



WALGA

Member Contract Conditions (Temporary Personnel Services)

Version 2 (July 2023)

This contract document has been developed for exclusive use with WALGA's preferred supplier program. As between WALGA and the Member, WALGA owns the rights to use, modify and adapt this document. Use of this form of contract outside of WALGA's Preferred Supplier Program, without WALGA's prior written consent, is strictly prohibited.

Table of contents

1	Definitions	1
2	Interpretation	7
3	Term and scope	7
4	Labour hire details	8
	4.1 Selection process.....	8
	4.2 Labour hire engagement.....	9
5	Performance of Services	9
6	Quality of Services	11
7	Timesheets	11
8	Work health and safety	11
9	Sustainable procurement	13
10	Records and reporting	14
11	Confidentiality, publicity, privacy and data security	14
	11.1 Confidential Information.....	14
	11.2 Publicity and reputation.....	15
	11.3 Privacy.....	15
	11.4 Data security.....	15
12	Conflicts and soliciting	16
	12.1 Conflict of interest.....	16
	12.2 No soliciting.....	16
13	Assignment and subcontracting	17
	13.1 Assignment.....	17
	13.2 Subcontracting.....	17
14	Intellectual Property	17
15	Indemnity and limits of liability	18
	15.1 Indemnity.....	18
	15.2 Limits of liability.....	18
16	Fee and invoicing	19
	16.1 Employment costs.....	19
	16.2 Payment of the Fee.....	19
	16.3 Tax invoice.....	20
	16.4 Payment.....	20
	16.5 Payment not approval.....	20
	16.6 Principal's right of set-off.....	20
	16.7 Reimbursement of out-of-pocket expenses.....	21

Contents

17	GST	21
18	Insurance	22
19	Termination and suspension of labour hire engagement	22
20	Termination of Contract	23
21	Dispute Resolution	24
22	Notices	24
	22.1 How and where notices may be sent.....	24
	22.2 When notices are taken to have been delivered and received.....	24
23	General	25
	23.1 Governing law and jurisdiction.....	25
	23.2 Entire agreement and reliance.....	25
	23.3 Waiver.....	25
	23.4 Relationship of the parties.....	25
	23.5 Amendment.....	26
	23.6 Invalidity and enforceability.....	26
	23.7 Executing the Contract.....	26
	23.8 Rights under the Contract.....	26
	23.9 Survival.....	27

1 Definitions

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

Term	Meaning
Agreed Hours	in respect of a specific engagement of Temporary Personnel, the work days, hours and times of the Temporary Personnel as set out in the Temporary Personnel Form for the relevant Temporary Personnel.
Business Day	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	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.
Confidential Information	<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"> 1 is, by its nature, confidential; or 2 is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential, <p>but does not include information which:</p> <ol style="list-style-type: none"> 3 is or becomes public knowledge other than by a breach of the Contract; or 4 has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.
Contract	<p>the agreement formed between the parties regarding the provision of Temporary Personnel, being:</p> <ol style="list-style-type: none"> 1 either (as applicable): <ul style="list-style-type: none"> – the relevant Procurement Form; or – the details in VendorPanel; and 2 the Temporary Personnel Services Contract Conditions, <p>with the documents forming part of the Contract prevailing in the order of precedence set out in this definition.</p>
Contractor	the party defined as the "Contractor" in the Procurement Form.

Term	Meaning
Contractor IP	<p>any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which:</p> <ol style="list-style-type: none"> 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 provision of the Temporary Personnel, or the performance of the Services by the Temporary Personnel; and 2 the Contractor makes available, contributes, brings to or uses in connection with the Contract.
Contractor Personnel	<p>an employee, contractor, individual or candidate of the Contractor available for labour hire engagements, as advised by the Contractor from time to time, including in response to a Temporary Personnel Request.</p>
Defect	<p>in respect of a specific engagement of Temporary Personnel, any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Services performed by the relevant Temporary Personnel.</p>
Dispute	<p>a difference, dispute or issue arising at any time between the parties arising out of, or in connection with, the Contract.</p>
Dispute Notice	<p>a notice in respect of a Dispute given under clause 21(b).</p>
End Date	<p>the date specified as the "End Date" in the Procurement Form.</p>
Excluded Loss	<p>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.</p>
Fee	<p>the fee or rates set out in the Temporary Personnel Form.</p>
Government Agency	<p>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.</p>
GST	<p>has the meaning given in section 195-1 of the GST Act.</p>

