



WALGA

## Member Contract Conditions (Goods and Services Supply)

**Version 2 (July 2023)**

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## 1 Definitions

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The meanings of the terms used in the Contract are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Approval</b>	each approval, certificate, licence, authority, waiver, exemption, registration, consent, permit or authorisation required to provide the Goods and Services in accordance with all applicable Laws.
<b>Approved Subcontractors</b>	a subcontractor listed as an “Approved Subcontractor” in the Procurement Form (if any).
<b>Business Day</b>	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.
<b>Claim</b>	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.
<b>Confidential Information</b>	<p>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:</p> <ol style="list-style-type: none"> <li>1 is, by its nature, confidential; or</li> <li>2 is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential,</li> </ol> <p>but does not include information which:</p> <ol style="list-style-type: none"> <li>3 is or becomes public knowledge other than by a breach of the Contract; or</li> <li>4 has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.</li> </ol>
<b>Contract</b>	<p>the agreement formed between the parties regarding the supply of the Goods and the performance of the Services by:</p> <ol style="list-style-type: none"> <li>1 with respect to the Goods and Services, either: <ul style="list-style-type: none"> <li>– the relevant Procurement Form; or</li> <li>– the details in VendorPanel; and</li> </ul> </li> <li>2 the Goods and Services Supply Contract Conditions,</li> </ol> <p>with the documents forming part of the Contract prevailing in the order of precedence set out in this definition.</p>



<b>Term</b>	<b>Meaning</b>
<b>Defect</b>	any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services (or both, where applicable).
<b>Defects Liability Period</b>	a period of 12 months commencing: 1 in respect of the Goods, on the Goods Date of Delivery; and 2 in respect of the Services, on the Services Date of Completion, and, where relevant, any additional period of time specified in accordance with clause 13.
<b>Dispute</b>	a difference, dispute or issue arising at any time between the parties arising out of, or in connection with, the Contract.
<b>Dispute Notice</b>	a notice in respect of a Dispute given under clause 23(b).
<b>End Date</b>	the date specified as the "End Date" in the Procurement Form.
<b>Excluded Loss</b>	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.
<b>Goods</b>	any goods, materials, supplies, equipment or other items set out in the Specifications and elsewhere in the Contract.
<b>Goods and Services Contract Conditions</b>	this document called "Member Contract Conditions (Goods and Services Supply)".
<b>Goods Date for Delivery</b>	the date for delivery of the Goods, as set out in the Procurement Form.
<b>Goods Date of Delivery</b>	the date on which the Goods are delivered to the Goods Delivery Location.
<b>Goods Delivery Location</b>	the location set out in the Procurement Form.
<b>Goods Delivery Requirements</b>	that:



Term	Meaning
	<ol style="list-style-type: none"> <li>1 the Goods meet the requirements of the Contract (including those set out in the Specifications); and</li> <li>2 those tests which are required by the Contract to be carried out and passed in respect of the Goods have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for goods of the same nature as the Goods have been carried out and passed).</li> </ol>
<b>Goods Non-Acceptance Notice</b>	is defined in clause 5(d).
<b>Government Agency</b>	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.
<b>GST</b>	has the meaning given in section 195-1 of the GST Act.
<b>GST Act</b>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act, ordinance, regulation, public binding ruling or subordinate legislation relating to the imposition of GST.
<b>Incident</b>	<p>any occurrence or event that has resulted in, or has the potential to result in, adverse consequences to people, property, the environment, reputation or production or a combination of these, including:</p> <ol style="list-style-type: none"> <li>1 deviations from the Principal's health, safety and environmental Policies and Guidelines; and</li> <li>2 non-compliances with relevant health, safety and environmental Laws and Approvals and any public complaint regarding the Supplier and relating to its provision of the Goods or Services.</li> </ol>
<b>Insolvency Event</b>	<p>in respect of the Supplier:</p> <ol style="list-style-type: none"> <li>1 the appointment of an administrator, a liquidator, a provisional liquidator or a controller (including any receiver or receiver and manager);</li> <li>2 any compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors (including a deed of company arrangement), insolvency, bankruptcy; or</li> <li>3 any similar procedure or situation which involves a moratorium or the suspension of the payment of any debts or, where applicable, changes in the constitution of any partnership or person, or death.</li> </ol>



Term	Meaning
<b>Insurances</b>	the insurances which the Supplier is required to obtain under the Panel Agreement.
<b>Intellectual Property</b>	all intellectual and industrial property rights, including trade marks, copyright (including future copyright), Moral Rights, 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.
<b>Laws</b>	any act, ordinance, regulation, subordinate legislation, by-law, award of the State, Territory or Commonwealth (as applicable) in which the Supplier's Obligations are being carried out.
<b>Loss</b>	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, legal costs and disbursements.
<b>Maximum Liability Amount</b>	by reference to each party: <ol style="list-style-type: none"> <li>1 the amount in the Procurement Form; or</li> <li>2 where no amount is provided in the Procurement Form, an amount equal to the Price.</li> </ol>
<b>Moral Rights</b>	has the meaning given in the <i>Copyright Act 1968</i> (Cth).
<b>Panel Agreement</b>	the agreement between WALGA and the Supplier, regarding the panel pursuant to which the Supplier is supplying the Goods and performing the Services for the Principal.
<b>Party Details</b>	the details of each party set out in the Procurement Form.
<b>Policies and Guidelines</b>	all of the policies and guidelines of the Principal made available to the Supplier, as amended and varied from time to time.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Law</b>	<ol style="list-style-type: none"> <li>1 the PPSA; and</li> </ol>



