



# WALGA

## Member Contract Conditions (Provision of Minor Deliverables)

---

### 1 Supply of Deliverables

---

- (a) In consideration of the payment of the Price by the Principal, the Contractor must provide the Deliverables in accordance with the Contract.
- (b) The Contract commences on the Commencement Date and will continue until the End Date, unless the Contract is terminated earlier.
- (c) The Contract is a non-exclusive contract for the supply of Deliverables, and nothing prevents or restricts the Principal from entering into other contracts for the supply of, or performance of, the same or similar Deliverables with other suppliers.

### 2 Contractor's obligations

---

#### 2.1 General obligations

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

- (a) have all necessary qualifications, licences, authorisations, skill and experience;
- (b) comply with all applicable Laws, the Policies and Guidelines and any reasonable directions given by the Principal;
- (c) co-operate with the Principal's activities, and the activities of any other person, at the Delivery Location or at the Principal Site;
- (d) carry out and provide the Deliverables in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work; and
- (e) provide all such information and assistance as the Principal reasonably requires.

#### 2.2 Standard of Deliverables

The Contractor must ensure that:

- (a) the Deliverables match the description of the Deliverables set out in the Procurement Form and comply with the requirements in the Scope;
- (b) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional supplier;
- (c) the Goods and any items the Contractor uses or supplies as part of the Services are new and of merchantable quality and are free from Defects in design, materials and workmanship;
- (d) the Deliverables are fit for the purpose stated in the Procurement Form and the Scope, or the purpose which could reasonably be inferred by a professional supplier supplying the Goods or performing the Services;
- (e) from transfer of the title in the Goods to the Principal, the Principal has the benefit of all usual manufacturers' warranties applicable to the Deliverables and any warranties specifically and reasonably requested by the Principal and will, where requested by the Principal, pursue any manufacturer warranties on the Principal's behalf; and
- (f) it provides the Principal with copies of all manufacturers' warranties applicable to the Goods and the Services and any other usual documentation including instruction manuals, technical specifications or drawings when the Goods are delivered or the Services are performed (as applicable) or when the Principal otherwise reasonably requests.

#### 2.3 Delivery and acceptance of Goods

- (a) The Contractor must deliver the Goods to the Delivery Location on the Date for Delivery.
- (b) The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- (c) Title in the Goods will pass from the Contractor to the Principal upon payment of the Price. The Contractor warrants that title in the Goods will be transferred to the Principal without any encumbrances or liens.
- (d) Subject to clause 2.3(e), risk in the Goods will pass to the Principal on the Principal taking delivery of the Goods at the Delivery Location.
- (e) If the Principal issues a Deliverables Non-Acceptance Notice under clause 3.1(a) with respect to the Goods, then risk does not pass to the Principal until the Contractor rectifies or replaces the Goods in accordance with clause 3.1(b).

#### 2.4 Performance and acceptance of Services

- (a) The Contractor must perform and complete the Services in accordance with any timing requirements in the Scope and otherwise complete the Services by the Date for Completion.
- (b) The Contractor must supply all plant, resources and equipment necessary to perform the Services unless otherwise set out in the Scope.
- (c) The Contractor must allow the Principal, at all reasonable times, to inspect, examine, review and witness tests of the Services, or the performance of the Services and to carry out site inspections at the Contractor's premises.
- (d) The Contractor must, where it is required to perform (or re-perform) any Services under the Contract, give notice to the Principal when, in its opinion, the Services are complete and meet the Deliverables Requirements.