Term	Meaning
GST Act	<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.
Incident	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: <ol style="list-style-type: none"> 1 deviations from the Principal's health, safety and environmental Policies and Guidelines; and 2 non-compliances with relevant health, safety and environmental Laws and authorisations and any public complaint regarding the Contractor or the Temporary Personnel and relating to the performance of their respective obligations under the Contract (including, for the Temporary Personnel, its performance of the Services).
Insurances	the insurances which the Contractor is required to obtain under the Panel Agreement.
Intellectual Property	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.
Labour Hire Commencement Date	in respect of a specific engagement of Temporary Personnel, the commencement date set out in the Temporary Personnel Form for the relevant Temporary Personnel.
Labour Hire Expiry Date	in respect of a specific engagement of Temporary Personnel, the expiry date set out in the Temporary Personnel Form for the relevant Temporary Personnel.
Labour Hire Location	in respect of a specific engagement of Temporary Personnel, the location set out in the Temporary Personnel Form for the relevant Temporary Personnel.
Laws	any act, ordinance, regulation, subordinate legislation, by-law, award of the State, Territory or Commonwealth (as applicable) in which the Temporary Personnel are performing the Services.
Loss	any liability, cost, expense, loss, personal injury (including illness), death or damage, amounts payable on a Claim (whether or not the Claim is

Term	Meaning
	successful), suit, charge, diminution in value, action, statutory or equitable compensation, demand, legal costs and disbursements.
Maximum Liability Amount	by reference to each party: 1 the amount in the Procurement Form; or 2 where no amount is provided in the Procurement Form, an amount equal to the aggregate amount of Fees due and payable under the Contract at the date of any Claim.
Moral Rights	has the meaning given in the <i>Copyright Act 1968</i> (Cth).
Out-Of-Pocket Expenses Cap	in respect of a specific engagement of a Temporary Personnel, the monthly amount of out-of-pocket expenses set out in the Temporary Personnel Form for the relevant Temporary Personnel.
Panel Agreement	the agreement between WALGA and the Contractor, regarding the panel pursuant to which the Contractor is providing Temporary Personnel to the Principal.
Party Details	the details of each party set out in the Procurement Form.
Policies and Guidelines	all of the policies and guidelines of the Principal made available to the Contractor or Temporary Personnel (or both), as amended from time to time.
Principal	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).
Principal Data	information and materials of the Principal in respect of which the Contractor or any Temporary Personnel has custody or control for the purpose of providing the Temporary Personnel or the Temporary Personnel performing the Services (as appropriate) or which are accessed, transmitted or stored using the Contractor’s information systems or equipment under the Contract.
Principal IP	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.

Term	Meaning
Privacy Legislation	is defined in clause 11.3(b).
Procurement Form	as appropriate: <ol style="list-style-type: none"> 1 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 that allows for the provision of Temporary Personnel; or 2 where a Contract is to be created in VendorPanel, the specifics contained on that system, by reference to the provision of Temporary Personnel, necessary for a Contract to be created.
Responsible Officer	with respect to a labour hire engagement, each party's responsible officer as set out in the Temporary Personnel Form, or such other person as a party may advise to the other party by notice, from time to time.
Services	in respect of a specific engagement of Temporary Personnel, any services to be performed by the Temporary Personnel for the relevant Temporary Personnel.
Specifications	the specifications and requirements describing the Services to be performed by the Temporary Personnel, as set out in the Procurement Form for the relevant Temporary Personnel.
Start Date	the date specified as the "Start Date" in the Procurement Form.
Sustainability Objectives	has the meaning given in clause 9.
Tax	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	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.
Temporary Personnel	each Contractor Personnel engaged by the Principal under the Contract to perform the Services on a labour hire basis, as set out in the relevant Temporary Personnel Form.

Term	Meaning
Temporary Personnel Form	<p>the form or document in relation to a specific engagement of Temporary Personnel, setting out the specifics with respect to that engagement, and that is:</p> <ol style="list-style-type: none"> 1 substantially in the form set out in Part C of the Procurement Form; or 2 unequivocally intended by the parties to record the information set out in Part C of the Procurement Form, and, for clarity, may include an email or other document produced by an electronic system used by the Contractor.
Temporary Personnel Request	<p>a written request by the Principal to the Contractor to enquire whether the Contractor has any suitable Contractor Personnel for a labour hire engagement, in a form provided by the Principal from time to time.</p>
Temporary Personnel Services Contract Conditions	<p>this document called 'Member Contract Conditions for Temporary Personnel Services'.</p>
Term	<p>the period of time from the Start Date to the End Date.</p>
VendorPanel	<p>WALGA's online quotation, compliance and contract management system, as updated from time to time, which includes the system formerly branded as "eQuotes".</p>
WALGA	<p>the Western Australian Local Government Association (ABN 28 126 945 127) of 170 Railway Parade, West Leederville, in the State of Western Australia.</p>
Work Health and Safety Requirements	<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"> 1 Laws; 2 the National Standard for Construction Work, codes of practice, Australian Standards and compliance codes; 3 directions, notices and the like issued by any Government Agency or in accordance with any Laws; 4 any such matters of which the Contractor has been informed by the Principal, orally or in writing; and 5 any relevant Policies and Guidelines, <p>and, for clarity, includes the <i>Work Health and Safety Act 2020</i> (WA) and the <i>Work Health and Safety (General) Regulations 2022</i> (WA).</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 Contractor must give the Principal notice of that inconsistency, and the Principal will direct the Contractor as to the interpretation and construction to be followed.

