*Text Legend* *Delete this legend before finalising the document*

*Red text is an instruction and should be deleted after reading*

*Blue text should be edited or deleted as required.* *Change Blue text to Black if keeping*

*Black text should generally be considered as fixed text*

Request

[Products and services procurement templates - Request - ICT, CUA, regional group buy &/or panel arrangement]

REQUEST TITLE:

[Insert Request Title Here]

REQUEST NUMBER:

[Please insert the Request Number]

CLOSING TIME:

2:30 PM [Please insert the Closing Date], Western Australia

ISSUED BY:

[Insert Public Authority Name Here]

[Or If Common Use Arrangement]

ISSUED BY THE CONTRACT AUTHORITY ON BEHALF OF:

The Public Authorities and other persons and bodies described as Potential Customers in Clause 2.1 of the General Conditions

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PART A – REQUEST NO [Insert Request Number]

# INTRODUCTION

## BACKGROUND

*[Provide an overview of the proposed contract, where products/services are to be delivered, proposed contract period and other relevant contract information. Corporate information is not required.]*

## SUBMISSION OF OFFER

*[Do not change this clause number as it is referenced in the Request Conditions]*

### HAND AND POST LODGEMENT

*[Due to COVID-19, electronic tender lodgement is strongly encouraged and the option for submission of hardcopies by hand or post is discouraged.* *Any agency who considers hardcopy submission to be critical should discuss with Tendering Services or their tender box operators, as applicable, prior to issuing the Request].*

The Respondent may not submit the Offer by hand or post.

[OR if hand or postal lodgement is critical]

*[Where lodgement of an Offer, by hand, post and/or fax, is going to be at the Agency then the Agency is to ensure it has in place appropriate procedures for the receipt, opening and registration of offers to safeguard their security and confidentiality]*

The Respondent may submit the Offer:

|  |  |
| --- | --- |
| By hand at: | By post at: |
| **[insert Agency address for hand submission OR Tendering Services, Optima Centre,16 Parkland Road, OSBORNE PARK WA 6017.]** | **[insert Agency address for postal submission OR Tendering Services, Locked Bag 11, OSBORNE PARK BC WA 6916]** |

If the Respondent submits the Offer by hand or post, the Respondent must submit the Offer to the relevant addresses above and provide One (1) unbound copy marked “Original Copy” and provide [insert number] (X) copies.

### FACSIMILE LODGEMENT

*[Please ensure that any Request closing at Tendering Services is marked "Offers may not be submitted by facsimile"]*

The Respondent may submit the Offer by facsimile at **[insert Agency's fax number]**.

[OR]

Offers may not be submitted by facsimile.

### ELECTRONIC LODGEMENT

The Respondent may submit the Offer electronically by uploading at: www.tenders.wa.gov.au.

Tenders WA can facilitate the uploading of files to a maximum 100MB limit per upload request.

The Respondent must be registered on Tenders WA to submit an offer electronically.

Guidelines to assist Respondents with registering on Tenders WA and lodging an Offer electronically can be downloaded at [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au) by following the links ‘Help’ > ‘Help Guides’ > ‘Suppliers Help Guides’.

*[OR]*

Offers may not be submitted electronically

### Conditions regarding the submission of Offers (including late lodgement and mishandling) are contained in the Request Conditions.

## OFFER VALIDITY PERIOD

The Offer Validity Period is for a period of [insert number] months.

## TENDERS WA

The Respondent may register (free) for the Tenders WA website to ensure that the complete Tender has been downloaded including any and all addenda.

## BRIEFING

*[Delete this clause if a briefing is not required]*

A [mandatory / non-mandatory] briefing to Respondents will be conducted at:

Date: [Insert Date]

Time: [Insert time] AM/PM Western Australia

Location:

The Respondent is requested to confirm its attendance by no later than [time] AM/PM, Western Australia & [date] by contacting [contact person’s name and phone number].

[Only insert the following paragraph if the briefing is mandatory]

Failure to attend the Request briefing will result in the Offer being ineligible for further consideration.

## CONTACT PERSONS

Different enquiries can be best dealt with by the most appropriate contact, shown below.

The Respondent must not contact any other person within Government or any consultant engaged in relation to this Request to discuss this Request.

**CONTRACTUAL AND ROUTINE ENQUIRIES:**

Name:

Title:

Telephone:

E-mail:

**TECHNICAL / CUSTOMER ENQUIRIES:**

Name:

Title:

Telephone:

E-mail:

ADVICE ON DELIVERING OFFERS:

Name: Tendering Services

Telephone: (08) 6551 2345

[OR your agency contact and delete the above]

Name: [Insert name]

Telephone: [Insert phone number]

Facsimile: [Insert fax number]

*[Delete the following paragraph if not applicable, ie. not advertised on Tenders WA, no option to submit offers via upload to Tenders WA]*

ADVICE ON USING TENDERS WA:

Name: Procurement Systems Support

Telephone: (08) 6551 2020

## REQUEST CONDITIONS

The “Request Conditions” are contained in the Part A of the *Request Conditions and General Conditions of Contract* [August 2019] located at [www.wa.gov.au/government/publications/request-conditions-and-general-conditions-of-contract](https://www.wa.gov.au/government/publications/request-conditions-and-general-conditions-of-contract) and contain important provisions regarding the nature of this Request and the consequences of the Respondent submitting an Offer. The Respondent is deemed to have read and considered the Request Conditions prior to submitting an Offer.

# SELECTION PROCESS

## SELECTION PROCESS

Value for Money is a key State Supply Commission policy objective to ensure that when purchasing products and/or services, Public Authorities achieve the best possible outcome, for every dollar spent, by assessing the costs and benefits of, and the risks inherent in, an Offer, rather than simply selecting the lowest Offered Price.

In determining Value for Money, the Contract Authority in the case of a Common Use Arrangement or otherwise the Customer will:

1. apply relevant State Supply Commission and Government policies to the assessment of Offers;
2. require Offers to meet the Pre-Qualification Requirements in Section 3 in Part B;
3. assess Offers against the Compliance and Disclosure Requirements in Section 4 in Part B;
4. assess Offers against the Qualitative Requirements in Section 5 in Part B;
5. assess Offers against the Insurance Requirements in Section 6 in Part B; and
6. assess the Offered Prices which includes assessing the Offered Price and Pricing Requirements in Schedule 3.