Term	Meaning
	2 any amendment made at any time to the <i>Corporations Act 2001</i> (Cth) or any other legislation as a consequence of the PPSA.
<b>Price</b>	the price for the Goods or Services (or both), as set out in the Procurement Form.
<b>Principal</b>	the party defined as the "Principal" in the Procurement Form, being an entity within the definition of "Member" (as that term is defined in the Panel Agreement).
<b>Principal Data</b>	information and materials of the Principal in respect of which the Supplier has custody or control for the purpose of performing the Supplier's Obligations or which are accessed, transmitted or stored using the Supplier's information systems or equipment under the Contract.
<b>Principal IP</b>	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.
<b>Procurement Form</b>	as appropriate: <ol style="list-style-type: none"> <li>1 the form of that title, order or requisition issued by the Principal to the Supplier from time to time, which provides for the specifics, execution and creation of the Contract for the supply of the Goods and performance of the Services; or</li> <li>2 where a Contract is to be created in VendorPanel, the specifics contained on that system, by reference to the Goods and Services, necessary for a Contract to be created.</li> </ol>
<b>Professional Supplier</b>	a supplier with skill and experience in, and the expertise and resources necessary to complete, the supply of goods and performance of services the same as, or similar to, the Goods and Services.
<b>Project IP</b>	is defined in clause 15(b).
<b>Security of Payment Act</b>	the <i>Building and Construction Industry (Security of Payment) Act 2021</i> (WA).
<b>Services</b>	any services set out in the Specifications and elsewhere in the Contract, including the delivery of any goods and performance of services ancillary to the Services.





Term	Meaning
<b>Services Date for Completion</b>	the date specified as the "Services Date for Completion" in the Procurement Form.
<b>Services Date of Completion</b>	the date on which the Services Requirements have been met.
<b>Services Non-Acceptance Notice</b>	is defined in clause 7(d).
<b>Services Requirements</b>	<p>that:</p> <ol style="list-style-type: none"> <li>1 the Services meet the requirements of the Contract (including those set out in the Specifications); and</li> <li>2 those tests which are required by the Contract to be carried out and passed in respect of the Services have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for services of the same nature as the Services have been carried out and passed).</li> </ol>
<b>Site</b>	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 Supplier or the Supplier's Personnel need to access in connection with the Contract.
<b>Site Requirements</b>	any requirements, including safety requirements, that the Supplier must comply with when on the Site, as may be notified by the Principal to the Supplier from time to time.
<b>Specifications</b>	the specifications and requirements describing the Goods and Services to be supplied under the Contract, as set out in the Procurement Form.
<b>Start Date</b>	the date specified as the "Start Date" in the Procurement Form.
<b>Supplier</b>	the party defined as the "Supplier" in the Procurement Form.
<b>Supplier IP</b>	<p>any Intellectual Property of the Supplier (or Intellectual Property licensed to the Supplier by a third party) which:</p> <ol style="list-style-type: none"> <li>1 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, the Goods or Services; and</li> </ol>



<b>Term</b>	<b>Meaning</b>
	2 the Supplier makes available, contributes, brings to or uses in connection with the Contract.
<b>Supplier's Obligations</b>	all of the Supplier's obligations under the Contract.
<b>Supplier's Personnel</b>	the Supplier's officers, employees, agents and subcontractors and their respective employees and agents.
<b>Sustainability Objectives</b>	has the meaning given in clause 10(a).
<b>Tax</b>	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.
<b>Tax Invoice</b>	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.
<b>Term</b>	the period of time from the Start Date to the End Date.
<b>Variation</b>	an increase, decrease, addition, omission, substitution or other change to any part of the Goods or Services (or both, where applicable) to be supplied or performed under the Contract.
<b>Variation Notice</b>	a notice issued by the Principal under clause 20(b) directing the Supplier to carry out a Variation requested under clause 20(a).
<b>Variation Quotation</b>	a quotation from the Supplier which sets out the Supplier's additional costs or savings and the effect on the Goods Date for Delivery or the Services Date for Completion (or both) for performing a Variation requested under clause 20(a).
<b>VendorPanel</b>	WALGA's online quotation, compliance and contract management system, as updated from time to time, which includes the system formerly branded as "eQuotes".