3 Term and scope

- (a) The Contract commences on the Start Date and ends on the End Date, unless terminated under clause 19.
- (b) During the term of the Contract, the Principal may request the Contractor to provide its Contractor Personnel on labour hire engagements to the Principal in accordance with the process set out in clause 4.1.

- (c) The Contractor may, but is not obliged to, provide its Contractor Personnel on labour hire engagements to the Principal and any labour hire engagements provided under the Contract must be coordinated with the Principal.
- (d) For clarity, the Principal may make multiple requests under clause 3(b) and there may be multiple Contractor Personnel engaged under the Contract.
- (e) The Contract is a non-exclusive agreement for the supply of labour and it does not prevent or restrict the Principal from entering into contracts with other labour hire companies for the purpose of procuring labour hire personnel the same or similar to the Contractor Personnel.
- (f) If any Contractor Personnel presented by the Contractor are already known to the Principal or have been introduced by another labour hire company, the Principal will advise the Contractor. No Fee or any other payments will be payable by the Principal in respect of any Contractor Personnel already known to the Principal or introduced by another labour hire company unless the parties agree a Temporary Personnel Form for the relevant Contractor Personnel in accordance with clause 4.2(a).
- (g) Subject to clause 19(a), the Contract continues in full force and effect notwithstanding the termination or expiry of the Panel Agreement.

4 Labour hire details

4.1 Selection process

- (a) The Principal may provide a Temporary Personnel Request to the Contractor if it is seeking to engage Temporary Personnel.
- (b) The Contractor must respond in writing to the Temporary Personnel Request within the timeframe set out in the Temporary Personnel Request (which may be the same day if such request is provided on an urgent basis):
 - (1) informing the Principal that it is unable to provide the Temporary Personnel; or
 - (2) with a list of Contractor Personnel for the labour hire engagement, including:
 - (A) the proposed hourly rate applicable to each Contractor Personnel in accordance with the pricing information and rates set out in the Procurement Form; and
 - (B) the costings of any additional pre-employment checks or medicals requested by the Principal but that are not included in the pricing information and rates set out in the Procurement Form.
- (c) Unless otherwise directed by the Principal, when providing the list of Contractor Personnel under clause 4.1(b), the Contractor must also provide to the Principal:
 - (1) copies of each Contractor Personnel's curriculum vitae;
 - (2) copies of written employment or character references in respect of each Contractor Personnel;
 - (3) evidence that each Contractor Personnel has the prerequisite qualifications specified in the Temporary Personnel Request;

- (4) copies of any compliance certificates, registrations, licences, additional pre-employment checks, and medicals requested by the Principal; and
 - (5) if the Contractor Personnel is engaged on a contractor basis, details of any fees or payments paid or payable in respect of that Contractor Personnel to any third party entity providing labour hire services to the Contractor.
- (d) If specified in the Temporary Personnel Request, the Contractor must conduct an interview process in accordance with any reasonable directions set out in the Temporary Personnel Request.

4.2 Labour hire engagement

- (a) If, following the selection process set out in clause 4.1, the Principal wishes to engage any Contractor Personnel as a Temporary Personnel under the Contract and the Contractor agrees to this request:
- (1) the parties must agree a Temporary Personnel Form for the relevant Temporary Personnel; and
 - (2) the labour hire engagement of the relevant Contractor Personnel will be governed by the terms and conditions of the Contract and the Temporary Personnel Form.
- (b) A labour hire engagement will commence on the Labour Hire Commencement Date and will continue until the Labour Hire Expiry Date unless terminated in accordance with the Contract.
- (c) The Temporary Personnel will be engaged to perform the Services set out in the relevant Temporary Personnel Form for the Principal during the labour hire engagement.
- (d) The Temporary Personnel's place of work during the labour hire engagement will be the Labour Hire Location. The Principal may require the Temporary Personnel to work in other locations from time to time, and may also require the Temporary Personnel to travel within Western Australia.
- (e) The Principal and the Contractor will each appoint a Responsible Officer for each labour hire engagement. For clarity, nothing prevents a party appointing the same person as:
- (1) both their Responsible Officer and their representative; and
 - (2) their Responsible Officer for one or more labour hire engagements.
- (f) The Temporary Personnel will remain an employee or contractor (as applicable) of the Contractor at all times during the labour hire engagement.
- (g) The Principal and the Contractor may agree to substitute a Temporary Personnel at any time prior to the Labour Hire Expiry Date, on the same terms and conditions of the Contract and the relevant Temporary Personnel Form.