## 2.5 Sustainable procurement

- (a) The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices (**Sustainability Objectives**).
- (b) The Contractor agrees to:
  - (1) use reasonable endeavours to conduct its business and supply the Deliverables in a manner which seeks to support and is consistent with the Sustainability Objectives;
  - (2) provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives; and
  - (3) undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that the Deliverables are supplied from sustainable sources and free from modern slavery.
- (c) The Contractor acknowledges that a rating system may be implemented by WALGA or the Principal to assess the Contractor's performance in relation to the Sustainability Objectives, and in considering whether to engage the Contractor or another supplier.
- (d) The Principal may request from time to time, and the Contractor must provide within the timeframe stipulated in such request:
  - (1) evidence of the Contractor's compliance with the Sustainability Objectives and this clause 2.5; and
  - (2) any other information reasonably requested by the Principal in connection to this clause 2.5.
- (e) The Contractor must allow the Principal (or its nominee) prompt access to the Contractor's records in connection with this clause 2.5, and to otherwise audit the Contractor's compliance with this clause 2.5 and the Sustainability Objectives.

## 3 Quality control

---

### 3.1 Non-acceptance of Deliverables

- (a) If the Principal determines, acting reasonably, that the Deliverables do not meet the Deliverables Requirements, the Principal may issue a notice to the Contractor within 20 Business Days of the provision of those Deliverables stating the reasons why the Deliverables do not meet the Deliverables Requirements (**Deliverables Non-Acceptance Notice**).
- (b) If the Contractor receives a Deliverables Non-Acceptance Notice, the Contractor must, at its cost (including costs of collection, re-performance and redelivery, as applicable), promptly rectify, re-perform or replace the Deliverables so that the Deliverables Requirements are met. The Principal has no liability to pay for Deliverables that are subject to a Deliverables Non-Acceptance Notice.
- (c) Acceptance of the Deliverables by the Principal does not constitute approval of the Deliverables or prejudice any Claim the Principal may have in connection with the Deliverables.

### 3.2 Defects

- (a) At any time prior to the expiry of the Defects Liability Period, the Contractor must, at its cost and at the Principal's direction, promptly rectify all Defects other than a Defect caused by the negligent acts or omissions of the Principal.
- (b) Nothing in this clause 3.2 prejudices any other right that the Principal may have against the Contractor arising out of the failure of the Contractor to provide the Deliverables in accordance with the Contract.
- (c) If the Principal directs the Contractor to rectify a Defect and the Contractor fails to rectify that Defect within a reasonable time specified by the Principal:
  - (1) the Principal may, without prejudice to any other rights the Principal may have against the Contractor, rectify the Defect itself; and
  - (2) the rectification costs incurred by the Principal will be a debt due and payable on demand from the Contractor to the Principal.
- (d) Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

## 4 Variations

---

- (a) If at any time the Principal notifies the Contractor that it requires a Variation, the Contractor must promptly provide a Variation Quotation.
- (b) If the Principal accepts a Variation Quotation, the Principal will issue a Variation Notice to the Contractor and:
  - (1) the Contractor must then carry out the Variation;
  - (2) the Price will be adjusted by the amount set out in the relevant Variation Quotation;
  - (3) if the Variation is in respect of the Services, the Date for Completion will be adjusted as set out in the Variation Quotation; and
  - (4) if the Variation is in respect of the Goods, the Date for Delivery will be adjusted as set out in the Variation Quotation.
- (c) The Contractor will not be entitled, in any circumstances, to an adjustment to the Price or any extension of time except as set out in a Variation Notice issued by the Principal in accordance with this clause 4.

## 5 Working on a Principal Site

---

- (a) This clause 5 applies to the extent the Contractor or any of the Contractor's Personnel are required to be on, or near the vicinity of, a Principal Site for the purpose of the Contract.