Term	Meaning
<b>WALGA</b>	the Western Australian Local Government Association (ABN 28 126 945 127) of 170 Railway Parade, West Leederville, in the State of Western Australia.
<b>Work Health and Safety Requirements</b>	<p>the requirements set out in the Contract relating to work health and safety, and any of the following related to work health and safety or dangerous goods:</p> <ol style="list-style-type: none"> <li>1 Laws;</li> <li>2 the National Standard for Construction Work, codes of practice, Australian Standards and compliance codes;</li> <li>3 directions, notices and the like issued by any Government Agency or in accordance with any Laws;</li> <li>4 any such matters of which the Supplier has been informed by the Principal, orally or in writing; and</li> <li>5 any relevant Policies and Guidelines,</li> </ol> <p>and, for clarity, includes the <i>Work Health and Safety Act 2020 (WA)</i> and the <i>Work Health and Safety (General) Regulations 2022 (WA)</i>.</p>

## 2 Interpretation

In the Contract unless the context suggests otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of the Contract;
- (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, schedule or attachment is a reference to a clause of, and a party, schedule or attachment 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 document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assignees;
- (i) a promise on the part of 2 or more persons binds them jointly and severally;



- (j) 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;
- (k) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (l) a reference to 'consent', 'approved' or 'approval' will be deemed to mean 'consent to in writing', 'approved in writing' or 'approval in writing'.
- (m) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (n) Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract; and
- (o) to the extent of any inconsistency between the provisions of the documents forming the Contract, the Supplier must give the Principal notice of that inconsistency, and the Principal will direct the Supplier as to the interpretation and construction to be followed.

### 3 Term

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- (a) The Contract commences on the Start Date and continues for the Term unless terminated under clause 22.
- (b) Subject to clause 22(a), the Contract continues in full force and effect notwithstanding the termination or expiry of the Panel Agreement.

### 4 Supplier's obligations

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- (a) The Supplier must supply and deliver the Goods in accordance with clause 5 and otherwise in accordance with the Contract.
- (b) The Supplier must perform the Services (if any) in accordance with clause 7 and otherwise in accordance with the Contract.
- (c) The Supplier must ensure that it and the Supplier's Personnel, in performing the Supplier's Obligations:
  - (1) have all of the necessary skills and training and hold all of the required qualifications and licences to perform the Services and supply the Goods in accordance with all applicable Laws and industry standards;
  - (2) obtain any Approvals required for the performance of the Services or the delivery of the Goods, including any approvals set out in the Specifications;
  - (3) comply with all applicable Laws, Work Health and Safety Requirements, the Policies and Guidelines and any reasonable directions given by the Principal;
  - (4) do not interfere with the Principal's activities or the activities of any other person at the Goods Delivery Location or a the Site;
  - (5) 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;

- (6) provide all such information and assistance as the Principal reasonably requires; and
- (7) at their own expense, supply all plant, equipment and resources required for the delivery of the Goods and Services (if any), except for any items of plant and equipment to be provided by the Principal as set out in the Specifications.

## 5 Delivery and acceptance of Goods

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- (a) The Supplier must deliver the Goods to the Goods Delivery Location on the Goods Date for Delivery.
- (b) The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- (c) The Supplier must allow the Principal or a representative of the Principal, at all reasonable times, to inspect, examine, review and witness tests of the Goods, or the performance of the Goods and to carry out site inspections at the Supplier's premises.
- (d) If the Principal determines that the Goods do not meet the Goods Delivery Requirements, the Principal may issue a notice to the Supplier within 20 Business Days of delivery stating the reasons why the Goods do not meet the Goods Delivery Requirements (**Goods Non-Acceptance Notice**).
- (e) If the Supplier receives a Goods Non-Acceptance Notice, the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods so that the Goods Delivery Requirements are met. The Principal has no liability to pay for Goods that are subject to a Goods Non-Acceptance Notice.
- (f) Acceptance of the Goods by the Principal does not constitute approval of the Goods or prejudice any Claim the Principal may have in connection with the Goods.

## 6 Title and risk

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- (a) Title in the Goods will pass from the Supplier to the Principal upon payment of any part of the Price. The Supplier warrants that title in the Goods will be transferred to the Principal without any encumbrances or liens.
- (b) Subject to clause 6(c), risk in the Goods will pass to the Principal on the Principal taking delivery of the Goods at the Goods Delivery Location.
- (c) If the Principal issues a Goods Non-Acceptance Notice under clause 5(d), then risk does not pass to the Principal until the Supplier rectifies or replaces the Goods in accordance with clause 5(e).



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### 7 Performance and acceptance of Services

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- (a) The Supplier must perform and complete the Services in accordance with any timing requirements in the Specifications and otherwise complete the Services by the Services Date for Completion.
- (b) The Supplier must allow the Principal or a representative of 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 Supplier's premises.
- (c) The Supplier 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 Services Requirements.
- (d) If the Principal determines that the Services do not meet the Services Requirements, the Principal may issue a notice to the Supplier within 20 Business Days of receiving a notice from the Supplier under clause 7(c) stating the reasons why the Services do not meet the Services Requirements (**Services Non-Acceptance Notice**).
- (e) If the Supplier receives a Services Non-Acceptance Notice, the Supplier must, at its cost, re-perform the Services, or that part of the Services that do not meet the Services Requirements, until the Services Requirements are met. The Principal has no liability to pay for Services that are subject to a Services Non-Acceptance Notice.
- (f) Acceptance of the Services by the Principal does not constitute approval of the Services or prejudice any Claim the Principal may have in connection with the Services.