5 Performance of Services

- (a) The Contractor must:

- (1) comply with all applicable Laws, Work Health and Safety Requirements, the Policies and Guidelines and any reasonable directions given by the Principal;
 - (2) not cause reputational damage to the Principal or WALGA; and
 - (3) provide all such information and assistance as the Principal reasonably requires.
- (b) The Contractor must ensure that, in performing the Services, the Temporary Personnel:
- (1) performs the Services in accordance with clause 5 and otherwise in accordance with the Contract;
 - (2) have all of the necessary skills and training and hold all of the required authorisations, qualifications and licences to perform the Services in accordance with all applicable Laws and industry standards, and, where the Temporary Personnel are not Australian residents or Australian citizens, have all the necessary permits and authorisations to perform the Services;
 - (3) works the Agreed Hours and do not work for more than the Agreed Hours without the prior approval of the Principal;
 - (4) are punctual and reliable and reports to the Principal's Responsible Officer as required;
 - (5) complies with all applicable Laws, Work Health and Safety Requirements, the Policies and Guidelines, and any reasonable directions given by the Principal;
 - (6) when requested by the Principal, provides a current National Police Check (with the exception of spent convictions under the *Spent Convictions Act 1988* (WA));
 - (7) are alcohol and drug free while carrying out the Services and are willing to submit at any time to alcohol and drug testing to be performed by any person that may be reasonably nominated by the Principal;
 - (8) are in a physical, mental and emotional state that enables them to perform the Services in a competent, professional and diligent manner and in a manner that does not:
 - (A) threaten the safety or health of themselves or others; or
 - (B) prejudice safe working practices, safety and care of property or continuity of work,
 and answers reasonable questions asked by the Principal in each regard;
 - (9) do not cause reputational damage to the Principal or WALGA;
 - (10) do not interfere with the Principal's activities or the activities of any other person at the Labour Hire Location;
 - (11) understands and agrees to the requirements of the Contract which are relevant to the Temporary Personnel; and
 - (12) provides all such information and assistance as the Principal reasonably requires.

- (c) The Contractor agrees that the Principal will have sole control, supervision and direction of the tasks which the Temporary Personnel performs during the labour hire engagement, and the manner in which those tasks are performed.
- (d) The Contractor must, at its own expense, provide and maintain in safe working condition all plant, equipment and resources (including personal protection equipment where required by the Contract) for use by the relevant Temporary Personnel in the performance of the Services, except for any items to be provided by the Principal as set out in the Temporary Personnel Form.

6 Quality of Services

The Contractor must ensure that the Temporary Personnel performs the Services, so that:

- (a) the Services match the description of the Services set out in the Temporary Personnel Form and comply with the requirements of the Contract;
- (b) the Services are performed with the professional skill, care and diligence and in a professional manner in accordance with industry standards;
- (c) any goods, materials, supplies, equipment or other items the Temporary Personnel uses or the Contractor supplies as part of the Services are new and of merchantable quality and are free from defects in design, materials and workmanship; and
- (d) the Services are fit for the purpose stated in the Contract (including the Specifications), or the purpose which could reasonably be inferred by a person with skill and experience in the performance of services the same as, or similar to, the Services.

7 Timesheets

- (a) The Contractor must provide the Temporary Personnel with timesheets, in a format and containing such details as the Principal requires, for the Temporary Personnel to record the hours the Temporary Personnel performs the Services during the labour hire engagement.
- (b) The Contractor must ensure that the Temporary Personnel truthfully and accurately completes the timesheet provided under clause 7(a).
- (c) If required by the Principal, the Contractor must ensure that the Temporary Personnel submits the timesheets to the Principal's Responsible Officer for approval before forwarding them to the Contractor.

8 Work health and safety

- (a) By accepting the Temporary Personnel on, or near the vicinity of, the Labour Hire Location, the Principal agrees to provide, so far as is reasonably practicable, at its expense:
 - (1) a safe and healthy working environment to the Temporary Personnel as required under relevant Work Health and Safety Requirements and

