

Explanatory note: certain terms used have specific definitions that are found in clause 19 below or are otherwise identified by bold text. Headings are for convenience only, and do not affect interpretation.

1 THIS CONTRACT

1.1 This Contract commences on the date that the City gives a Purchase Order to the Supplier for the supply of Goods and/or Services the subject of this Contract.

Other contract documents

1.2 Unless expressly agreed to in writing by the City, to the extent permitted by Law, where this Contract is in place no other terms or conditions (including the Supplier's own terms and conditions even where they have been provided to the City) will apply or have any legal effect in connection with the supply of the Goods or Services.

1.3 Where the Supplier and the City have separately entered into another written contract (by whatever name, including by way of example, a "Supply of Goods and Services", "Minor Works" or "Professional Services" contract) for the supply of any Goods and/or Services (**Prevailing Contract**), then to avoid doubt:

- (a) where the City gives the Supplier a Purchase Order for some or all Goods or Services (**PO Goods or Services**) that are the subject of or within the scope of the Prevailing Contract then, unless expressly stated in writing by the City to the Supplier prior to or at the time of giving that Purchase Order, no contract incorporating these Conditions of Contract is formed in relation to the supply of the PO Goods or Services, and only the Prevailing Contract applies to such a supply; but
- (b) where the relevant Prevailing Contract relates to the provision of various goods and/or services and the PO Specified Goods and Services are different or additional to those Goods and/or Services (**PO Additional Goods or Services**), then this Contract applies to the supply of the PO Additional Goods or Services and the Prevailing Contract continues to apply to the goods and services to which the Prevailing Contract previously applied.

Explanatory note: the purpose of clause 1.3 is to clarify which contract terms apply when the City and the Supplier have entered into a separate Prevailing Contract and, while that Prevailing Contract is still in force, the City issues to the Supplier a purchase order containing or incorporating by reference these Conditions of Contract. Under the circumstances described in clause 1.3(a), no new contract is formed and the Prevailing Contract applies to the relevant supply. Under the circumstances described in clause 1.3(b), a new Contract is formed but only in relation to the supply of the PO Additional Goods or Services.

2 CONTRACTOR'S GENERAL OBLIGATIONS

2.1 The Supplier must supply the Goods or Services to the City in accordance with this Contract.

2.2 The Supplier must ensure that it and the Supplier's Personnel, in performing the Supplier's Obligations under this Contract:

- (a) comply with all applicable Laws, any standards and procedures made available by the City to the Supplier, and any reasonable instructions given by the City;
- (b) do not interfere with the City's activities or the activities of any other person at the Delivery Point or any place the Supplier provides the Services;
- (c) carry out and perform the Supplier's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work and is not likely to cause injury or illness to any person;
- (d) unless otherwise set out in this Contract, supply all plant, resources and equipment necessary to perform the Services; and
- (e) provide all such information and assistance as the City reasonably requires.

2.3 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Supplier must:

- (a) as soon as practicable, but in any event within 24 hours, notify the City of that injury, property damage, accident or incident; and
- (b) provide the City with any further information requested by the City.

2.4 The Supplier acknowledges that if, in performing its obligations under this Contract, the Supplier's Personnel enter the City's Premises, they must comply with the City's occupational health and safety policies and procedures and do so at the Supplier's own risk.

Conflict of interest

2.5 The Supplier warrants that, to the best of its knowledge, as at the date that this Contract commences:

- (a) the Supplier has declared in writing to the City any Conflict of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
- (b) the information contained in the Supplier's written declaration as to the existence of any Conflict of Interest is correct and comprehensive.

2.6 If a Conflict of Interest or risk of Conflict of Interest arises after the date that this Contract commences, including because of work undertaken by the Supplier for a person other than the City, the Supplier must immediately give written notice of the Conflict of Interest, or the risk of it, to the City.

Time of the essence

2.7 Time is of the essence in the Supplier's Obligations.

2.8 In addition to any other rights under this Contract and at Law, if the Supplier fails to perform any obligation by the time specified in this Contract (whether as the 'Supply Completion Date' or otherwise), the City:

- (a) at the Supplier's cost, may require the Supplier to do whatever is reasonably necessary to:
 - (i) expedite provision of the Goods and Services; and
 - (ii) expedite transport or completion of the Goods and Services as directed by the City; and
- (b) at the Supplier's cost, may contract any others, on reasonable terms, for the supply and/or completion of the Goods and Services that have not been provided or completed on time by the Supplier.