### 8 Quality of Goods and Services

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The Supplier must ensure that:

- (a) the Goods and Services (if any) match the description of the Goods or Services (or both, where applicable) set out in the Procurement Form and comply with the requirements in the Contract;
- (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 Supplier 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 Goods and Services (if any) are fit for the purpose stated in the Contract (including the Specifications), or the purpose which could reasonably be inferred by a Professional Supplier supplying the Goods or performing the Services (or both, where applicable);
- (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 Goods and any warranties specifically 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 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.

## 9 Assignment and Subcontracting

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### 9.1 Assignment

- (a) The Principal may, without the Supplier's consent, assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity who is solvent and able to make the payments required by the Contract, and able to comply with the Principal's other obligations.
- (b) The Supplier 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 consent of the Principal.

### 9.2 Subcontracting

- (a) Unless otherwise provided for in the Panel Agreement, the Supplier must not, without the prior written approval of the Principal, subcontract any part or all of the supply of the Goods or performance of the Services.
- (b) Approved Subcontractors are taken to have the approval of the Principal for the purposes of clause 9.2(a).
- (c) The Principal may request further information regarding a subcontractor and the particulars of the Goods or Services (or both) to be subcontracted in order to approve (or otherwise) a subcontractor under clause 9.2(a).
- (d) Approval to subcontract does not relieve the Supplier from any liability or obligation under the Contract, and the Supplier is absolutely liable:
  - (1) to the Principal for the acts and omissions of any subcontractor, its personnel and the Supplier's Personnel as if they were acts or omissions of the Supplier;
  - (2) for undertaking the appropriate due diligence to ensure that the subcontractor is able to supply the Goods or perform the Services (or both) that it has been subcontracted in accordance with clause 9.2; and
  - (3) for the direct payment of all subcontractors, notwithstanding the Principal's approval (or otherwise) of any subcontractor (including Approved Subcontractors).

## 10 Sustainable procurement

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- (a) The Supplier acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices (**Sustainability Objectives**).
- (b) The Supplier agrees to:

- (1) use reasonable endeavours to conduct its business and perform the Supplier's Obligations 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 Supplier 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 Supplier's Obligations are performed in accordance with sustainable sources and free from modern slavery.
- (c) The Supplier acknowledges that a rating system may be implemented by WALGA or the Principal to assess the Supplier's performance in relation to the Sustainability Objectives, and in considering whether to engage the Supplier or another supplier.
- (d) The Principal may request from time to time, and the Supplier must provide within the timeframe stipulated in such request:
- (1) evidence of the Supplier's compliance with the Sustainability Objectives, and this clause 10; and
  - (2) any other information reasonably requested by the Principal in connection with this clause 10.
- (e) The Supplier must allow the Principal (or its nominee) prompt access to the Supplier's records in connection with this clause 10, and to otherwise audit the Supplier's compliance with this clause 10 and the Sustainability Objectives.

## 11 Working on the Site

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- (a) This clause 11 applies to the extent the Supplier or any of the Supplier's Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Contract.
- (b) Without limiting the Supplier's obligations under clause 4(c), the Supplier agrees to comply, and to ensure that the Supplier's Personnel comply, with:
  - (1) the Site Requirements;
  - (2) the Principal's health, safety and environmental Policies and Guidelines applicable from time to time;
  - (3) all relevant Work Health and Safety Requirements, environmental Laws and Approvals;
  - (4) all reasonable directions from a representative of the Principal; and
  - (5) the health, safety and environmental conditions in this clause 11.
- (c) The Supplier must work co-operatively with other contractors working at the Site, and must use best endeavours to avoid any conflict between the Supplier's activities and the activities of other contractors.
- (d) Where required, each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by the Principal to enter the Site.
- (e) The Supplier must ensure that the Supplier's Personnel entering the Site:



- (1) maintain the Site in a safe, secure, clean and orderly manner having regard to the condition of the Site immediately before such entry; and
  - (2) do not interfere with the activities of the Principal or any other person while on the Site.
- (f) The Supplier must notify the Principal as soon as possible of any Incident.
- (g) If the Supplier or any of the Supplier's Personnel fail to comply with any obligation under this clause 11, then the Principal may in its discretion deny that person access to the Site or require that person to leave the Site immediately.
- (h) The Principal is not liable to the Supplier for any Loss or Claim arising from the removal of any person under clause 11(g).
- (i) Nothing in this clause 11 affects any obligation or duty imposed on the Supplier or the Supplier's Personnel to secure and have proper regard to the health and safety of any of the Supplier's Personnel.

## 12 Records and reporting

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- (a) The Supplier must keep and maintain accurate and reasonably detailed books and records in connection with the performance of the Supplier's Obligations.
- (b) Within a reasonable time of the Principal's request, the Supplier will permit the Principal to audit and examine any books and financial records necessary for the verification of compliance with the Supplier's Obligations.
- (c) From time to time, the Principal may request that the Supplier provide a report setting out in detail such information about:
  - (1) the Goods and Services (if any); or
  - (2) any other obligations of the Supplier under the Contract,and the Supplier must provide the report to the Principal within 10 Business Days of that request, unless another reasonable timeframe is stipulated in the Principal's request.