- environmental Laws, including providing all appropriate personal protection equipment and safety inductions (unless the Contract specifically provides for the Contractor or Temporary Personnel providing personal protection equipment); and
- (2) the Contractor, on reasonable notice, with any information required to enable the Contractor to confirm the provision of a safe and healthy work environment to the Temporary Personnel and meet any duties that the Contractor has under applicable Work Health and Safety Requirements and environmental Laws.
- (b) Without limiting any other obligation under the Contract, the Contractor must ensure that the Temporary Personnel complies with:
- (1) all Labour Hire Location requirements made known to the Temporary Personnel from time to time;
- (2) the Principal's health, safety and environmental Policies and Guidelines applicable from time to time;
- (3) all relevant Work Health and Safety Requirements and environmental Laws;
- (4) all reasonable instructions from a representative of the Principal; and
- (5) the health, safety and environmental conditions in this clause 8.
- (c) Where required, the Contractor must ensure the Temporary Personnel's attendance at all appropriate and relevant induction courses required by the Principal to enter the Labour Hire Location. Attendance by the Temporary Personnel at such inductions is to be at the Contractor's cost, unless the Contract otherwise provides for those costs to be paid by the Principal.
- (d) The Contractor must ensure that the Temporary Personnel:
- (1) work co-operatively with other persons working at the Labour Hire Location;
- (2) maintain the Labour Hire Location in a safe, secure, clean and orderly manner having regard to the condition of the Labour Hire Location immediately before such entry; and
- (3) do not interfere, and use best endeavours to avoid any conflict, with the activities of the Principal or any other person while at the Labour Hire Location.
- (e) The Contractor must ensure that the Temporary Personnel notify the Principal as soon as possible of any Incident.
- (f) The Contractor must:
- (1) comply with, and ensure that the Temporary Personnel complies with, the requirements of all Work Health and Safety Requirements and environmental Laws applicable to the labour hire engagement; and
- (2) cooperate with the Principal to enable the Principal to comply with its obligations under all relevant Work Health and Safety Requirements and environmental Laws.
- (g) The Contractor's Responsible Officer (or such other person as the parties may agree from time to time) may access the Labour Hire Location (or such other place at which Temporary Personnel are performing the Services) for the purpose of meeting any duties that the Contractor may have with respect to the health and safety of the Temporary Personnel under any applicable Work Health and Safety Requirements and environmental Laws. The Contractor's

Responsible Officer or any other person accessing the Labour Hire Location under this clause 8(g) must comply with any reasonable directions given by the Principal in connection with this access, including undertaking any site safety inductions, where reasonably required.

- (h) If the Contractor or the Temporary Personnel fail to comply with any obligation under this clause 8, the Principal may, in its discretion, deny that person access to the Labour Hire Location or require that person to leave the Labour Hire Location immediately.
- (i) The Principal is not liable to the Contractor or any Temporary Personnel for any Loss or Claim arising from the removal of any person under clause 8(h).
- (j) Nothing in this clause 8 affects any obligation or duty imposed on the Contractor or any Temporary Personnel to secure and have proper regard to the health and safety of the Temporary Personnel.

9 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 Temporary Personnel 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 Temporary Personnel 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 9; and
 - (2) any other information reasonably requested by the Principal in connection to this clause 9.
- (e) The Contractor must allow the Principal (or its nominee) prompt access to the Contractor's records in connection with this clause 9, and to otherwise audit the Contractor's compliance with this clause 9 and the Sustainability Objectives.

10 Records and reporting

- (a) The Contractor must keep and maintain accurate and reasonably detailed books and records in connection with the performance of the Contractor's obligations under the Contract.
- (b) Within a reasonable time of the Principal's request, the Contractor will permit the Principal to audit and examine any books and records necessary for the verification of compliance with the Contractor's obligations under the Contract.
- (c) From time to time, the Principal may request that the Contractor provide a report setting out in detail such information about:
 - (1) the Temporary Personnel;
 - (2) the Services; or
 - (3) any other obligations of the Contractor under the Contract,and the Contractor 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.

11 Confidentiality, publicity, privacy and data security

11.1 Confidential Information

- (a) Each party must, and the Contractor must ensure that each Temporary Personnel:
 - (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 Contractor must, and must procure that each Temporary Personnel, return to the Principal, or destroy or delete as the Principal directs, all original documents and copies (including in electronic form) in the Contractor's or Temporary Personnel'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;

- (2) on the end of each specific labour hire engagement of each Temporary Personnel; or
- (3) on the termination or expiry of the Contract.
- (c) If the Principal requires, the Contractor must ensure that each Temporary Personnel promptly executes a confidentiality undertaking in the form provided by the Principal from time to time.
- (d) Without limiting the Contractor's obligations in this clause 11 with regard to confidentiality, the Temporary Personnel may:
 - (1) consult with the Contractor for advice and assistance in the performance of the Services;
 - (2) for the purposes outlined in clause 11.1(d)(1), maintain a computer link with the Contractor;
 - (3) with the Principal's prior approval, attend meetings, training sessions, in-house seminars and social events conducted by the Contractor; and
 - (4) receive internal correspondence and publications of the Contractor for the purpose of keeping up-to-date with developments of the Contractor.
- (e) The Contractor acknowledges that the Principal may be 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 Contractor whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992 (WA)*.