3 QUALITY OF GOODS AND SERVICES

3.1 The Supplier must ensure that:

- (a) all Goods or Services conform to the description of the Goods or Services set out in this Contract or in any Specification (as the case requires);
- (b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;
- (c) if the Supplier provided the City with a demonstration of the Services or represented that a result could be achieved by the Services before the City issued the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be);
- (d) all Goods are new and of merchantable quality; and
- (e) all goods are properly, safely and securely packaged and labelled for identification.

3.2 The Supplier warrants that the Supplier's Personnel engaged to perform the Services have all the necessary skills, training, licences and qualifications to carry out the Services in accordance with this Contract.

3.3 The Supplier must ensure that the City has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on the City's behalf).

4 RECEIPT, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES

- 4.1 The Supplier must deliver the Goods in full to the Delivery Point and perform the Services at the times stated in this Contract. In this respect, time will be of the essence of the Contract.
- 4.2 The Supplier must deliver the Goods to the Delivery Point and in doing so must:
- (a) leave the Delivery Point secure and fit for immediate use; and
 - (b) obtain the signature of a member of the City's Personnel who receives delivery of the Goods or, where obtaining such a signature is not possible, leave the Goods where requested by the City.
- 4.3 Acceptance of the Goods or Services by the City does not constitute approval of the Goods or Services or prejudice any claim the City may have in connection with the Goods or Services.
- 4.4 Acceptance of the Goods or Services occurs on the earlier of:
- (a) a representative of the City notifying the Supplier in writing that the Goods or Services have been accepted; or
 - (b) the lapse of 10 Business Days after the Supply Completion Date, without the City notifying the Supplier in writing that the Goods or Services have been rejected.
- 4.5 The Supplier must allow the City or a representative of the City, upon 2 Business Days' written notice from the City and during standard business hours, to inspect, examine, review and witness tests of the Goods or Services, or the performance of the Goods or Services, and to carry out site inspections at the Supplier's premises.

Quantity of Goods

- 4.6 The City shall only be required to take or accept, and pay for, the quantity of the Goods specified in the relevant Purchase Order, any Specification, or otherwise in this Contract, unless otherwise agreed in writing by the Parties
- 4.7 If the Supplier delivers more Goods than the quantity specified in the relevant Purchase Order or otherwise in writing, the Supplier must, upon the City's direction, collect the excess Goods from the City at the Supplier's risk and expense, unless the City elects, in its discretion, to return the excess Goods to the Supplier, which is done at the Supplier's sole risk and expense

5 TITLE AND RISK

- 5.1 Title in the Goods will pass from the Supplier to the City upon payment of the Contract Price. The Supplier warrants that it has good and complete title in the Goods and that the Goods will be transferred to the City without any encumbrances or liens.
- 5.2 Risk in the Goods will pass to the City on acceptance of the Goods in accordance with clause 4.4.

6 VARIATIONS TO GOODS OR SERVICES

The Supplier must not vary the Goods or Services, including an addition, reduction or omission to any part of the Goods or Services, or the substitution of new Goods for the contracted Goods, except where the variation has been agreed in writing by the parties. Any such variation agreement between the parties will include an adjustment to the Contract Price if such price adjustment is agreed by the parties.

7 DEFECTS

- 7.1 At any time prior to the expiry of the Defects Liability Period, the City may notify the Supplier in writing that any Goods or Services provided are Defective.
- 7.2 Upon receipt of a notice from the City that any Goods or Services are Defective, the Supplier must, at its cost and at the City's direction, promptly rectify all Defects other than a Defect caused by the negligence of the City.
- 7.3 Nothing in this clause 7 prejudices any other right that the City may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with this Contract.

- 7.4 If the City directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by the City:
- (a) the City may, without prejudice to any other rights the City may have against the Supplier, rectify the Defect itself; and
 - (b) the rectification costs incurred by the City will be a debt due and payable on demand from the Supplier to the City.

7.5 Where any Defect has been rectified under this Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

7.6 The City shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Supplier has been notified in writing by the City that they are Defective.