The determination of Value for Money will require a consideration of all of the above factors and any other matters that the Contract Authority or Customer considers relevant.

## STATE SUPPLY COMMISSION AND GOVERNMENT POLICIES

The following State Supply Commission policies apply to this Request:

1. Value for Money;
2. Probity and Accountability;
3. Open and Effective Competition; and
4. Sustainable Procurement.

The following Government policies apply *OR* policy applies [Amend as appropriate]to this Request:

1. Buy Local Policy; including the Addenda; and

*[Include the following statement if the procurement has a metropolitan contract delivery point and is valued at $1,000,000 or above OR if the procurement has a regional contract delivery point and is valued at $500,000 or above. For further information on the Western Australian Participation Strategy, go to the Industry Link Advisory Service (ILAS) website (*[*https://industrylink.wa.gov.au*](https://industrylink.wa.gov.au/)*).]*

1. Western Australian Industry Participation Strategy (WAIPS).

The Buy Local Policy can be viewed and downloaded at [www.wa.gov.au/government/publications/buy-local-policy](https://www.wa.gov.au/government/publications/buy-local-policy) or copies of these policies are available from the State Supply Commission (telephone (08) 6551 1500). [Delete if WAIPS is not applicable]The WAIPS can be downloaded at the Industry Link Advisory Service (ILAS) website (<https://industrylink.wa.gov.au>).

*[Include the following statement if the procurement is valued at $680,000 or above. The inclusion of this statement is required due to the agreement of the State of Western Australia to be bound by the Government Procurement chapters of the Free Trade Agreements that the Australian Government has entered into with the United States, Chile, Korea, Japan and Singapore. For further information on the FTAs, go to* [*www.wa.gov.au/government/publications/free-trade-agreement-guidelines*](https://www.wa.gov.au/government/publications/free-trade-agreement-guidelines) *and download the FTA Guidelines document.]*

This Request is a covered procurement under the Australia-United States Free Trade Agreement (AUSFTA), the Australia-Chile Free Trade Agreement (ACl-FTA), the Korea-Australia Free Trade Agreement (KAFTA), the Japan-Australia Economic Partnership Agreement (JAEPA) and the Singapore-Australia Free Trade Agreement (SAFTA).

SCHEDULE 1 - HEAD AGREEMENT DETAILS AND (delete if not a CUA or Panel Arrangement) CUSTOMER CONTRACT DETAILS

[If not a Common Use Arrangement or Panel Arrangement, delete the Head Agreement Details. IF a Common Use Arrangment or Panel Arrangement, the Head Agreement Details AND the Customer Contract Details MUST both be included in the Request.]