11.2 Publicity and reputation

The Contractor must not:

- (a) make any public announcement or issue any media release (including on social media) relating to the Contract or the provision of the Temporary Personnel 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, trade mark or brand.

11.3 Privacy

- (a) The Contractor must comply with any reasonable request by the Principal for personal information relating to the Temporary Personnel.
- (b) The Principal must comply with the *Privacy Act 1988 (Cth)* (**Privacy Legislation**) in relation to any personal information (as defined in the Privacy Legislation) of a Temporary Personnel.

11.4 Data security

The Contractor must, and the Contractor must ensure that each Temporary Personnel:

- (a) do all things that a person with skill and experience in:

- (1) in the case of the Contractor, the provision of labour hire services the same, or similar to, the Temporary Personnel; or
- (2) in the case of the Temporary Personnel, the performance of services the same as, or similar to, the Services,

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 (and must procure that each Temporary Personnel return or destroy, as appropriate) in the Contractor's or Temporary Personnel's possession, custody or control, at the earliest of the following:
 - (1) immediately on demand by the Principal;
 - (2) on the end of each specific labour hire engagement of each Temporary Personnel; or
 - (3) on the termination 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.

12 Conflicts and soliciting

12.1 Conflict of interest

- (a) The Temporary Personnel may engage in work other than in connection with the Contract during the labour hire engagement, provided that this does not conflict with the Contractor's obligations under the Contract or the Temporary Personnel's obligations under the confidentiality undertaking entered into by the relevant Temporary Personnel pursuant to clause 11.1(c).
- (b) If the Contractor becomes aware of an actual or potential conflict of interest between its obligations under the Contract or the Temporary Personnel's obligations under the confidentiality undertaking entered into by the relevant Temporary Personnel pursuant to clause 11.1(c) and any work the Temporary Personnel has been offered or is undertaking other than in connection with the Contract, it must immediately inform the Principal in writing and must direct the Temporary Personnel to cease any such other work if requested to do so in writing by the Principal.

12.2 No soliciting

- (a) A party must not, and must ensure that its respective personnel (including Contractor Personnel and any Temporary Personnel) during the Term and for a period of 12 months after the Term, do not:
 - (1) solicit, interfere with, or endeavour to entice any employee or contractor of the other party to leave the employment of that party; or

- (2) counsel, procure or otherwise assist any person to solicit, interfere with, or endeavour to entice any employee or contractor of a party to leave the employment of that party.
- (b) The restriction in clause 12.2(a) does not apply where an employee or contractor responds to an advertisement published by the other party that is targeted to a wide audience of potential applications.

13 Assignment and subcontracting

13.1 Assignment

- (a) The Principal may, without the Contractor'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 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 consent of the Principal.

13.2 Subcontracting

- (a) Unless otherwise provided in the Panel Agreement, the Contractor must not, without the prior written notice of the Principal, subcontract any part or all of the performance of its obligations under the Contract.
- (b) The Principal may request further information regarding a subcontractor and the particulars of the obligations under the Contract to be subcontracted in order to approve (or otherwise) a subcontractor under clause 13.2(a).
- (c) Approval to subcontract does not relieve the Contractor from any liability or obligation under the Contract, and the Contractor is absolutely liable:
 - (1) to the Principal for the acts and omissions of any subcontractor, its personnel (including the Temporary Personnel) as if they were acts or omissions of the Contractor;
 - (2) for undertaking the appropriate due diligence to ensure that the subcontractor is able to perform the obligations that it has been subcontracted in accordance with this clause 13.2; and
 - (3) for the direct payment of all subcontractors,notwithstanding the Principal's approval (or otherwise) of any subcontractor.

14 Intellectual Property

- (a) Subject to clause 14(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 are created in the performance of the Services by the Temporary Personnel.
- (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 for the Contractor to perform its obligations under the Contract or the performance of the Services by the Temporary Personnel.

15 Indemnity and limits of liability

15.1 Indemnity

- (a) The Contractor indemnifies the Principal from and against any Claim or Loss, however caused, brought against, suffered or incurred by the Principal arising out of or in connection with the provision of the Temporary Personnel or the performance of the Services by the Temporary Personnel, the Contractor's breach of the Contract, or the negligence of the Contractor or the Temporary 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 15.1(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.