- (b) Without limiting the Contractor's obligations under the other parts of the Contract, the Contractor agrees to comply, and to ensure that the Contractor's Personnel comply, with:
  - (1) the Principal's health, safety and environmental Policies and Guidelines applicable from time to time;
  - (2) all relevant health, safety and environmental Laws;
  - (3) all reasonable directions from a representative of the Principal; and
  - (4) the health, safety and environmental conditions in this clause 5.
- (c) Where required, each of the Contractor's Personnel must attend all appropriate and relevant induction courses required by the Principal to enter a Principal Site.
- (d) The Contractor must ensure that the Contractor's Personnel entering a Principal Site maintain the Principal Site in a safe, secure, clean and orderly manner having regard to the condition of the Principal Site immediately before such entry.
- (e) If the Contractor or any of the Contractor's Personnel fail to comply with any obligation under this clause 5, then the Principal may in its discretion deny that person access to the Principal Site or require the relevant Contractor's Personnel to leave the Principal Site immediately.
- (f) Nothing in this clause 5 affects any obligation or duty imposed on the Contractor or the Contractor's Personnel to secure and have proper regard to the health and safety of any of the Contractor's Personnel.

## **6 Price, invoicing and GST**

---

### **6.1 Payment of the Price**

- (a) The Principal must pay the Price to the Contractor for the Deliverables.
- (b) The Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and no additional amounts will be payable by the Principal subject to:
  - (1) clause 4;
  - (2) any cost and expense being included or excluded from being paid under the Contract in accordance with the terms of the Panel Agreement; and
  - (3) any amounts payable as set out in the Procurement Form.
- (c) Subject to clause 6.1(d), on or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services, the Contractor must submit a Tax Invoice to the Principal for the amount due to the Contractor.
- (d) If agreed in writing by the Principal, the Contractor may submit a Tax Invoice to the Principal at the end of each month for any Deliverables provided during that or previous months provided those Deliverables have not already been included in a previous Tax Invoice issued to the Principal.

### **6.2 Invoicing**

- (a) A Tax Invoice must include:
  - (1) the Procurement Form number;
  - (2) a description of the Deliverables provided, including any quantities and relevant dates of performance;
  - (3) the amount being claimed for the Deliverables;
  - (4) the amount of any applicable GST; and
  - (5) any further information reasonably requested by the Principal.
- (b) Tax Invoices must be submitted to and in accordance with the methodology specified in the Procurement Form.
- (c) If a Tax Invoice does not contain the information required in clause 6.2(a), the Principal may, at its option, complete the missing details or return the incomplete Tax Invoice to the Contractor, in which case the Contractor must submit a replacement Tax Invoice compliant with clause 6.2(a).
- (d) Subject to the Contractor submitting a Tax Invoice in accordance with clause 6.2(a) or a compliant Tax Invoice in accordance with clause 6.2(c), the Principal must, unless otherwise stated in the Procurement Form, pay the amount payable within 30 days.
- (e) Payment under this clause 6 will not be taken as proof or admission that all, or any part of, the Deliverables have been provided to the satisfaction of the Principal, but will be taken to be payment on account only.
- (f) The Contractor agrees that the Principal may:
  - (1) deduct from moneys due to the Contractor any money due or which may become due from the Contractor to the Principal under, or in connection with, the Contract; and
  - (2) withhold payment of any amounts payable under the Contract, pending resolution of any dispute.

### **6.3 GST**

- (a) The Contractor warrants that it is registered for GST purposes in Australia and, if requested by the Principal, must provide to the Principal sufficient evidence to substantiate that the Contractor is registered for GST purposes.
- (b) If GST is imposed on any supply made by the Contractor in connection with the Contract, the Contractor may recover from the Principal, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- (c) The Contractor must first provide the Principal with a Tax Invoice before the Principal will pay the GST amount to the Contractor.

## **7 Confidential Information, data security and intellectual property**

---

### **7.1 Confidentiality**

- (a) Each party must:
- (1) keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
    - (A) to the extent necessary for the performance of their obligations under the Contract;
    - (B) that a party may disclose to its legal advisers or auditors who are under a duty of confidence; and
    - (C) that a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
  - (2) immediately provide notice to the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other party's Confidential Information.