## 13 Defects

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- (a) At any time prior to the expiry of the Defects Liability Period, the Supplier must, at its cost and at the Principal's direction, promptly rectify all Defects other than a Defect caused by the negligence of the Principal.
- (b) Nothing in this clause 13 prejudices any other right that the Principal may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.
- (c) If the Principal directs the Supplier to rectify a Defect and the Supplier 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 Supplier, rectify the Defect itself; and
  - (2) the rectification costs incurred by the Principal will be a debt due and payable on demand from the Supplier 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.

## 14 Confidentiality, Publicity and Data Security

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### 14.1 Confidential Information

- (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 its obligations under the Contract;
    - (B) that a party may disclose to its legal advisers or auditors who are under a duty of confidence;
    - (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
    - (D) that the Principal may (where applicable) disclose to the Minister responsible for administering the *Local Government Act 1995* (WA) or that Minister's department; 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.
- (b) The Supplier must return to the Principal, or destroy or delete as the Principal directs, all original documents and copies (including in electronic form) in the Supplier's possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information of the Principal, at the earliest of the following:
- (1) immediately on demand by the Principal; or
  - (2) on the termination or expiry of the Contract.
- (c) The Supplier acknowledges that the Principal is subject to the *Freedom of Information Act 1992* (WA) and that the Contract or documents relating to the Contract may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. The Principal has no liability to the Supplier whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

### 14.2 Publicity and reputation

The Supplier must not:

- (a) make any public announcement or issue any media release relating to the Contract or the performance of the Services 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.

### 14.3 Data Security

The Supplier must:

- (a) do all things that a Professional Supplier 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 Supplier may retain one copy of any Principal Data solely for the purposes of its own records or if required by Law.

## 15 Intellectual Property

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- (a) Subject to clause 15(c), the Supplier IP remains vested in the Supplier and the Principal IP remains vested in the Principal.
- (b) The Principal will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods (**Project IP**).
- (c) The Supplier grants to the Principal a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Supplier IP to the extent necessary to use the Goods and the Project IP.

## 16 Indemnity and limits of liability

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### 16.1 Indemnity

- (a) The Supplier indemnifies the Principal for any Loss suffered or incurred by the Principal arising out of, or in connection with, the supply of the Goods and performance of the Services, the Supplier's breach of the Contract, or negligence of the Supplier or the Supplier'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) reputational damage to the Principal;
  - (4) any breach of Law; or
  - (5) any breach of a party or third party's Intellectual Property.



- (b) The indemnity in clause 16.1(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.

## 16.2 Limits of liability

- (a) To the extent permitted by Law, but subject to clause 16.2(c), each party will have no liability to the other party arising under or in connection with the Contract (however so arising, including negligence) for Excluded Loss.
- (b) Subject to clause 16.2(c), the Supplier's liability to the Principal, and the Principal's liability to the Supplier, 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.
- (c) The Supplier's liability in respect of the following is not limited by clauses 16.2(a) or 16.2(b) and is not counted towards the limit under clause 16.2(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 Supplier 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 16.2(c)(6), the exclusions and limits of liability under clauses 16.2(a) or 16.2(b) will not be taken into account.
- (e) A party's liability in respect of the following is not limited by clauses 16.2(a) or 16.2(b), and is not counted towards the limit under clause 16.2(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.
- (f) Liability to which a limit under clause 16.2(b) applies is counted towards the limit when discharged by a party.

## 17 Price and invoicing

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### 17.1 Payment of the Price

- (a) The Principal must pay the Price to the Supplier for the Goods and Services (if any) in accordance with this clause 17.
- (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 20;
- (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.

## 17.2 Payment claims

- (a) Subject to clause 17.2(b), on or promptly after the later of the Goods Date of Delivery of the Goods or the Services Date of Completion of the Services, the Supplier may submit to the Principal a written payment claim for the amount due to the Supplier.
- (b) If set out in the Procurement Form, the Supplier may submit a payment claim to the Principal at the end of each month, or any other period agreed by the Principal in writing, for any Goods supplied and Services performed (if any) during that or previous months provided those Goods or Services have not already been included in a Tax Invoice issued to the Principal.
- (c) Each payment claim must:
  - (1) set out the total amount claimed and an itemised breakdown of that amount;
  - (2) include details and supporting information reasonably required to assess whether the amounts claimed are payable in accordance with the Contract; and
  - (3) otherwise be in the form and include the information reasonably required by the Principal.
- (d) The Supplier must provide any further information and assistance reasonably requested by the Principal for the purposes of assessing a payment claim.

## 17.3 Payment schedule

- (a) Within 10 Business Days of receipt of the payment claim under clause 17.2, the Principal must assess the payment claim and issue a payment schedule to the Supplier.
- (b) The payment schedule must identify the payment claim to which it relates (if any) and set out:
  - (1) the amount claimed which is payable to the Supplier;
  - (2) the reasons for any difference (including, if applicable, the reasons for withholding or setting off any amount); and
  - (3) any other amounts that are payable to the Supplier in accordance with the Contract (including any relevant additional amounts for authorised Variations under clause 20).
- (c) The Principal may, at any time, issue a payment schedule correcting any error discovered in a previous payment schedule.