**HEAD AGREEMENT DETAILS**

|  |  |
| --- | --- |
| 1. **Contract Authority** | The Contract Authority is the Director General, Department of Finance, as delegate of the State Supply Commission.  [OR if an Agency Specific Panel Arrangement]  The Contract Authority is the Director General *[OR]* Chief Executive Officer, [insert name of Agency] |
| 1. **The Term of the Head Agreement** | The Term of the Head Agreement is [insert number of months or years]. |
| 1. **Commencement Date** | The Contract Authority will notify the Contractor of the Commencement Date in the Letter.  *[OR]*  The Contract Authority and the Contractor will agree on the Commencement Date and the Contract Authority will confirm the agreed Commencement Date in the Letter.  *[OR]*  The Commencement Date is [insert date]. |
| 1. **Extensions** | The Contract Authority has [insert number] options to extend the Term, each option having a one (1) year duration. [delete if not applicable] |
| 1. **Notice of Extension** | [insert period of notice of extension]  OR  Clause 3.8 of the General Conditions applies. |
| 1. **Price Variation** | The Price is fixed for the Term.  OR (option 2)  The Price is fixed for the first year of the Term.  On each anniversary of the Commencement Date, the Price will be varied by the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth).  OR (option 3)  The Price is fixed for the first year of the Term.  The Price will be varied after the first year of the Term on [SPECIFY DATE] by [SPECIFY MECHANISM].  [Important Note: If price variations are linked to exchange rate variations seek advice on the financial risk involved from the WA Treasury Corporation (WATC) at www.watc.wa.gov.au or on (08) 9235 9100.]  *[The following text must be included if option 2 or 3 above are used]* The Contractor shall apply in writing for the Contract Authority’s approval each time a revised price is to be applied to the Head Agreement. Twenty one (21) days prior notice is required for a Price Variation request.  Documentation will be required to justify applications for revised Head Agreement prices during the term of the Head Agreement.  No price variation is payable unless and until approved by the Contract Authority.  Any request by the Contractor for back-payment of price variations will not be considered. |
| 1. **Public Liability** | Public liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Services for an amount of not less than [$20 million] for any one occurrence and unlimited in the number of occurrences happening in the period of insurance. |
| 1. **Workers’ Compensation** | Workers’ compensation insurance in accordance with the provisions of the *Workers’ Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **$50 million** for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers’ Compensation and Injury Management Act 1981.* |
| 1. **Contract Management Requirements** | *Supplier Performance Management requirements should be considered and included here. Refer to the Supplier Performance Management Framework located at* [*www.wa.gov.au/government/collections/goods-and-services-procurement-practice-resources*](https://www.wa.gov.au/government/collections/goods-and-services-procurement-practice-resources)*.*  Reporting  [insert details]  Meetings  [insert details]  Key Performance Indicators  [insert details]  Contract Authority’s Representative  [insert details]  Contract Authority’s address and email details  [insert details] |
| 1. **Confidential Information** | IMPORTANT NOTE: If there is any particular information that the Contractor must treat as confidential, insert the first option below and specify that particular information.  If there is not any particular information that the Contractor must treat as confidential, insert the second option below.  The Contract Authority specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:  [Insert confidential information]  OR (second option)  For the purposes of paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions, there is no information that is specified by the Contract Authority as confidential. |
| 1. **Panel Arrangement** | NOTE: If this request is to establish a CUA Panel Arrangement then select the first option. If this request is to establish an Agency Specific Panel Arrangement then select the second option. If the request is not to establish a Panel Arrangement, select the final option.  This Request is to establish a Panel Arrangement. Clause 4(b) of the General Conditions applies.  OR  This Request is to establish a Panel Arrangement. Clause 4(c) of the General Conditions applies.  OR  Clause 4(b) and 4(c) of the General Conditions do not apply. |
| 1. **Police Clearance** | Clause 18.4 of the General Conditions applies.  OR  Clause 18.4 of the General Conditions does not apply. |
| 1. **Confidential Declaration – Prevention of Paedophilia** | Clause 18.5 of the General Conditions applies.  OR  Clause 18.5 of the General Conditions does not apply. |
| 1. **Warranties** | The Contractor must give, or ensure the Contract Authority has the benefit of, the following warranties:  [Insert warranties]  If the warranty specified exceeds the Term of the Customer Contract, the warranty survives the expiry or termination of the Customer Contract.  OR  For the purposes of clause 19.5 of the General Conditions, no warranties are specified. |
| 1. **Intellectual Property Owner** | IMPORTANT NOTE: Under clause 23.1 of the General Conditions, the owner of Intellectual Property Rights in New Material is the State of Western Australia, unless otherwise specified. If the owner is to be an entity other than the State (e.g. a particular statutory authority), specify that entity in this Special Condition.  [ ] is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.1 of the General Conditions  OR  If the owner of Intellectual Property Rights in New Material is to be the Contractor, use this Special Condition.  The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions. |
| 1. **Publicity** | IMPORTANT NOTE: Under clause 24.4 of the General Conditions, the Contractor may not use the name or logo of the Contract Authority, the Customer or any other Public Authority without the requisite prior written consent. If there is "any other Public Authority", specify in this Special Condition.  [ ] is specified for the purposes of clause 24.4 of the General Conditions.  OR  For the purposes of clause 24.4 of the General Conditions, no other Public Authority is specified. |
| 1. **Termination Without Cause** | *This clause is to be included in all CUAs and regional group buying arrangements. Not required for Agency Panel Arrangements.*  *Please contact* [*procurementpractice@finance.wa.gov.au*](mailto:procurementpractice@finance.wa.gov.au) *for the clause.* |
| 1. **Western Australian Industry Participation Strategy – Requirements For CUA and Panel Arrangements** | IMPORTANT NOTE  Include where:   * the estimated total Head Agreement value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * a full or conditional exemption from inclusion of the Standard Participation Plan HAS been granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Exemption Reporting**    1. The Contractor must submit a completed Exemption Reporting for CUA and Panel Arrangements report to the Contract Authority:       1. annually (**Annual Report**); and       2. upon the expiry of the Head Agreement (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the Exemption Reporting Template for CUA and Panel Arrangements (**Exemption Reporting Template for CUA and Panel Arrangements**) which is available to download from the Industry Link portal at <https://industrylink.wa.gov.au/resources-library>.   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Contract Authority to the Contractor; and      2. a Final Report no later than two months after the expiry of the Head Agreement.   3. Where the Head Agreement is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Contract Authority may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause** **survives**   This clause survives the termination or expiration of the Head Agreement. |
| 1. **Western Australian Industry Participation Strategy – Requirements For Standard Participation Plans** | IMPORTANT NOTE  Include where:   * the estimated total Head Agreement contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Standard Participation Plan as a qualitative requirement HAS NOT been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Standard Participation Plan Reporting**    1. The Contractor must submit a completed Standard Participation Plan Report to the Contract Authority:       1. annually (**Annual Report**); and       2. upon the expiry of the Head Agreement (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the Standard Participation Plan Reporting Template (**Standard Participation Plan Reporting Template**) which is available to download from the Industry Link portal at [www.industrylink.wa.gov.au > Participation Plans > Reporting](https://industrylink.wa.gov.au/participation-plans/reporting-for-participation-plans).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Contract Authority to the Contractor; and      2. a Final Report no later than two months after the expiry of the Head Agreement.   3. Where the Head Agreement is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Contract Authority may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Head Agreement. |
| 1. **Pro Bono Legal Services** | [IMPORTANT NOTE: This condition and Appendix 1 must be included in all Requests where the Contractor will be providing legal services to the State of Western Australia.]  As a condition of provision of Services under this Head Agreement, the Contractor must provide Pro Bono Legal Services in accordance with the Pro Bono Appendix in Appendix 1. This condition includes compliance with reporting requirements as set out in Appendix 1. |

[The Customer Contract Details must be included in every Request]