## 7.2 Publicity and reputation

The Contractor must not:

- (a) make any public announcement or issue any media release relating to the Contract or the performance of the Deliverables or exploit the fact that it has entered into the Contract, without the prior written approval of the Principal, which may be withheld at the Principal's discretion or given subject to any conditions; and
- (b) commit any act or omission that damages or adversely affects, or has the potential to damage or adversely affect, the Principal's reputation, trademark or brand.

## 7.3 Data security

The Contractor must:

- (a) do all things that a reasonable and prudent contractor would do to ensure that all Principal 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 Principal 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 Principal Data; and
- (c) either return to the Principal or destroy any Principal Data immediately following the termination or expiry of the Contract, provided that the Contractor may retain one copy of any Principal Data solely for the purposes of its own records or if required by Law.

## 7.4 Intellectual Property

- (a) Subject to clause 7.4(c), the Contractor IP remains vested in the Contractor and the Principal IP remains vested in the Principal.
- (b) The Principal will own all Intellectual Property that the Contractor creates in the provision of the Deliverables.
- (c) The Contractor grants to the Principal a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Contractor IP to the extent necessary to use the Deliverables.

# 8 Risk and liability

---

## 8.1 Insurances

- (a) The Contractor acknowledges and agrees that it is obliged under its Panel Agreement to take out and maintain insurances, which insurances will be for the benefit of WALGA members (including the Principal) that procure goods, services and works under the Panel Agreement.
- (b) The parties acknowledge and agree that the relevant provisions of the Panel Agreement relating to insurance are repeated and apply in the Contract, as modified for the application to the provision of the Deliverables under the Contract.
- (c) Subject to clause 11.3, if the Contractor subcontracts any part of the provision of the Deliverables, the Contractor must ensure that each subcontractor effects and maintains all of the insurances required under the Preferred Supply Agreement, as appropriate for the Deliverables being performed by that subcontractor, before the subcontractor commences providing any part of the Deliverables.

## 8.2 Indemnity

- (a) The Contractor indemnifies the Principal from and against any Claim or Loss, however caused, brought again, suffered or incurred by the Principal arising out of or in connection with the provision of the Deliverables, the Contractor's breach of the Contract, or the negligence of the Contractor or the Contractor's Personnel, in respect of:
  - (1) damage to, or loss or destruction of, any property (including damage to the environment);
  - (2) injury to, or death or disease of, any person;
  - (3) any breach of Law; or
  - (4) any breach of a party or third party's Intellectual Property.
- (b) The indemnity in clause 8.2(a) will be reduced to the extent that the Loss is caused, or contributed to, by the Principal's negligence or breach of the Contract.

## 8.3 Limits of liability

- (a) To the extent permitted by Law, but subject to clause 8.3(c), each party will have no liability to the other party arising under or in connection with the Contract (howsoever arising, including negligence) for Excluded Loss.
- (b) Subject to clause 8.3(c), the Contractor's liability to the Principal, and the Principal's liability to the Contractor, in respect of Loss arising out of or in connection with the Contract, in the aggregate for all Claims, is limited to the Maximum Liability Amount. Liability to which a limit under this clause 8.3(b) applies is counted towards the limit when discharged by a party.
- (c) The Contractor's liability in respect of the following is not limited by clause 8.3(a) or 8.3(b), and is not counted towards the limit under clause 8.3(b):

- (1) personal injury and death, including third party claims in connection with personal injury or death;
  - (2) damage to, or loss or destruction of, any property;
  - (3) breach of any Laws, confidence or privacy;
  - (4) the infringement of any Intellectual Property of a party or third party;
  - (5) any amount agreed as the Price under the Contract; and
  - (6) to the extent that the Contractor recovers proceeds under insurances required by the Contract in respect of the liability, or would have recovered insurance proceeds if it had complied with the Contract, complied with the insurance policy, and taken all reasonable steps to do so.
- (d) When determining the insurance proceeds that would have been recovered for the purposes of clause 8.3(c)(6), the exclusions and limits of liability under clauses 8.3(a) and 8.3(b) will not be taken into account.
- (e) A party's liability in respect of the following is not limited by clauses 8.3(a) or 8.3(b), and is not counted towards the limit under clause 8.3(b):
- (1) fraud, deliberate default, wilful misconduct; or
  - (2) any act or omission done or not done with a reckless disregard for the consequences by the party or any other party for whom the party is responsible.

