the Letter of Acceptance but excluding the Special Conditions), then the General Conditions will prevail.

38.4 To the extent of any inconsistency in the standard to which the Goods are to be supplied or the Services performed, the higher standard will prevail.

39. Record Keeping Requirements

39.1 The requirements in this clause 39 are the minimum requirements the Contractor must follow and do not limit any other obligations of the Contractor under this Supply Contract (including clause 9).

39.2 The Contractor must at all times maintain accurate, complete and up-to-date records which demonstrate its performance of, and compliance with, this Supply Contract, including:

- (a) any records which the Contractor is required to keep in order to comply with its obligations under this Supply Contract; and
- (b) any other records which a prudent and professional organisation would hold if it were required to perform the Contractor's obligations under this Supply Contract,

and such records must:

- (c) include appropriate audit trails for transactions performed;
- (d) be kept in a manner that permits them to be conveniently and properly audited;
- (e) be maintained in such a way as to:
 - (i) facilitate any action undertaken by the Principal;
 - (ii) allow a proper scrutiny of the conduct of the Contractor's business by appropriate authorities; and
 - (iii) protect the financial, legal and other rights of the Principal, its clients, and any third parties affected by its actions and decisions;
- (f) be controlled, as applicable, using:
 - (i) version control; and
 - (ii) date of last update and by whom;

- (g) be made available to the Principal on request; and
 - (h) be governed by an appropriate retention and disposal management plan.
- 39.3 The Contractor acknowledges that the records it holds in connection with this Supply Contract may be subject to a request under the Freedom of Information Act received by the Principal, and such records are to be immediately returned to the Principal for review in such circumstances. If the return of the records impacts on the Contractor's performance of its obligations under this Supply Contract, the Principal will consider any concerns the Contractor may raise.
- 39.4 The Contractor must (at its own cost and expense), for the duration of this Supply Contract, provide the Principal with all assistance reasonably requested by the Principal to assist the Principal in complying with its obligations under the *State Records Act 2000* (WA) and with the Principal's records management plan, where such compliance is in respect of records created, or to be created, by the Contractor on behalf of the Principal in accordance with this Supply Contract.
- 39.5 The Contractor must, in respect of records created during the term of this Supply Contract, retain such records for the retention period set out for that class of record in the General Disposal Authority for Local Government Records RD 2010046 as amended or replaced from time to time.
- 39.6 Contractors must not knowingly destroy records once they are aware of any impending legal action relating to this Supply Contract by any contractual parties or by any third parties or is subject to an investigation by an appropriate investigating body. Any action of this nature must lead to the suspension of any disposal action of all records once the retention timeframe has been met on those records.

40. Notices

- 40.1 Any notice, approval, consent or other communication ("Notice") in relation to this Supply Contract must be:
- (a) in legible writing in English;
 - (b) signed by an Authorised Representative of the sender and otherwise in accordance with the requirements of this Supply Contract;
 - (c) marked for the attention of the Contractor's Representative if directed to the Contractor, or the Principal's Representative if directed to the Principal; and
 - (d) either:
 - (i) left at the address for the party set out in the Contract Specifics;
 - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address for the party set out in the Contract Specifics; or
 - (iii) sent by email to the email address for the party set out in the Contract Specifics.

However, if the addressee has notified a change of postal address or email address, then the Notice must be to that changed postal address or email address, as the case may be.

- 40.2 Notices sent by email need not be marked for attention in the way stated in clause 40.1. However, the email must:
- (a) state the first and last name of the sender; and
 - (b) be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Notices sent by email are taken to be signed by the named sender.

- 40.3 Despite clause 40.1(d)(iii) and 40.2, a Notice under clause 32, 34 or 35 must not be sent by email.
- 40.4 Notices take effect from the time they are received or taken to be received under clause 40.5 (whichever happens first) unless a later time is specified.
- 40.5 Notices are taken to be received:
- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
 - (b) if sent by email:

- (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first.
- 40.6 Despite clauses 40.4 and 40.5, if Notices are received or taken to be received under clause 40.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

41. Entire agreement

This Supply Contract constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

42. Industrial arrangements

The Contractor agrees to observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the provision of the Goods and/or performance of the Services (as applicable) under this Supply Contract.

43. Other matters

- 43.1 If the whole or any part of a provision of this Supply Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Supply Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Supply Contract or is contrary to public policy.
- 43.2 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Supply Contract expressly states otherwise.
- 43.3 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 43.4 The rights and remedies provided in this Supply Contract are in addition to other rights and remedies given by law independently of this Supply Contract.
- 43.5 Except as, and to the extent, expressly stated otherwise in this Supply Contract, a provision of this Supply Contract or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- 43.6 The indemnities in this Supply Contract are continuing obligations, independent from the other obligations of the parties under this Supply Contract and continue after this Supply Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Supply Contract.
- 43.7 Each party agrees, at its own expense, to do anything reasonably requested by another party (such as negotiating in good faith, obtaining consents, signing and producing documents and getting documents completed and signed) to give effect to the provisions of this Supply Contract and the transactions contemplated by it.
- 43.8 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Supply Contract or any part of it.
- 43.9 The Contractor must obtain at its own expense any necessary Licences or permits and comply with applicable Laws in supplying the Goods and/or Services.
- 43.10 The Principal's rights, remedies and powers under this Supply Contract are in addition to any rights, remedies and powers provided by law.
- 43.11 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the provision of goods and/or services the same as, or similar to, the Goods and Services.

44. Governing law

- 44.1 This Supply Contract is governed by the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

44.2 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not in any way apply to this Supply Contract.

45. Counterparts

This Supply Contract may consist of a number of counterparts each signed by one or more parties to this Supply Contract. When taken together, the signed copies are treated as making up the one document.