8 INVOICING AND PAYMENT

- 8.1 The City must pay the Contract Price to the Supplier for the Goods and the Services.
- 8.2 The Contract Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with this Contract and Taxes and, subject to clause 6, no additional amounts will be payable by the City.
- 8.3 Subject to clause 8.4, on or promptly after the Supply Completion Date, the Supplier must submit an Invoice to the City for the amount due to the Supplier.
- 8.4 If agreed in writing by the City, the Supplier may submit an Invoice to the City at the end of each month for any Services performed during that or previous months provided those Services have not already been included in a previous Invoice issued to the City.
- 8.5 An Invoice must include:
- (a) the Purchase Order number;
 - (b) a description of the Goods delivered, including the quantity of Goods and the actual date on which the Goods were delivered to the Delivery Point; or
 - (c) a description of the Services performed;
 - (d) the amount being claimed for the Goods and the Services;
 - (e) the amount of any applicable GST; and
 - (f) any further information reasonably requested by the City.

8.6 If an Invoice does not contain the information required in clause 8.5, the City may, at its option, complete the missing details or return the incomplete Invoice to the Supplier, in which case the Supplier must submit a replacement Invoice compliant with clause 8.5.

- 8.7 Subject to:
- (a) the Supplier submitting an Invoice in accordance with clause 8.5 or a compliant Invoice in accordance with clause 8.6; and
 - (b) any right of the City to retain, withhold, reduce or set-off any amount due to the Supplier,

the City must pay the amount payable within 30 days after the end of the calendar month in which the Invoice (or, where applicable, the compliant Invoice) was issued by the Supplier to the City, or within such other time as agreed in writing by the parties, provided always that, where the City disputes the Invoice, then to the extent permitted by Law, the City may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.

- 8.8 Payment under this clause 8 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the City, but will be taken to be payment on account only.
- 8.9 The Supplier agrees that the City may:
- (a) deduct from moneys due to the Supplier any money due or which may become due from the Supplier to the City under, or in connection with, this Contract; and

- (b) withhold payment of any amounts payable under this Contract pending resolution of any dispute about an invoice.

9 GOODS AND SERVICES TAX

- 9.1 If GST is imposed on any supply made by the Supplier in connection with this Contract, the Supplier may recover from the City, in addition to the Contract Price, an amount equal to the GST payable in respect of that supply.
- 9.2 The Supplier must first provide the City with an Invoice before the City will pay the GST amount to the Supplier.

10 CONFIDENTIAL INFORMATION

- 10.1 Subject to clause 10.2, the parties must not:
 - (a) disclose Confidential Information to any other person; or
 - (b) use Confidential Information except to the extent necessary to fulfil their obligations under this Contract.
- 10.2 A party may disclose Confidential Information to a third party:
 - (a) with the prior consent of the party that disclosed the Confidential Information;
 - (b) to the extent required by any Law or applicable securities regulation or rule;
 - (c) in connection with any dispute or litigation concerning this Contract or its subject matter;
 - (d) to the extent required by any government authority having jurisdiction over the party that received the Confidential Information (**Receiving Party**); or
 - (e) who is an employee, officer, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under this Contract.

11 INTELLECTUAL PROPERTY

- 11.1 The Supplier warrants that any supply by it of the Goods and Services and any designs, documents or methods of working provided by it to the City in doing so does not infringe any Intellectual Property right.
- 11.2 The Supplier shall indemnify the City against any loss resulting from any alleged or actual infringement of any Intellectual Property right arising from or in connection with the supply of the Goods and Services or from any designs, documents or methods of working provided by it to the City.
- 11.3 Subject to clause 11.5, the Supplier IP remains vested in the Supplier and the City IP remains vested in the City.
- 11.4 The City will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
- 11.5 The Supplier grants to the City a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licenseable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services.