## **9 Termination**

---

- (a) The Principal may terminate the Contract by notice to the Contractor:
- (1) at any time and in its discretion, by giving the Contractor not less than 20 Business Days' notice;
  - (2) if the Contractor commits a breach (other than an inconsequential breach) of the Contract and fails to remedy that breach within 10 Business Days of the Principal giving notice of the breach;
  - (3) immediately if an Insolvency Event occurs; or
  - (4) immediately if the Principal becomes aware that WALGA has suspended or terminated the Panel Agreement, in accordance with the terms of the Panel Agreement.
- (b) The Contractor may terminate the Contract by notice to the Principal if the Principal does not comply with its obligations under clause 6.2(d) and fails to remedy that default within 15 Business Days of notice of that default from the Contractor.
- (c) On termination of the Contract, the Contractor must:
- (1) immediately cease the provision of the Deliverables; and
  - (2) promptly deliver to the Principal all Confidential Information, employee lists, working papers, correspondence, documents and other property belonging to the Principal that may be in the Contractor's possession or under its control.
- (d) If the Contract are terminated under clause 9(a)(1) or 9(b):
- (1) the Principal must pay the Contractor that part of the Price for any Deliverables provided prior to termination that have not already been paid by the Principal; and
  - (2) the Contractor is not entitled to, and the Principal is not liable for, any additional amounts whatsoever.
- (e) Subject to clause 9(d), termination of the Contract, however it may occur, does not prejudice any Claim that either party may have against the other under the Contract on termination.

## **10 Disputes**

---

- (a) Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief of an urgent nature, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 10.
- (b) If any dispute arises between the parties in relation to the Contract, either party must give notice of the dispute to the other party.
- (c) A senior representative of each of the parties must promptly meet and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 15 Business Days of the notice referred to in clause 10(b), then either party may issue court proceedings.
- (d) The parties may escalate the dispute to WALGA, at any time, for WALGA to assist the parties in the resolution of the dispute.

## **11 General**

---

### **11.1 Notices**

- (a) Subject to clause 11.1(c), a notice must be in writing and:
- (1) delivered by hand or sent by post, to the address of the party set out in the Procurement Form or otherwise notified; or
  - (2) sent by email to the email address of the party as notified to the other party.
- (b) A notice is deemed to be given and received:
- (1) if delivered by hand, on the day of delivery;
  - (2) if sent by post, on the third Business Day after posting; or
  - (3) if sent by email, four hours after it is sent, unless the sender receives notification from its or the recipient's email server that the email is undeliverable, was not delivered or the recipient is out of the office.
- (c) A notice under clause 9 may only be delivered by hand or sent by post.

### 11.2 PPSA

- (a) If the Principal determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including 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:
- (1) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (2) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Principal has the priority required by it; or
  - (3) enabling the Principal to exercise rights in connection with the security interest.
- (b) Notwithstanding clause 7.1, neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 11.2(b) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

### 11.3 Subcontracting

- (a) Unless otherwise provided for in the Panel Agreement, the Contractor must not, without the prior written consent of the Principal (with such consent to not be unreasonably withheld), subcontract any of the provision of the Deliverables.
- (b) Approval to subcontract does not relieve the Contractor from any liability or obligation under the Contract, and the Contractor is liable to the Principal for the acts and omissions of any subcontractor, its personnel and the Contractor's Personnel as if they were acts or omissions of the Contractor.
- (c) The Principal may request further information regarding a subcontractor and the particulars of any Deliverables to be subcontracted in order to approve (or otherwise) a subcontractor under clause 11.3(a).