**CUSTOMER CONTRACT DETAILS**

|  |  |
| --- | --- |
| 1. **Customer** | [For a CUA or regional group buying arrangement]  The Customer will be specified in the Order.  [OR for an agency specific contract, including Panel Arrangement]  The Customer is the Director General *[OR]* Chief Executive Officer, [insert name of Agency] |
| 1. **The Term of the Customer Contract** | The Term of the Customer Contract is [insert number of months or years]. [If a period contract with extension options, clauses 4 and 5 below must be included]  [OR]  The Term of the Customer Contract will be specified in the Order.  [OR]  The Term will commence on the Commencement Date and will expire when the Services have been supplied in accordance with Clause 6 of the General Conditions.  [OR]  The Term will commence on the Commencement Date and will expire when the Products have been supplied in accordance with Clause 7 of the General Conditions. |
| 1. **Commencement Date** | The Customer will notify the Contractor of the Commencement Date in the [insert either Letter OR Order].  [OR]  The Customer and the Contractor will agree on the Commencement Date and the Customer will confirm the agreed Commencement Date in the [insert either Letter OR Order].  [OR]  The Commencement Date is [insert date] |
| [If you have chosen the first option in clause 2 and wish to establish a period contract with extension options, include clauses 4 and 5 below] | |
| 1. Extensions | The Customer has [insert number] options to extend the Term, each option having a one (1) year duration. |
| 1. Notice of Extension | [insert period of notice]  [OR]  Clause 3.4 of the General Conditions applies. |
| 1. Price Variation | The Price is fixed for the Term.  [OR option 2]  The Price is fixed for the first year of the Term.  On each anniversary of the Commencement Date, the Price will be varied by the Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0): 1 All Groups, Index Numbers – Perth).  [OR option 3]  The Price is fixed for the first year of the Term.  The Price will be varied after the first year of the Term on [SPECIFY DATE] by [SPECIFY MECHANISM].  [Important Note: If price variations are linked to exchange rate variations seek advice on the financial risk involved from the WA Treasury Corporation (WATC) at www.watc.wa.gov.au or on (08) 9235 9100]  The following text must be included if option 2 or 3 above are used] The Contractor shall apply in writing for the Customer’s approval each time a revised price is to be applied to the Contract. Twenty one (21) days prior notice is required for a price variation request.  Documentation will be required to justify applications for revised Contract prices during the term of the Contract.  No price variation is payable unless and until approved by the Customer.  Any request by the Contractor for back-payment of price variations will not be considered. |
| IMPORTANT NOTE: Insurance requirements should be determined by an insurable assessment of the contract risk (and after consultation with the Insurance Commission of WA if required – Ph: 9264 3333). Examples of Insurance requirements set out below: (DELETE INDIVIDUAL INSURANCES IF NOT APPLICABLE) | |
| 1. Public Liability | Public liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Services for an amount of not less than [$20 million] for any one occurrence and unlimited in the number of occurrences happening in the period of insurance. |
| 1. Public and Product Liability | Public and products liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Products and / or Services for an amount of:   1. not less than [$20 million] for any one occurrence; 2. unlimited in the number of occurrences happening in the period of insurance for public liability; and 3. limited in the annual aggregate to [$20 million] for products liability. |
| 1. Professional Indemnity. | Professional indemnity insurance covering the legal liability of the Contractor and the Contractor’s Personnel under the Customer Contract, arising out of any act, negligence, error or omission made or done by or on behalf of the Contractor, or any subcontractor in connection with the Contract for a sum of [$1 million - $5 million] for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.  Professional indemnity insurance required under this clause must include:   1. fraud and dishonesty; 2. defamation; 3. infringement of intellectual property rights; 4. loss of or damage to documents and data; and 5. breach of Australian Consumer Law. |
| 1. **Workers’ Compensation** | Workers’ compensation insurance in accordance with the provisions of the *Workers’ Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **$50 million** for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers’ Compensation and Injury Management Act 1981*. |
| 1. Motor vehicle third party | The $30 million coverage stated in this clause should be reassessed where the nature of the use of the vehicle may require a higher limit, for example, fuel cartage.  Motor vehicle third party insurance covering legal liability against property damage and bodily injury to, or death of, persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the Products and / or Services for an amount of not less than $30 million for any one occurrence or accident. |
| 1. Compulsory third party | Compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Products and / or Services. |
| 1. Technology (Cyber) Liability | The inclusion of this insurance type should be considered for procurements, **when as part of a detailed risk assessment**, a cyber liability exposure is identified.  The risks covered by Technology (Cyber) Liability insurance include the Respondent’s legal liability following a “cyber attack” for claims arising from:  o the public disclosure of personal or corporate information  o liability, loss of, damage or destruction to any property (including data) whilst in the care, custody or control of the Respondent  o a breach of confidentiality or privacy  o any act or omission by an unauthorised person or entity resulting in loss of, damage or destruction to the computer system (including hardware, software and data) owned or used by the Respondent.  Where it is believed this insurance type may need to be included, contact the Insurance Commission of WA to discuss and, as applicable, obtain the clause to be inserted here.  If the clause is added here, the insurance type will need to be added to the Customer Contract Insurance Requirements table at section 6. |
| 1. **Contract Management Requirements** | *Supplier Performance Management requirements should be considered and included here. Refer to the Supplier Performance Management Framework located at* [*www.wa.gov.au/government/collections/goods-and-services-procurement-practice-resources*](https://www.wa.gov.au/government/collections/goods-and-services-procurement-practice-resources)*.*  Customer’s Representative  [insert details]  Customer’s address and email details  [insert details]  Reporting  [insert details]  Meetings  [insert details]  Key Performance Indicators  [insert details] |
| **SPECIAL CONDITIONS** [delete clauses if not applicable] | |
| 1. Performance Guarantee | [Optional clause - Delete if not applicable. However, if this clause is applicable, then the entire clause must be inserted (including the paragraph stating that this is a mandatory requirement).]  The Customer will conduct a financial due diligence on the short-listed Respondent. If the Customer determines in its discretion that the short-listed Respondent lacks the financial capability to perform the Contract then:   1. the Customer may seek a performance guarantee, in accordance with the form set out in Schedule 4; and 2. if the Customer requests a performance guarantee, then the short-listed Respondent must provide the performance guarantee by the date specified by the Customer.   This is a mandatory requirement. Failure by the Respondent to agree to this requirement will result in the Customer rejecting the Respondent's Offer. |
| 1. Financial Undertaking | [Optional clause - Delete if not applicable. However, if this clause is applicable, then the entire clause must be inserted (including the paragraph stating that this is a mandatory requirement).]  The Customer requires a financial undertaking to the amount of AUD$ [ ]million from an entity, and in a form, acceptable to the Customer.  The financial undertaking may be drawn down on termination of the Contract due to breach of contract by the Contractor or on the occurrence of any of the trigger events identified in these Customer Contract Details.  This is a mandatory requirement. Failure by the Respondent to agree to this requirement will result in the Customer rejecting the Respondent's Offer. |