12 ACCESS TO CITY'S PREMISES; DATA SECURITY

Access

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

Data security

- 12.4 The Supplier must:
 - (a) do all things that a reasonable and prudent person or entity would do to ensure that all City Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
 - (b) provide protective measures for the City Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the City Data; and
 - (c) either return to the City or, if directed in writing by the City, destroy any City Data immediately following the end or earlier termination of this Contract.
 - 12.5 If requested in writing by the City, acting reasonably, the Supplier must take out and maintain insurance, to the City's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 13 shall apply to this insurance with any necessary modifications
- ## 13 INSURANCE
- 13.1 Where this Contract is for Goods, the Supplier must effect and maintain with a reputable insurer insurance covering the Goods against all risks to the point of delivery at the Delivery Point and, if the Goods are rejected by the City, from the time the Supplier collects the Goods from the City, for an amount not less than the full replacement costs of the Goods.
 - 13.2 Where this Contract is for Services, the Supplier must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:
 - (a) *public and products liability insurance* covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less than \$20 million in respect of each and every claim, unlimited as to the number of occurrences for public liability;
 - (b) workers compensation insurance as required by Law, including cover for common law liability;
 - (c) *motor vehicle insurance* covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third party liability of not less than \$20 million in respect of each and every claim;
 - (d) insurance covering the Supplier's own property, goods, materials owned, hired, leased or used by the Supplier, for an amount not less than the market value of those insured items;
 - (e) any additional insurance required by an applicable Law or reasonably requested in writing by the City including any insurance requested by the City under clause 12.5; and
 - (f) where the Supplier is providing professional services, *professional indemnity insurance* of not less than \$5 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the Supply Completion Date or the earlier termination of the Contract.
 - 13.3 The Supplier must provide to the City, within 3 Business Days of a written request by the City, certificates of currency for each of the insurance policies required under clauses 13.1 or 13.2 (or both, as applicable).
 - 13.4 Subject to clause 18.4, if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every subcontractor effects and maintains all of the insurances required under clause 13.1 or 13.2 (or both, as applicable), as appropriate for the work being performed by that subcontractor, before the subcontractor commences any of the Supplier's Obligations.
- ## 14 INDEMNITY AND LIMITS OF LIABILITY
- 14.1 The Supplier indemnifies the City and the City's officers, employees, agents and contractors for and against any Loss

suffered or incurred by any of them arising out of, or in connection with:

- (a) any breach of this Contract by the Supplier; or
- (b) any wrongful or negligent act or omission of the Supplier or any of the Supplier's Personnel; or
- (c) any claim made by a third party against the City or its Personnel, to the extent that the claim arose out of any act or omission of the Supplier or the Supplier's Personnel,

except to the extent that the Loss is caused by the negligence of the City or the City's personnel.

14.2 Neither party is liable to the other for Consequential Loss.

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

15 SUSPENSION AND TERMINATION

15.1 If the Supplier is at any time the subject of:

- (a) an investigation into its conduct by the Corruption and Crime Commission; or
- (b) an investigation or prosecution in relation to potential or actual criminal charges by the Supplier or any of its Personnel in relation to the Goods or Services,

then the City may suspend the performance of its obligations (or any of them) and the Supplier's obligations (or any of them) by written notice to the Supplier, until such time that the matter is resolved to the City's reasonable satisfaction or the City otherwise directs that the performance of the Contract is no longer suspended at which point the parties must promptly recommence the performance of their obligations.

15.2 The Supplier must bear any cost it incurs as a result of a suspension under clause 15.1 and any costs incurred by the City as a result of the suspension. Any amounts payable by the Supplier under this clause become a debt due to the City by the Supplier.

15.3 To avoid doubt, if the City suspends the Contract or any part of it in accordance with clause 15.1, the Supply Completion Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

Termination

15.4 The City may terminate this Contract by written notice to the Supplier, with such notice to specify under which of the following paragraphs the Contract is terminated:

- (a) at any time and in its absolute discretion by giving 3 Business Days' written notice to the Supplier; or
- (b) if the Supplier has committed a breach of the Contract and has failed to remedy that default within 10 Business Days of the City giving the Supplier written notice of that breach, by the City giving further written notice to the Supplier; or
- (c) immediately if an Insolvency Event occurs; or
- (d) if the Supplier or any of the Supplier's Personnel are found guilty of any criminal action relating to the Goods and/or Services; or
- (e) if the Supplier gives to the City, in relation to the provision of the Goods or Services under the Contract, any statement, representation, description of fact, matter, information or thing which is, in the City's opinion, acting reasonably, materially false, untrue, incorrect or inaccurate, whether known to the Supplier or not; or
- (f) if a report published by the Corruption and Crime Commission finds that the Supplier has acted unethically or corruptly, or the report recommends that criminal charges be investigated against the Supplier.

15.5 On termination of this Contract, the Supplier must promptly return to the City any of the City's Confidential Information, property (including City IP) and documents which the City owns or in which the City has an interest.