### 11.4 General provisions

- (a) **(Assignment)** The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Principal.
- (b) **(Governing law)** The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- (c) **(Sole terms)** Unless expressly agreed to in writing by the Principal and referenced in the Procurement Form, to the extent permitted by Law, no other terms or conditions, including the Contractor's own terms and conditions even where they have been provided to the Principal, will apply or have any legal effect in connection with the provision of the Deliverables or the Contract.
- (d) **(No constraint on Principal)** Nothing in the Contract has the effect of constraining the Principal or placing any fetter on its statutory rights, duties, powers and functions including those contained or referred to in any Law.
- (e) **(Authority)** The Contractor represents and warrants that it has full power and authority to enter into and perform its obligations under the Contract, and has taken all necessary action to authorise the execution, delivery and performance of the Contract.
- (f) **(Nature of relationship)** Nothing in the Contract gives a party authority to bind the other party in any way. Nothing in the Contract imposes any fiduciary duties on a party in relation to the other party.
- (g) **(Waiver)** No waiver of a breach of any term of the Contract or of a default under the Contract will be effective unless in writing, signed by, or on behalf of, the parties and expressed to be such a waiver.
- (h) **(Cumulative rights)** The rights and remedies contained in the Contract are cumulative and not exclusive of any rights or remedies provided by Law.
- (i) **(Survival)** Clauses 3, 7, 8, 9, 10, 11 and 12, and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract, will survive expiry or termination of the Contract, and are enforceable at any time at Law.

## 12 Definitions and interpretation

---

### 12.1 Definitions

**Business Day** means a day that is not a Saturday, Sunday, a public holiday in the place where the Principal has its head office, or 27, 28, 29, 30 or 31 December.

**Claim** means a claim, demand, action or proceeding of any nature whether actual or threatened arising out of, or in connection with, the Contract or otherwise arising in any way whatsoever.

**Commencement Date** means the date set out in the Procurement Form.

**Confidential Information** means the terms of the Contract and in respect of a party, all information in connection with the party's business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of the Contract) and which:

- (a) is, by its nature, confidential; or
- (b) is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential, but does not include information which:
  - (c) is or becomes public knowledge other than by a breach of the Contract; or
  - (d) has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.

**Contract** means the agreement formed by:

- (a) with respect to the Deliverables, either:

- (1) the relevant Procurement Form; or
- (2) the details in VendorPanel; and

(b) the Member Contract Conditions,

with the documents forming part of the Contract prevailing in the order of precedence set out in this definition.

**Contractor** means the party specified as such in the Procurement Form.

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

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

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

**Date for Completion** means the "Due Date" set out against the description of the Services in the Procurement Form.

**Date for Delivery** means the "Due Date" set out against the description of Goods in the Procurement Form.

**Date of Completion** means the date on which the Deliverables Requirements in respect of Services have been met.

**Date of Delivery** means the date on which the Goods are delivered to the Delivery Location.

**Defect** means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Deliverables.

**Defects Liability Period** means a minimum period of 12 months commencing:

- (a) in respect of the Goods, on the Date of Delivery; and
- (b) in respect of the Services, on the Date of Completion,

and, where relevant, any additional period of time specified in accordance with clause 3.2(d).

**Deliverables** means the Goods and Services to be provided under the Contract.

**Delivery Location** means, with respect to the Goods, the location set out in the Procurement Form.

**Deliverables Requirements** means that:

- (a) the Deliverables meet the requirements of the Contract (including those set out in the Scope); and
- (b) those tests which are required by the Contract to be carried out and passed in respect of the Deliverables have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for deliverables of the same nature as the Deliverables have been carried out and passed).

**Excluded Loss** means loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature and loss of opportunities.

**End Date** means the date specified in the Procurement Form, or if no date is specified in the Procurement Form, the date on which the Contractor has provided all of the Deliverables.