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### 17.4 Tax invoice

- (a) Within 2 Business Days of the Principal issuing a payment schedule to the Supplier, the Supplier must provide the Principal with a Tax Invoice for the amount specified in the payment schedule.
- (b) A Tax Invoice must include:
  - (1) the Procurement Form number;
  - (2) a description of the Goods delivered, including the quantity of Goods and the Goods Date of Delivery;
  - (3) a description of the Services performed (if any);
  - (4) the amount being claimed for the Goods and the Services (if any);
  - (5) the amount of any applicable GST; and
  - (6) any further information reasonably requested by the Principal.
- (c) Tax Invoices must be submitted to the details provided by the Principal in writing, as updated from time to time.
- (d) The Supplier 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 Supplier is registered for GST purposes.

### 17.5 Payment

Subject to clause 17.7, the Principal must pay the amount stated as due to the Supplier in a payment schedule within 8 Business Days after the provision by the Supplier of a Tax Invoice in compliance with clause 17.4.

### 17.6 Payment not approval

Payment under this clause 17 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 Principal, but will be taken to be payment on account only.

### 17.7 Principal's right of set-off

The Supplier agrees that the Principal may:

- (a) deduct from amounts due to the Supplier any money due or which may become due from the Supplier to the Principal under, or in connection with, the Contract; and
- (b) withhold payment of any amounts payable under the Contract pending resolution of any Dispute

## 18 GST

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- (a) Words or expressions used in this clause 18 which are defined in the GST Act have the same meaning as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under the Contract are exclusive of GST and where the value of any supply is to be calculated with



reference to a monetary turnover figure, the GST exclusive value of the monetary turnover will be used in calculating the value of the supply.

- (c) If a party (**supplier**) makes a taxable supply under or in connection with the Contract:
- (1) the consideration otherwise payable or to be provided for that supply is increased by, and the party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;
  - (2) subject to the supplier complying with clause 18(c)(3), the recipient must pay the GST amount in Australian dollars, at the same time and in the same manner as it must pay or provide the consideration for that supply; and
  - (3) the supplier must issue a valid Tax Invoice or adjustment note to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (d) Where an amount is payable to a party as a reimbursement, indemnification or similar payment calculated by reference to a Loss, cost, expense or any other amount incurred by that party, then such amount must be reduced by any part of that Loss, cost, expense or other amount which is attributable to GST for which that party, or the representative member of any GST group of which that party is a member, is entitled to an input tax credit.

## 19 Insurance

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- (a) The Supplier acknowledges and agrees that:
- (1) it is obliged under the Panel Agreement to take out and maintain Insurances, which, as a minimum, Insurances will apply in respect of contracts with WALGA members (including the Principal) for the procurement of goods, services and works under the Panel Agreement;
  - (2) due to the nature of the Goods and Services, the Procurement Form may require that levels of insurances greater than those required under clause 19(a)(1) be provided by the Supplier; and
  - (3) in circumstances where the Procurement Form requires higher levels of insurances, the Supplier must ensure that it has insurances sufficient to meet such requirements.
- (b) The parties acknowledge and agree that the relevant insurance provisions of the Panel Agreement are repeated and apply in the Contract, as modified for the application to the supply of Goods and performance of Services under the Contract.
- (c) Subject to clause 9.2, if the Supplier subcontracts any part of the Supplier's Obligations, the Supplier must ensure that each subcontractor effects and maintains all of the insurances required under the Panel Agreement, as appropriate for the Goods and Services being supplied or performed (as applicable) by that subcontractor, before the subcontractor commences providing any part of the Goods and Services.
- (d) In addition to the Principal's rights under clause 22(a)(2), if the Supplier fails to comply with any of its obligations under this clause 19, the Principal may,



immediately suspend the Contract in accordance with clause 21(a)(4) or refuse payment of any amount due to the Supplier until evidence of the Insurances required by this clause 19 is produced to the Principal.

- (e) The Insurances contemplated by this clause 19 are primary and not secondary to the indemnities referred to in the Contract.

## 20 Variations

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- (a) If at any time the Principal notifies the Supplier that it requires a Variation, the Supplier must promptly provide a Variation Quotation.
- (b) If the Principal accepts a Variation Quotation, the Principal will issue a Variation Notice to the Supplier and:
  - (1) the Supplier 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 Services 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 Goods Date for Delivery will be adjusted as set out in the Variation Quotation.
- (c) The Supplier 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.