15.6 If this Contract is terminated under clause 15.4(a):

(a) if the terminated Contract is for the supply of Goods to be specially manufactured, fabricated or prepared by the Supplier to fit the City's Specifications, then:

- (i) the Supplier must immediately stop all work in connection with the Purchase Order, except as otherwise directed by the City;
- (ii) the City will pay the Supplier for any actual out-of-pocket expenses directly attributed to the Goods up to the date work stops, including reasonable expenses incurred in terminating subcontracts, plus ten per cent (10%) PROVIDED THAT the Supplier accepts payment as full compensation for termination, all such expenses are first approved in writing by the City, and the total amount paid to the Supplier, including previous payments, must not exceed the portion the performed work bears to the aggregate total purchase price specified in the relevant Purchase Order; and
- (iii) the Goods, including uncompleted portions, will be the property of the City. The Supplier must for a reasonable period hold safely and securely the City's Goods, until it receives written instructions from the City;

- (b) in any case of termination under clause 15.4(a) not covered by clause 15.6(a), the City must pay the Supplier that part of the Contract Price for any Supplier's Obligations performed prior to termination that have not already been paid by the City; and
- (c) the Supplier is not entitled to, and the City is not liable for, any additional amounts whatsoever.

15.7 Subject to clause 15.6, termination of this Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

15.8 Clauses 5, 0, 8.9, 10, 11, 13.2(f), 14, 15.7, 17 and 18 survive the termination or expiry of this Contract.

16 NOTICES

16.1 Any notice or other communication relating to this Contract must be in writing, signed by the party sending the notice or that party's agent, and either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

16.2 Any notice or other communication is regarded as being given by the notifying party and received by the receiving party:

- (a) if by hand delivery, when delivered to the address of the receiving party;
- (b) if by post, 5 Business Days from and including the date of postage;
- (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA); and
- (d) if sent by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

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

17 DISPUTES

17.1 If a party considers that a dispute has arisen between the parties in relation to this Contract, then that party must give written notice of the dispute to the other party, specifying the nature of the dispute.

17.2 A senior representative of each of the parties must meet as soon as is practicable (and in any event within 10 Business Days) and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 15 Business Days of the giving of the notice referred to in clause 17.1, then either party may issue court proceedings.

17.3 Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory relief, from a court in respect of a dispute until they have

complied with the dispute resolution process in accordance with this clause 17.

- 17.4 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Contract, unless agreed in writing by the parties otherwise.

18 GENERAL

- 18.1 This Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understanding and agreements in respect of its subject matter.
- 18.2 This Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- 18.3 The Supplier must not assign or novate this Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the City.
- 18.4 The Supplier must not, without the prior written consent of the City, which consent must not be unreasonably withheld, subcontract any of the Supplier's Obligations.
- 18.5 No term or provision of this Contract will be construed against a party on the basis that the Contract or the term or provision in question was put forward or drafted by that party.
- 18.6 This Contract is a non-exclusive contract for the supply of Goods or Services and it does not prevent the City from entering into other contracts for the supply or performance of the same or similar goods or services with other contractors.
- 18.7 Any provision of this Contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions.
- 18.8 If the City is restructured by Law, then the rights and obligations of the City under this Contract are novated to and assumed by the appropriate legal entity as determined by the City or the successors of the City under the restructure.
- 18.9 Regarding waiver:
- (a) a party may only waive a right or power it has under this Contract by written notice to the other party; and
 - (b) no forbearance, delay or indulgence by a party in enforcing a provision of this Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

19 WHS

- (a) In providing the Goods and Services, the Supplier must (and must ensure that the Supplier's Personnel):
 - (i) comply with all applicable WHS Law applicable to occupational health and safety and environment protection;
 - (ii) comply with any instructions, directions, guidelines, rules and procedures provided to you by the City in relation to work health and safety or the environment (including, when on a site controlled by the City or any of the City's contractors);
 - (iii) if the Supplier becomes aware of any matter with respect to the provision of the Goods or Services on a site controlled by the City or any of the City's contractors and that poses or might create a potential hazard to any worker involved in or proximate to where any works connected with the provision of those Goods and Services is being undertaken, immediately inform the City of that matter, the nature of the potential hazard and the resources required to eliminate or minimise it as far as is reasonably practicable.
- (b) The Supplier accepts that the Supplier is the "person conducting a business or undertaking" (PCBU) (as

defined in WHS Law) with respect to the provision of the Goods and Services (**Works**) with control and power over the manner in which the Works are performed. The Supplier is, unless otherwise directed by the City, appointed and authorised as the principal contractor (as defined in WHS Law) in connection with the Works.