| 1. Discharge of Performance and Financial Guarantee | [This clause must be inserted if a clause for Performance Guarantee or Financial Undertaking are inserted in this Request.]  The Customer will consent to the discharge of a performance guarantee, financial undertaking or similar arrangement made pursuant to these Special Conditions if, at any time following the termination or expiry of the Customer Contract, the Contractor can demonstrate to the Customer’s reasonable satisfaction that there is no basis for any claim to be made against the performance guarantee, financial undertaking or similar arrangement in the future. |
| 1. Liquidated Damages and Trigger Events | [Optional clause - Delete if not applicable. If this clause is to be used, the amount of liquidated damages and the events that trigger the payment of liquidated damages must be specified.]  [Important Note: if liquidated damages are required also require a financial guarantee for an appropriate amount] |
| 1. Civil Liability Act | [IMPORTANT NOTE: Optional clause - this clause should only be inserted following receipt of advice from the State Solicitor’s Office]  The Customer and the Contractor agree that Part 1F of the *Civil Liability Act (WA) 2002* does not apply to the Customer Contract. |
| 1. Confidential Information | IMPORTANT NOTE: If there is any particular information that the Contractor must treat as confidential, insert the first option below and specify that particular information.  If there is not any particular information that the Contractor must treat as confidential, insert the second option below.  The Customer specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:  [Insert confidential information]  OR (second option).  For the purposes of paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions, there is no information that is specified by the Customer as confidential. |
| 1. Police Clearance | Clause 18.4 of the General Conditions applies.  [OR]  Clause 18.4 of the General Conditions does not apply. |
| 1. Confidential Declaration – Prevention of Paedophilia | Clause 18.5 of the General Conditions applies.  [OR]  Clause 18.5 of the General Conditions does not apply. |
| 1. Warranties | The Contractor must give, or ensure the Customer has the benefit of, the following warranties:  [Insert warranties]  If the warranty specified exceeds the Term of the Customer Contract, the Warranty survives the expiry or termination of the Customer Contract.  [OR]  For the purposes of clause 19.5 of the General Conditions, no warranties are specified. |
| 1. Intellectual Property Owner | IMPORTANT NOTE: Under clause 23.1 of the General Conditions, the owner of Intellectual Property Rights in New Material is the State of Western Australia, unless otherwise specified. If the owner is to be an entity other than the State (e.g. a particular statutory authority), specify that entity in this Special Condition.  Clause 23.1 (a) of the General Conditions applies.  [OR]  [ ] is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.1 of the General Conditions.  [OR]  If the owner of Intellectual Property Rights in New Material is to be the Contractor, use this Special Condition.  The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions. |
| 1. **Working Papers** | Clause 23.1 (e) of the General Conditions applies.  OR  Copyright and property in all Working Papers vest in the Contractor. |
| 1. **Publicity** | IMPORTANT NOTE: Under clause 24.4 of the General Conditions, the Contractor may not use the name or logo of the Customer or any other Public Authority without the requisite prior written consent. If there is "any other Public Authority", specify in this Special Condition.  [ ] is specified for the purposes of clause 24.4 of the General Conditions.  OR  For the purposes of clause 24.4 of the General Conditions, no other Public Authority is specified. |
| 1. **Government Policies** | IMPORTANT NOTE: If the Request requires the Contractor to comply with Government Procurement Policies, then insert the first option below and specify the relevant policies.  If not applicable insert the second option below.  The following obligations are obligations relating to Government procurement policies for the purposes of clause 32 of the General Conditions:  OR (second option)  For the purposes of clause 32 of the General Conditions, no obligations relating to Government procurement policies are specified. |
| 1. **Western Australian Industry Participation Strategy – Requirements For Exempted WAIPS Contracts** | IMPORTANT NOTE  DO NOT INCLUDE THIS CLAUSE IF ESTABLISHING A HEAD AGREEMENT.  Include where:   * the estimated total Customer Contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Standard Participation Plan as a qualitative requirement HAS been granted by the Director General, Department of Jobs, Tourism, Science and Innovation.  1. **Exemption Reporting**    1. The Contractor must submit a completed Exemption Reporting for WAIPS Contracts report to the Customer:       1. annually (**Annual Report**); and       2. upon the expiry of the Customer Contract (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the Exemption Reporting Template for WAIPS Contracts (**Exemption Reporting Template for WAIPS Contracts**) which is available to download from the Industry Link portal at <https://industrylink.wa.gov.au/resources-library>.   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Customer to the Contractor; and      2. a Final Report no later than two months after the expiry of the Customer Contract.   3. Where the Customer Contract is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause** **survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **Western Australian Industry Participation Strategy – Requirements For Standard Participation Plans** | IMPORTANT NOTE  DO NOT INCLUDE THIS CLAUSE IF ESTABLISHING A HEAD AGREEMENT.  Include where:   * the estimated total Customer Contract value is $1 million and above (metropolitan delivery point), or $500,000 and above (regional Western Australia delivery point); and * an exemption from inclusion of the Standard Participation Plan as a qualitative requirement HAS NOT been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation*.*  1. **Standard Participation Plan Reporting**    1. The Contractor must submit a completed Standard Participation Plan report to the Customer:       1. annually (**Annual Report**); and       2. upon the expiry of the Customer Contract (**Final Report**),   in accordance with this clause.   * 1. Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the Standard Participation Plan Reporting Template (**Standard Participation Plan Reporting Template**) which is available to download from the Industry Link portal at [www.industrylink.wa.gov.au > Participation Plans > Reporting](https://industrylink.wa.gov.au/participation-plans/reporting-for-participation-plans).   2. Subject to subclause a iv below, the Contractor must submit:      1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Customer to the Contractor; and      2. a Final Report no later than two months after the expiry of the Customer Contract.   3. Where the Customer Contract is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with subclause a iii (B).   4. The report required by this clause must be endorsed and verified as being true and correct by the Contractor’s Chief Executive Officer, Managing Director or equivalent.  1. **Use of Information**   The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.   1. **Clause survives**   This clause survives the termination or expiration of the Customer Contract. |
| 1. **Disability Access and Inclusion Plan** | Note: this clause should only be used if the Customer is required to have a Disability Access and Inclusion Plan (DAIP) under the Disability Services Act 1993 (In which case, the Customer must take all practicable measures to ensure that the DAIP is also implemented by the Contractor. The DAIP only applies to services provided to the public. It does not apply to services provided by the Contractor directly to the Customer e.g. cleaners, re-wiring of telephones etc.).  If the Customer Contract involves the supply of Services to the public, then the Contractor will:   1. to the extent practicable, implement the Customer’s “Disability Access and Inclusion Plan” prepared under the *Disability Services Act 1993*; and 2. provide a report to the Customer by [insert date] in each year of the Term reporting on the extent to which the Contractor has implemented the Customer’s Disability Access and Inclusion Plan. |
| 1. **Pro Bono Legal Services** | [IMPORTANT NOTE: This condition and Appendix 1 must be included in all Requests where the Contractor will be providing legal services to the State of Western Australia.]  As a condition of provision of Services under this Contract, the Contractor must provide Pro Bono Legal Services in accordance with the Pro Bono Appendix in Appendix 1. This condition includes compliance with reporting requirements as set out in Appendix 1. |