## 21 Suspension by Principal

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- (a) The Principal may, by written notice to the Supplier, suspend the performance of all or part of the Supplier's Obligations if:
  - (1) the Supplier breaches a provision of the Contract and fails to comply with a written notice issued by the Principal within 10 Business Days of receiving such notice;
  - (2) the Principal reasonably believes that the Supplier, or the Supplier's Personnel, is not complying or will not comply with clause 11;
  - (3) the Principal reasonably believes that the Supplier, or any Supplier's Personnel, is endangering or will endanger any person, property or the environment; or
  - (4) the Supplier has failed to ensure insurance is effected and maintained in accordance with clause 19, or to provide evidence of insurance in accordance with clause 19.
- (b) The Principal's written notice must state the Principal's reasons for the suspension.
- (c) The Supplier must recommence any Supplier's Obligations suspended under this clause 21 as soon as practicable after receiving written notice from the Principal directing the Supplier to recommence those Supplier's Obligations. The Supplier must notify the Principal in writing before recommencing the suspended Supplier's Obligations.





- (d) Subject to clause 21(e), the Supplier is not entitled to make any Claim against the Principal arising out of, or in connection with, a suspension under this clause 21.
- (e) If the Principal suspends any Supplier's Obligations for a reason other than the reasons identified in clause 21(a), the Supplier will be paid the standby rates approved by the Principal (acting reasonably).

## 22 Termination

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- (a) The Principal may terminate the Contract by notice to the Supplier:
  - (1) at any time and in its discretion by giving the Supplier not less than 20 Business Days' notice;
  - (2) if the Supplier commits a breach of the Contract and fails to remedy that default 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 Supplier may terminate the Contract by notice to the Principal if the Principal does not comply with its obligations under clause 17.5 and fails to remedy that default within 15 Business Days of notice of that default from the Supplier.
- (c) On termination of the Contract, the Supplier must:
  - (1) immediately cease performance of the Supplier's Obligations;
  - (2) ensure that accurate notes are made of the Goods supplied or Services performed (or both, where applicable) up to the date of termination and delivered to the Principal; and
  - (3) promptly comply with its obligations under clause 14.1(b) and deliver to the Principal all employee lists, working papers, correspondence, documents and other property belonging to the Principal that may be in the Supplier's possession or under its control.
- (d) If the Contract is terminated under clause 22(a) or 22(b):
  - (1) the Principal must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by the Principal; and
  - (2) the Supplier is not entitled to, and the Principal is not liable for, any additional parts of the Price whatsoever.
- (e) Subject to clause 22(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.



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## 23 Dispute Resolution

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- (a) Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief from a court in respect of a Dispute until they have complied with the dispute resolution process in accordance with this clause 23.
- (b) If any Dispute arises between the parties in relation to the Contract, either party may give notice of the Dispute to the other party (**Dispute Notice**).
- (c) A Dispute Notice must specify the:
  - (1) alleged facts on which the Dispute is based;
  - (2) legal basis on which the Dispute is made, including any issues of law relevant to the Dispute (if any); and
  - (3) relief that is claimed.
- (d) Within 3 Business Days of a party receiving a Dispute Notice, the parties must arrange for a senior representative from the Principal and a senior representative from the Supplier to meet to attempt to resolve the Dispute.
- (e) If a Dispute is not resolved within 3 Business Days of the parties' senior representatives meeting to attempt to resolve the Dispute in accordance with clause 23(d), the parties may escalate the Dispute to WALGA for WALGA to assist the parties in the resolution of the Dispute.
- (f) If a Dispute is not resolved within 20 Business Days of the party receiving a Dispute Notice, either party who has given a Dispute Notice under clause 23(b) and complied with this clause 23 may end the dispute resolution process and commence court proceedings in relation to the Dispute.
- (g) If a Dispute exists, each party must continue to comply with its obligations under the Contract, except with respect to any aspect that is in dispute.

## 24 Notices

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### 24.1 How and where notices may be sent

- (a) Subject to clause 24.1(b), 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 Party Details or otherwise notified; or
  - (2) sent by email, as an attachment to an email, to the email address of the party set out in the Party Details or otherwise notified.
- (b) A notice under clause 22 may only be delivered by hand or sent by post.

### 24.2 When notices are taken to have been delivered and received

A notice is effective:

- (a) if delivered by hand, on the date it is delivered to the recipient;
- (b) if sent by post:
  - (1) within Australia to an Australian address, on the third Business Day following the postage date; or

- (2) from a place within Australia to an address outside of Australia, or from a place outside Australia to an address within Australia, on the eighth Business Day following the postage date; or
- (c) if sent by email, on the earlier of:
  - (1) an email delivery confirmation report being received by the sender; or
  - (2) 4 hours after the email was 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,

provided that where any notice is sent by email and is received after 4:00pm (recipient's time) or on a day other than a Business Day (recipient's time), then the notice will be deemed as being received at 9:00am on the next Business Day (recipient's time).