**Goods** means any goods, materials, supplies, equipment or other items set out in the Procurement Form and the Scope.

**Government Agency** means any government or governmental, local governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency, department, commission, authority or Minister in Western Australia or the Commonwealth of Australia.

**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 Contractor, 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 trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

**Laws** means any act, ordinance, regulation, subordinate legislation, by-law, or award of Western Australia or the Commonwealth of Australia, equity, the common law and the legally enforceable requirements of Government Agencies, including any regulation or local law of the Principal.

**Loss** means any liability, cost, expense, loss, personal injury (including illness), death or damage, amounts payable on a Claim (whether or not the Claim is successful), suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense, and legal costs and disbursements.

**Maximum Liability Amount** means, by reference to each party:

- (a) the amount in the Procurement Form; or
- (b) where no amount is provided in the Procurement Form, an amount equal to the Price.

**Member Contract Conditions** means these conditions titled "Member Contract Conditions (Provision of Minor Deliverables)".

**Panel Agreement** means the agreement between WALGA and the Contractor, regarding the panel pursuant to which the Contractor is providing the Deliverables to the Principal.

**Policies and Guidelines** means all of the policies and guidelines of the Principal as made available by the Principal, and as amended and varied from time to time.

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

**PPS Law** means:

- (a) the PPSA; and
- (b) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

**Price** means the price for the Deliverables (exclusive of GST) set out in the Procurement Form.

**Principal** means the party specified as such in the Procurement Form, being an entity within the definition of "Member" (as that term is defined in the Panel Agreement).

**Principal Data** means information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Deliverables or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract.

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

**Principal Site** means any premises which the Principal owns or which is in the care, control and management of the Principal including any land on which the Principal's property is situated on and which the Contractor needs to access in connection with the Contract.

**Procurement Form** means:

- (a) the form of that title, order or requisition issued by the Principal to the Contractor from time to time, which provides for the specifics, execution and creation of the Contract for the provision of the Deliverables; or
- (b) where a Contract is to be created in VendorPanel, the specifics contained on that system, by reference to the Deliverables, necessary for a Contract to be created.

**Scope** means the scope describing the Deliverables to be provided under the Contract, as set out in the Procurement Form.

**Services** means any services set out in the Procurement Form and the Scope, including the delivery of any goods and performance of services ancillary to the Services.

**Sustainability Objectives** has the meaning given in clause 2.5(a).

**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.

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

**Variation** means an increase, decrease, omission or any other change to any part of the Deliverables to be supplied or performed under the Contract.

**Variation Notice** means a notice issued by the Principal under clause 4(b) directing the Contractor to carry out a Variation requested under clause 4(a).

**Variation Quotation** means a quotation from the Contractor which sets out the Contractor's additional costs or savings and the effect on the Date for Delivery or the Date for Completion for performing a Variation requested under clause 4(a).

**VendorPanel** means WALGA's online quotation, compliance and contract management system, as updated from time to time, which includes the system formerly branded as "eQuotes".

**WALGA** means the Western Australian Local Government Association (ABN 28 126 945 127).

## 12.2 Interpretation

In the Contract:

- (a) to the extent of any inconsistency between the provisions of the documents forming the Contract, the Contractor must give the Principal notice of that inconsistency, and the terms of the Procurement Form take precedence;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (e) a reference to a clause, party or schedule is a reference to a clause of, and a party or schedule to, the Contract;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to a party to a document includes that party's successors and permitted assignees;
- (h) a promise on the part of 2 or more persons binds them jointly and severally;
- (i) no provision of the Contract will be construed adversely to a party because that party was responsible for the preparation of the Contract or that provision;
- (j) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (k) words and phrases used in the Contract that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates; and
- (l) Part 1F of the Civil *Liability Act 2002* (WA) does not apply to the Contract.