- (c) If the Supplier is not appointed as the principal contractor the Supplier must not interfere with, disturb, impede or obstruct the carrying out by the principal contractor of the principal contractor's obligations under the WHS Law, and must co-operate and comply at the Supplier's own cost with any direction of the principal contractor and do all other things reasonably required by the City to comply with WHS Law and ensure that the Supplier does not cause any non-compliance by the City with WHS Law.

20 DEFINITIONS

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

City means the City of Perth, being the party issuing a Purchase Order in relation to this Contract.

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

City IP means any Intellectual Property of the City (or licensed to the City by a third party) which the City makes available, contributes, brings to or uses in connection with this Contract.

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

City's Premises means any land, including buildings, under the control, care and management of the City.

Conditions of Contract means these general conditions of contract for the supply of goods and/or services under a purchase order.

Confidential Information means:

- (a) this Contract;
- (b) information relating to the City's past, existing or future business, strategic plans or operations, finances, or customers; and
- (c) any other information disclosed by one party to the other party which is identified by the disclosing party as confidential;

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

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

Consequential Loss means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

Contract and '**this Contract**' both mean the Conditions of Contract and the relevant Purchase Order and, where applicable, any Specification.

Contract Price means the price for the Goods or Services (exclusive of GST) set out in the Purchase Order.

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

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services and '**Defective**' has a corresponding meaning.

Defects Liability Period means a period of 12 months commencing on the Supply Completion Date and, where relevant, any additional period of time specified in accordance with clause 7.5.

Delivery Point means the place set out in the Purchase Order for delivery of the Goods or otherwise notified by the City in writing.

Goods means any goods, materials, supplies, equipment or other items set out in the Purchase Order.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in respect of the Supplier, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Intellectual Property means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

Invoice means any document or record treated by the Commissioner of Taxation as an invoice or as a document entitling a recipient to an input tax credit.

Law means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

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

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

Purchase Order means the City's purchase order form for the Goods or Services.

Services means any services set out in the Purchase Order, including the delivery and/or installation of any goods and performance of services ancillary to the Services.

Specification means any technical specifications, special conditions and schedules to be read with these General Conditions as part of the Contract, whether such specifications are referred to in the Purchase Order or otherwise notified in writing by the City to the Supplier before the commencement of the Contract. In the event of any inconsistency between the Specifications and these Conditions of Contract, the former prevails unless otherwise stated.

Supplier means the supplier, consultant or contractor specified in the Purchase Order.

Supplier IP means any Intellectual Property of the Supplier (or Intellectual Property licensed to the Supplier by a third party) which:

- (a) is in existence before the date of this Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

Supplier's Obligations means all of the Supplier's obligations under this Contract.

Supplier's Personnel means the Supplier's officers, employees, agents and subcontractors and their respective employees and agents.

Supply Completion Date means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in the relevant Purchase Order or otherwise agreed by the Parties in writing. To avoid doubt, if the Goods are delivered or the Services are completed after the date specified in the relevant Purchase Order or other date agreed in writing, but the City does not by written notice insist on the written Supply Completion Date applying, then the date of actual delivery of the Goods or actual completion of the Services shall be the **Supply Completion Date**

under the Contract. Nothing in this definition limits the operation of clauses 2.7 and 2.8.

Tax means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

WHS Law means the *Work Health Safety Act 2020* (WA) and associated regulations (including the *Work Health and Safety (General) Regulations 2022* (WA)), and all other Laws applicable to work health and safety.

21 INTERPRETATION

In this Contract:

- (a) a reference to "Goods or Services" or to 'Goods and Services' is to be read as "Goods or Services, or both of them, as applicable";
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to a clause or party is a reference to a clause of, and a party to, this Contract;
- (d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (e) the words 'include', 'includes' and 'including' must be construed without limitation as to what else might be included; and
- (f) the explanatory note to clause 1.3 does not form an operative part of the Contract and is included as an aid to understanding only.