[FOR USE WITH ICT CONTRACTS ONLY]

|  |  |
| --- | --- |
| **Supply of Consultancy and Contracting Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Description of Consultancy and Contracting Services | [insert description of Consultancy and Contracting Services]  OR  [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Resources required | [insert details] |
| 1. Methodology requirements | [insert details] |
| 1. Performance Measures | [insert details] |
| **Hardware/Product Specific Issues** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Details of Hardware required | [insert details] or [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Time for transfer of title | [insert details] |
| 1. Overview of implementation and training services | [insert details] |
| 1. Whether Hardware warranted to be free of defects | [insert period] |
| 1. Whether Hardware warranted to be in compliance with the Specification | [insert details] |
| 1. Period for which warranty applies | [insert details] |
| **Supply of Hardware Maintenance Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements, Schedule 7 - Project Plan and Schedule 9 - Hardware Maintenance Services* | |
| 1. Overview of Hardware Maintenance requirements | [insert details] |
| 1. Commencement date | [insert details] |
| 1. Renewal arrangements | [insert details] |
| 1. Whether maintenance is to commence prior to the expiry of a warranty | [insert details] |
| 1. Whether preventative maintenance is required | [insert details] |
| 1. Whether remedial maintenance is required | [insert details] |
| **Supply of Managed Services** [delete if not applicable]  *See also Schedule - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. General Obligations of Contractor | [insert details] or [Refer to Schedule 2 Specification / Statement of Requirements] |
| 1. Service commencement date | Services shall commence on [insert date] |
| 1. Assets to be acquired from Customer | [insert details] |
| 1. Content of procedures manual | [insert details] |
| 1. Service delivery requirements | [insert details] |
| 1. Reporting intervals (if not monthly) | [insert details] |
| 1. Qualifications on transition-out obligations | [insert details] |
| **Supply of Software Development Services** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Overview of the Software to be developed | [insert details] |
| 1. Resources required | [insert details] |
| 1. Date for submission of project plan | [insert details] |
| 1. Date for approval of project plan | [insert details] |
| 1. Extended period for approval of project plan | [insert details] |
| 1. Date for submission of Design Specification | [insert details] |
| 1. Date for approval of Design Specification | [insert details] |
| 1. Extended period for approval of Design Specification | [insert details] |
| 1. Documentation requirements | [insert details] |
| 1. Whether the source code is to be placed in escrow | [insert details] |
| 1. Whether Developed Software can be used prior to Acceptance | [insert details] |
| **Software Licensing** [delete if not applicable]  *See also Schedule 2 - Specification/Statement of Requirements and Schedule 7 for the Project Plan* | |
| 1. Description of Licensed Software | [insert details] |
| 1. Special or alternative licence conditions (attach if necessary) | [insert details] |
| 1. Number of copies of Licensed Software | [insert details] |
| 1. Whether the licence can be transferred to another government entity | [insert details] |
| 1. Whether the licence is transferable | [insert details] |
| 1. Period of licence | [insert details] |
| 1. Customer's record keeping requirements | [insert details] |
| 1. Implementation and training services | [insert details] |
| 1. Requirements for updates and new releases | [insert details] |
| 1. Period during which Contractor must maintain superseded version (if not 18 months) | [insert details] |
| 1. Designated equipment for the Licensed Software | [insert details] |
| 1. Whether the Customer requires an archival copy | [insert details] |
| 1. Restrictions on archival use | [insert details] |
| 1. Post-licence period for return or destruction of Licensed Software | [insert details] |
| 1. Whether escrow is required | [insert details] |
| 1. Name of escrow agent if one is required | [insert details] |
| 1. Special conditions governing application of third party contracts | [insert details] |
| **Supply of Software Support Services** [delete if not applicable]  *See Schedule 10 - Software Support Services* | |
| 1. Overview of Software Support Services | [insert details] |
| 1. Commencement date for Software Support Services | [insert details] |
| 1. Renewal arrangements | [insert details] |
| **Supply of Systems Integration** **Services** [delete if not applicable]  See Schedule 2 - Specification/Statement of Requirements and Schedule 7 - Project Plan | |
| 1. Overview of Systems Integration Services | [insert details] |
| **Supply of Telecommunications Services** [delete if not applicable]  *See Schedule 2 - Specifications/Statement of Requirements and Schedule 7 - Project Plan* | |
| 1. Overview of Telecommunications Services | [insert details] |
| 1. Authorities which Contractor is to obtain | [insert details] |
| 1. Special terms and conditions applicable to Telecommunications Services | [insert details] |
| 1. Interoperability Requirements | [insert details] |
| **Acceptance Testing** [delete if not applicable]  *See Schedule 13 - Acceptance Testing Requirements* | |
| 1. Whether Acceptance testing is required | [insert details] |