## 25 PPSA

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- (a) 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.
- (b) 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 Supplier 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.
- (c) If the Supplier holds any security interests for the purposes of the PPS Law and if failure by the Supplier to perfect such security interests would materially adversely affect the security interests the Principal holds or affect its business, the Supplier agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Supplier must take all steps under the PPS Law to continuously perfect any such security interests including all steps necessary:
  - (1) for it to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
  - (2) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (d) Notwithstanding clause 14.1, neither the Principal nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the



disclosure of such information. This clause 25(d) does not prevent disclosure where that disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## 26 Security of Payment Act

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- (a) This clause 26 only applies to the extent that the Goods and Services constitute 'construction work' carried out within Western Australia or involves the supply of 'related goods and services' (both as defined in the Security of Payment Act).
- (b) Nothing in the Contract will affect, restrict or limit the Supplier's right to:
  - (1) make an adjudication application pursuant to section 28 of the Security of Payment Act; and
  - (2) suspend the supply of Goods and performance of Services under section 62 of the Security of Payment Act.
- (c) Notwithstanding anything else in the Contract, the Supplier must:
  - (1) promptly give the Principal a copy of any notice the Supplier receives from a subcontractor; and
  - (2) ensure that each subcontractor promptly gives the Principal a copy of any notice that the subcontractor receives from another party (including the Supplier), under any of sections 28, 30, 57 or 62 of the Security of Payment Act.
- (d) If the Principal becomes aware that a subcontractor is entitled to suspend the supply of goods and performance of services (which forms part of the Goods and Services) under section 62 of the Security of Payment Act, the Principal may (at its discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of goods and services forming part of the Goods and Services, and any amount paid by the Principal is recoverable from the Supplier as a debt due to the Principal. The Principal:
  - (1) must notify the Supplier prior to making payment pursuant to this clause 26(d); and
  - (2) will not make a payment pursuant to this clause 26(d) where the Supplier demonstrates to the Principal that it has reasonable grounds to have withheld payment to the subcontractor.
- (e) The Supplier indemnifies, and holds harmless, the Principal against all Loss of any nature suffered or incurred by the Principal arising out of:
  - (1) a suspension by a subcontractor of the supply of goods and performance of services (which forms part of the Goods and Services) under section 62 of the Security of Payment Act;
  - (2) a subcontractor exercising a statutory lien, under section 64 of the Security of Payment Act, over unfixed plant or materials supplied by the subcontractor for use in carrying out services and goods forming part of the Goods or Services (or both); and
  - (3) a failure by the Supplier to comply with its obligations under clause 26(c).
- (f) For the purposes of this clause 26, a reference to a subcontractor refers to any party engaged by the Supplier, any of its subcontractors or any other party to



supply goods and perform services which forms part of the Goods and Services.

## 27 General

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### 27.1 Governing law and jurisdiction

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.

### 27.2 Entire agreement and reliance

- (a) The 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, understandings and agreements in respect of its subject matter.
- (b) Neither party has relied on any statement by the other party not expressly included in the Contract.

### 27.3 Waiver

No party to the Contract may rely on the words or conduct of any other party (including any delay in exercising a right) as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. For the purposes of this clause 27.3, "waiver" includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 27.4 Relationship of the parties

- (a) The Supplier acknowledges and agrees that:
  - (1) it is an independent contractor and not an agent of the Principal;
  - (2) the Contract is entered into in accordance with the terms of the Panel Agreement;
  - (3) the Contract is entered into between the Principal and the Supplier, and WALGA is not a party to the Contract; and
  - (4) the Supplier has no authority to bind the Principal, or WALGA, by contract or otherwise.
- (b) In the event that the Supplier assigns or novates any right, benefit or interest under the Panel Agreement in accordance with the terms of the Panel Agreement, the Supplier must provide the Principal with such reasonable assistance as may be necessary to assign or novate (as applicable) the Supplier's rights, benefit or interest under the Contract to the assignee or novatee (as applicable).
- (c) In carrying out their respective obligations under the Contract, each party is acting independently of the other party. Nothing in the Contract creates a partnership, trust or agency between the parties or imposes any fiduciary duties on either party in relation to the other, unless expressly stated.



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### 27.5 Amendment

An amendment of any term of the Contract must be in writing and signed by both parties.

### 27.6 Invalidity and enforceability

- (a) Any provision of the Contract which is invalid or unenforceable will not affect the remaining provisions of the Contract which remain in full force and effect.
- (b) If any provision of the Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid.

### 27.7 Executing the Contract

- (a) Each party must do all things and execute all documents necessary to give full effect to its obligations under the Contract and the transactions contemplated by it.
- (b) The Supplier represents and warrants that it:
  - (1) has full power and authority to enter into and perform its obligations under the Contract; and
  - (2) has taken all necessary action to authorise the execution, delivery and performance of the Contract.
- (c) The Contract may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute the Contract by signing any counterpart.

### 27.8 Rights under the Contract

- (a) Unless the Contract provides otherwise:
  - (1) a party may exercise a right, power or remedy in any way at its discretion; and
  - (2) the rights, powers and remedies provided by the Contract are in addition to any rights, powers and remedies provided at Law.
- (b) Nothing in the Contract:
  - (1) gives a party authority to bind any other party in any way; or
  - (2) imposes any fiduciary duties on a party in relation to any other party.
- (c) The Principal is not required to engage the Supplier exclusively to supply the Goods or perform the Services.

### 27.9 Survival

Clauses 1, 2, 14, 15, 16, 22(e) and 27, and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract, will survive the termination or expiry of the Contract, and are enforceable at any time at Law.