15.2 Limits of liability

- (a) To the extent permitted by Law, but subject to clause 15.2(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 15.2(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.
- (c) The Contractor's liability in respect of the following is not limited by clause 15.2(a) or 15.2(b), and is not counted towards the limit under clause 15.2(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 Fee 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 15.2(c)(6), the exclusions and limits of liability under clauses 15.2(a) and 15.2(b) will not be taken into account.
- (e) A party's liability in respect of the following is not limited by clauses 15.2(a) or 15.2(b), and is not counted towards the limit under clause 15.2(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 (which, in the case of the Contactor, includes the Temporary Personnel).
- (f) Liability to which a limit under clause 15.2(b) applies is counted towards the limit when discharged by a party.

16 Fee and invoicing

16.1 Employment costs

- (a) During the term of the Contract, the Contractor will continue to be solely responsible for and must pay:
 - (1) the Temporary Personnel's employment entitlements or any entitlements which the Temporary Personnel is entitled to under a contract for services with the Contractor (including superannuation), which it must continue to provide directly to the Temporary Personnel; and
 - (2) payroll taxes, withholding taxes or any other form of cost or charge assessed by any government authority in respect of the Temporary Personnel,
 and the Principal will have no liability whatsoever for these benefits, taxes or costs.
- (b) If requested by the Principal, the Contractor must provide a statutory declaration by a person authorised by the Contractor declaring that the Contractor has paid all wages, salary and other entitlements of each Temporary Personnel for which the Fee is being claimed.

16.2 Payment of the Fee

- (a) The Principal must pay the relevant Fee for each labour hire engagement to the Contractor.
- (b) The Fee is inclusive of the Contractor's and the Temporary Personnel's compliance with the Contract and Taxes and no additional amounts (including in respect of any superannuation, annual leave, personal leave or other absence or leave taken by the Temporary Personnel during the labour hire engagement) will be payable by the Principal, subject to:
 - (1) any cost and expense being included or excluded from being paid under the Contract in accordance with the terms of the Panel Agreement; and
 - (2) any amounts payable as set out in the Procurement Form.

16.3 Tax invoice

- (a) At the end of each month during the term of the Contract, or any other period specified by the Principal in writing, the Contractor must submit a Tax Invoice to the Principal for the Fee payable by the Principal for each Temporary Personnel engaged under the Contract during that month.
- (b) A Tax Invoice must include:
 - (1) the Procurement Form number;
 - (2) the hours worked by the Temporary Personnel for which the Fee is being claimed;
 - (3) a description of the Temporary Personnel provided;
 - (4) a description of the Services performed by the Temporary Personnel;
 - (5) the Fee amount being claimed for the Temporary Personnel;
 - (6) itemised costs for any pre-employment checks and medicals requested by the Principal under the Contract;
 - (7) the amount of any applicable GST; and
 - (8) 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) If a Tax Invoice does not contain the information required in clause 16.3(b), 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 which complies with clause 16.3(b).
- (e) 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.

16.4 Payment

Subject to clause 16.6, the Principal must pay the amount payable within 30 days after the provision by the Contractor of a Tax Invoice in compliance with clause 16.3.

16.5 Payment not approval

Payment under this clause 16 will not be taken as proof or admission that all, or any part of, the provision of the Temporary Personnel or performance of the Services by the Temporary Personnel (or both) have been performed to the satisfaction of the Principal, but will be taken to be payment on account only.

16.6 Principal's right of set-off

The Contractor agrees that the Principal may:

- (a) deduct from amounts 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
- (b) withhold payment of any amounts payable under the Contract pending resolution of any dispute.

16.7 Reimbursement of out-of-pocket expenses

- (a) Subject to clauses 16.7(b) and 16.7(c), the Principal must reimburse to the Temporary Personnel, or pay on their behalf, any reasonable travel or other out-of-pocket expenses that the Temporary Personnel may incur in the course of providing the Services during the labour hire engagement in accordance with the Principal's Policies and Guidelines.
- (b) The Principal will not be required to pay or reimburse the Temporary Personnel or the Contractor for any expenses incurred in relation to the Temporary Personnel travelling to and from the Labour Hire Location (except in relation to travel for off-site visits or meetings related to the Services).
- (c) The Contractor and the Temporary Personnel must not in any month incur, or agree to incur, any travel or other out-of-pocket expenses in connection with the Contract in excess of the Out-Of-Pocket Expenses Cap without the prior consent of the Principal and the Principal will not be liable to reimburse the Contractor or the Temporary Personnel for any costs incurred in breach of this clause 16.7(c).

17 GST

- (a) Words or expressions used in this clause 17 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 17(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 or any other amount incurred by that party, then such amount must be reduced by any part of that Loss 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.