|  |  |
| --- | --- |
| **Indemnities, Liability and Releases** | |
| (a) Restricted Application of Indemnity | Sub-clauses (b) (c), (d), (e) and (f) only apply to loss or liability arising from claims made by a third party. The obligations of the parties in circumstances not addressed by these clauses will be determined by reference to sub-clause (g). |
| (b) Third Party Indemnity by Contractor | The Contractor indemnifies the Customer (including the Customer’s Personnel) against any loss or liability that has been incurred by the Customer as the result of a claim made by a third party, including loss or liability in respect of personal injury, sickness, death or property damage, where and to the extent that loss or liability:   1. was caused or contributed to by a breach of the Customer Contract, or tortious, unlawful or wrongful act or omission, by the Contractor or the Contractor’s Personnel; or 2. arises from a claim made or threatened against the Customer in which it is alleged that a Service or Product (including the Customer's use of a Service or Product) infringes the Intellectual Property Rights of a third party. For the purposes of this sub-clause (b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the *Patents Act 1990* (Cth) s.163, the *Designs Act 2003* (Cth) s.96, the *Copyright Act 1968* (Cth) s.183 and the *Circuits Layout Act 1989* (Cth) s.25, constitute an infringement; or 3. arises from a claim made or threatened against the Customer relating to a breach of confidence or privacy by, or a conflict of interest in respect of, the Contractor. |
| (c) Customer's Obligations to Contractor | Where the Customer wishes to enforce an indemnity in sub-clause (b), it must   1. not admit liability for the alleged breach, or tortious, unlawful, or wilfully wrong act or omission, or infringement; 2. give written notice to the Contractor as soon as practicable; 3. subject to the Contractor agreeing to comply at all times with government policy relevant to the conduct of the litigation, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and 4. in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation. |
| (d) Continued Use or Replacement of Infringing Material | If a claim of infringement of Intellectual Property Rights is made or threatened by a third party, the Customer will allow the Contractor, at the Contractor’s expense, to either:   1. obtain for the Customer the right to continued use of the Product; or 2. replace or modify the Product so that the alleged infringement ceases so long as the Product continues to provide the Customer with equivalent functionality and performance as required in the Specifications. |
| (e) Third Party Indemnity by the Customer | The Customer indemnifies the Contractor (including the Contractor’s Personnel) against any loss or liability that has been incurred by the Contractor as the result of a claim made by a third party where and to the extent that loss or liability was caused or contributed to by a breach of the Contract or tortious act or omission by the Customer or the Customer’s Personnel including loss or liability in respect of personal injury, sickness, death or property damage. |
| (f) Contractor's Obligations to Customer | Where the Contractor wishes to rely on the indemnity in sub-clause (e) it must:   1. not admit liability for the alleged breach or tortious act or omission; 2. give written notice to the Customer as soon as practicable; 3. permit the Customer, at the Customer's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and 4. provide all reasonable assistance to the Customer in the handling of negotiations and litigation. |
| (g) Liability Generally | Subject to the releases from loss or liability (if any) in sub-clauses (i), (j) and (k) the liability of either party for breach of the Contract or for any other common law or statutory cause of action arising out of the operation of the Contract will be determined under the relevant law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time. |
| (h) General Exclusions from Release from Liability | Any release from loss or liability does not apply to loss or liability for:   1. 3rd party claims including in respect of any exemplary or punitive damages awarded to a 3rd party; 2. personal injury, sickness and death; 3. subject to sub-clause (k), loss of, or damage to, tangible property which does not include data or Software; 4. infringement of Intellectual Property Rights; 5. breach of confidence or privacy by the Contractor; 6. a conflict of interest in respect of the Contractor; 7. matters that cannot be excluded at law; 8. to the extent that a party is able to recover the loss from its insurer; 9. an abandonment of the Customer Contract by a party; 10. reckless acts or omissions carried out with a wilful disregard for the consequences; 11. wilful and intentional breach by a party; 12. any statutory fines or penalties levied against a party;   and in no circumstances is the Contractor released from liability to the Customer in respect of any unlawful acts or omissions of the Contractor or the Contractor’s Personnel. |
| (i) Customer – Contractor (Party- Party) Liability | Each party releases the other in respect of Party-Party claims from all loss or liability from a breach of the Customer Contract or tortious act or omission in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Term.  OR  Loss or liability arising from a breach of the Contract or tortious act or omission is unlimited.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (j) Indirect and Consequential Losses | (Loss of Profit etc.) Each party releases the other from all loss or liability from any and all claims in respect of all loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  OR  (Loss of Profit etc.) All loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341, is recoverable.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  OR  (Loss of Profit etc.) Each party releases the other from all loss or liability from any and all claims in respect of all loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341, in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Contract Term.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (k) Loss of data etc. | (Loss of Data and Damage to Software (Non-Tangible Property) Sub-clause (h) is amended by deleting the reference to “*tangible property which does not include data or Software*” and replacing it with “*property which includes for the purposes of the Contract data and Software*”.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  OR  Each party releases the other from all loss or liability from any and all claims in respect of loss of data or damage to Software.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected.  OR  Each party releases the other from all loss or liability from any and all claims in respect of loss of data or damage to Software in excess of:  [$#]  This release will apply for the benefit of both parties and applies in respect of any one occurrence, a series of related occurrences or in the aggregate during the Contract Term.  [Optional additional paragraph - Delete if not applicable.]  This is a mandatory requirement. The Customer is not prepared to negotiate this requirement. Failure by the Respondent to agree to this requirement will result in the Respondent’s Offer being rejected. |
| (l) Contribution | The liability of a party ("1st Party") for loss or liability sustained by the other party ("2nd party") will be reduced proportionately to the extent that such loss or liability has been caused by the 2nd Party's failure to comply with its obligations and responsibilities under the Contract and to the extent that a tortious act or omission of the 2nd Party has contributed to such loss or liability. |
| (m) Termination of Contract | If a claim is made by the Customer against the Contractor which results in any of the releases in this sub-clause having effect, the Customer may by notice in writing to the Contractor immediately terminate the Contract.  If a claim is made by the Contractor against the Customer which results in any of the releases in this sub-clause having effect, the Contractor may by notice in writing to the Customer immediately terminate the Contract. |
| (n) Survival | This clause survives the termination or expiry of the Contract. |

SCHEDULE 2 - SPECIFICATION / STATEMENT OF REQUIREMENTS

# STATEMENT OF REQUIREMENTS

[insert brief description of the product/project/services to be carried out]

# SPECIFICATION

[insert detailed description of the specification of product/project/services to be carried out]

[Clearly set out the request for Products and / or Services.]

## PRODUCTS

The following are some suggestions that may be considered:

* Product/quality description with the possible inclusion of a minimum technical specifications table.
* Quantities required or specify an estimated number required annually.
* Samples to be supplied (if required) – at no cost, when and where they are to be provided and sample returns.
* Delivery Free into Store, date, time and location of deliveries.
* Ordering arrangements.
* Warranties.
* Installation (if required).
* Training (if required).
* Post warranty maintenance.
* Any special payment provisions and where invoices are to be submitted.
* Contract Management requirements: rectification of unsatisfactory work – contract meetings – any performance indicators.

## SERVICES

The following are some suggestions that may be considered:

* Description – objectives – tasks of the services.
* Quality standards that may be required.
* Where the services are to be performed.
* Outline of methodology.
* Indicative hours (if applicable).
* Any material to be provided by the Customer.
* Stakeholder consultations.
* Service outcomes: project timetable – development of a project plan – deliverables – reports (when they required both draft and final – whether progress reports are required – are presentations to the Customer required –format of report – number of copies).
* Any special payment provisions and where invoices are to be submitted.
* Contract management requirements: rectification of unsatisfactory work – contract meetings – any performance indicators.

PART B – CONTENT REQUIREMENT AND RESPONDENT’S OFFER

PART B SHOULD BE COMPLETED BY THE RESPONDENT AND RETURNED TO THE CONTRACT AUTHORITY OR CUSTOMER (REFER ‘SUBMISSION OF OFFER’ REQUIREMENTS OF CLAUSE 2.1 IN THE REQUEST CONDITIONS).

# NOTE TO RESPONDENT

In preparing its Offer, the Respondent must:

1. address each requirement in the form set out in this Part B;
2. take into account the [Head Agreement and] (delete if not applicable) Customer Contract requirements, as explained in the [Head Agreement Details and] (delete if not applicable) Customer Contract Details. The Respondent must read these in conjunction with the General Conditions;
3. in respect of the Qualitative Requirements in Section 5 in this Part B, provide full details of any claims, statements or examples;
4. assume that the Contract Authority or Customer has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the Contract Authority, Customer or any other Public Authority; and
5. nominate any Offer Information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions.