18 Insurance

- (a) The Contractor 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 its obligations under the Contract, the Procurement Form may require that levels of insurances greater than those required under clause 18(a)(1) be provided by the Contractor; and
 - (3) in circumstances where the Procurement Form requires higher levels of insurance, the Contractor must ensure that it has insurances sufficient to meet such requirements.
- (b) The parties acknowledge and agree that the relevant provisions of the Panel Agreement are repeated and apply in the Contract, as modified for the application to the provision of the Temporary Personnel under the Contract.
- (c) Subject to clause 13.2, if the Contractor subcontracts any of its obligations under the Contract, the Contractor must ensure that each subcontractor effects and maintains all of the insurances required under the Panel Agreement, as appropriate for the obligations being performed by that subcontractor, before the subcontractor commences providing any part of those obligations.
- (d) In addition to the Principal's rights under the Contract, if the Contractor fails to comply with any of its obligations under this clause 18, the Principal may, immediately suspend or terminate the labour hire engagement in accordance with clause 19 or refuse payment of any amount due to the Contractor until evidence of the Insurances required by this clause 18 is produced to the Principal.
- (e) The Insurances contemplated by this clause 18 are primary and not secondary to the indemnities referred to in the Contract.

19 Termination and suspension of labour hire engagement

- (a) The Principal may:
 - (1) immediately suspend a labour hire engagement for any reason by notice to the Contractor;
 - (2) terminate a labour hire engagement at any time by giving the Contractor 1 weeks' notice; and
 - (3) terminate a labour hire engagement immediately if a Temporary Personnel:
 - (A) engages in serious misconduct;
 - (B) is negligent in the performance of the Services; or
 - (C) brings the Principal into disrepute,as determined by the Principal in its discretion.

- (b) A labour hire engagement will automatically terminate upon:
 - (1) the labour hire engagement being suspended for a continuous period of 2 months;
 - (2) the resignation or termination of the Temporary Personnel from employment or engagement with the Contractor; or
 - (3) the termination of the Contract under clause 20.
- (c) If a labour hire engagement is suspended or terminated under this clause 19, the Principal will not be obliged to pay the Contractor that portion of the Fee relevant to the labour hire engagement for the period between:
 - (1) in the case of suspension, the date that the suspension commences and the date that the suspension ends; and
 - (2) in the case of termination, the date that the labour hire engagement is terminated and the Labour Hire Expiry Date.

20 Termination of Contract

- (a) The Principal may terminate the Contract at any time and in its discretion by giving notice to the Contractor. The termination will take effect from the date set out in the notice.
- (b) The Contractor may terminate the Contract by notice to the Principal if the Principal does not comply with its obligations under clause 16.4 and fails to remedy that default within 15 Business Days of notice of that default from the Contractor.
- (c) On termination of the Contract:
 - (1) the Contractor must, and ensure that each Temporary Personnel must:
 - (A) immediately cease performance of their respective obligations under the Contract (including performance of the Services);
 - (B) ensure that accurate notes are made of the Services performed up to the date of termination and delivered to the Principal; and
 - (C) promptly comply with its obligations under clause 11.1(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 Contractor's or Temporary Personnel's possession or under their control;
 - (2) the Principal must pay the Contractor that part of the Fee for each labour hire engagement current at the date of termination, but is not required to pay that portion of the Fee from the date that the Contract is terminated until the Labour Hire Expiry Date; and
 - (3) the Contractor is not entitled to, and the Principal is not liable for, any additional parts of the Fee whatsoever.
- (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.

21 Dispute Resolution

- (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 21.
- (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 Contractor 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 21(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 21(b) and complied with this clause 21 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.

22 Notices

22.1 How and where notices may be sent

- (a) Subject to clause 22.1(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 19 may only be delivered by hand or sent by post.

22.2 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).

23 General

23.1 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.

23.2 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.

23.3 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. In this clause 23.3, "waiver" includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

23.4 Relationship of the parties

- (a) The Contractor acknowledges and agrees that:
 - (1) it is an independent contractor of the Principal, and neither it nor the Temporary Personnel are agents 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 Contractor, and WALGA is not a party to the Contract;

- (4) the Contractor has no authority to bind the Principal, or WALGA, by contract or otherwise; and
 - (5) it will ensure that the Temporary Personnel do not hold themselves out as being authorised to exercise any responsibilities for or on behalf of the Principal other than as provided by the Contract.
- (b) 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.
- (c) In the event that the Contractor assigns or novates any right, benefit or interest under the Panel Agreement in accordance with the terms of the Panel Agreement, the Contractor must provide the Principal with such reasonable assistance as may be necessary to assign or novate (as applicable) the Contractor's rights, benefit or interest under the Contract to the assignee or novatee (as applicable).

23.5 Amendment

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

23.6 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.

23.7 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 Contractor 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.

23.8 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 Contractor exclusively to provide the Temporary Personnel.

23.9 Survival

Clauses 1, 2, 11, 12.2, 14, 15, 20(d) and 23, and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract, will survive termination or expiry of the Contract, and are enforceable at any time at Law.