# IDENTITY OF RESPONDENT

The Respondent must provide the following details:

|  |  |
| --- | --- |
| **RESPONDENT TO COMPLETE**: | |
| 1. Name of Legal Entity: |  |
| 1. ACN (if a company): |  |
| 1. Registered address of Company or address of principal place of business if no registered address: |  |
| 1. Business Name: |  |
| 1. ABN: |  |
| 1. Contact Person: |  |
| 1. Contact Person Position Title: |  |
| 1. Email: |  |
| 1. Telephone: |  |
| 1. Address and email for service of contractual notices: |  |

**NB: The Offer does not require the Respondent’s signature**.

# PRE-QUALIFICATION REQUIREMENTS

There are no pre-qualification requirements for this Request.

*OR*

The Contract Authority or Customer will not consider any Offer that does not meet all of the following Pre-Qualification Requirements:

THESE SHOULD BE SPECIFIED WITH EXTREME CAUTION

1. (for example) QUALITY

[Requesting that Respondents have certification to the AS/NZS ISO 9001:2016 Quality Management Systems standard (or similar standards) is appropriate for complex, high risk and high value procurements, particularly those requiring specialist skills, knowledge, innovation or design that may affect departmental programs. Unless there is a specific need for this standard, do not request it]

|  |  |
| --- | --- |
| The Respondent must provide a management system certified as complying with the requirements of AS/NZS ISO 9001:2016 – Quality Management Systems – Requirements. The Respondent’s scope of registration must include **[state specific requirement]** [Design / Standard].  **RESPONDENT TO COMPLETE:**  Does the Respondent have a quality management system that complies with the quality assurance requirements specified in this clause? | |
| Yes | No |

1. (for example) ATTENDANCE AT MANDATORY BRIEFING

|  |  |
| --- | --- |
| The Respondent, or its representative, must have attended the mandatory briefing described in clause 1.5 of Part A  **RESPONDENT TO COMPLETE:**  (for example) Did the Respondent attend the mandatory briefing? | |
| Yes | No |

1. (for example) LICENSING OR STATUTORY APPROVAL REQUIREMENTS

|  |  |
| --- | --- |
| **RESPONDENT TO COMPLETE:**  (for example) Is the Respondent licensed as required, or able to attain the statutory approvals as required? | |
| Yes | No |

# COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements, and/or which contains material departures from the Head Agreement Details *(delete if not applicable)*, Customer Contract Details and/or General Conditions.

1. **Compliance**
2. Head Agreement Details [delete if not applicable]

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the Head Agreement Details. If the Respondent will not comply with any clause of the Head Agreement Details, the Respondent must set out:   * + 1. the clause(s) of the Head Agreement Details it will not comply with;     2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Head Agreement Details; and     3. the reason for non-compliance.   **RESPONDENT TO COMPLETE:**  Does the Respondent agree to the Head Agreement Details? | |
| Yes | No |
| If no, provide details: | |

1. **Customer Contract Details**

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the Customer Contract Details (excluding the General Conditions and Schedules). If the Respondent will not comply with any clause of the Customer Contract Details, the Respondent must set out:   1. the clause it will not comply with; 2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Customer Contract Details; and 3. the reason for non-compliance.   **RESPONDENT TO COMPLETE:**  Does the Respondent agree to the Customer Contract Details? | |
| Yes | No |
| If no, provide details: | |

1. **General Conditions / Schedules**

|  |  |
| --- | --- |
| The Respondent must confirm whether it will comply with the General Conditions and Schedules. If the Respondent will not comply with any of the General Conditions and Schedules, the Respondent must set out:   * + 1. the General Condition / Schedules it will not comply with;     2. the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the General Conditions / Schedules; and     3. the reason for non-compliance.   **RESPONDENT TO COMPLETE:**  Does the Respondent agree to the General Conditions/Schedules? | |
| Yes | No |
| If no, provide details: | |

**b). DISCLOSURES**

**(i) Participants (including subcontractors)**

|  |  |
| --- | --- |
| **RESPONDENT TO COMPLETE:**  Is the Respondent acting as an agent or trustee for another person or persons? | |
| Yes | No |
| If yes, provide details: | |
| AND  Is the Respondent acting jointly or in association with another person or persons? | |
| Yes | No |
| If yes, provide details: | |
| AND  Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the supply of the Services? | |
| Yes | No |
| If yes, provide details: | |

**(ii) Criminal Convictions**

|  |  |
| --- | --- |
| The Respondent must confirm that neither the Respondent nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention.  **RESPONDENT TO COMPLETE:**  Has the Respondent or any person included in the Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention? | |
| Yes | No |
| If yes, provide details: | |

**(iii) Conflict of Interest**

|  |  |
| --- | --- |
| The Respondent must declare and provide details of any actual, potential or perceived conflict of interest.  **RESPONDENT TO COMPLETE:**  Does the Respondent have any actual, potential or perceived conflict of interest in relation to the performance of the Customer Contract (if awarded) by the Respondent? | |
| Yes | No |
| If yes, the reasons why: | |

**(iv) Small Business, Australian Disability Enterprise (ADE) and/or Aboriginal Business**

|  |  |  |
| --- | --- | --- |
| **RESPONDENT TO COMPLETE:**  Respondent is required to disclose whether it is a: | | |
| * 1. small business that employs less than twenty (20) people; and/or | | |
| Yes | No | |
| * 1. registered Australian Disability Enterprise (ADE) – registered means to be listed as an approved ADE on the Australian Disability Enterprises website at: [*http://buyability.org.au/directory/*](http://buyability.org.au/directory/); and/or | | |
| Yes | No | |
| * 1. registered Aboriginal business – the business is to be registered on the Aboriginal Business Directory WA at: [*http://www.abdwa.com.au/*](http://www.abdwa.com.au/) and/or on Supply Nation’s Indigenous Business Direct at [*http://supplynation.org.au/*](http://supplynation.org.au/). | | |
| Yes  If Yes, registered on:  Aboriginal Business Directory WA  Supply Nation’s Indigenous Business Direct  Both | | No |
| The Respondent should note that its response to this Compliance and Disclosure Requirement:   * 1. will be used by the Department of Finance for statistical purposes only; and   2. will not be used by the Customer in its evaluation of the Offer. | | |

**(v) Credit Card/Purchasing Card Payment** [delete if not applicable]

|  |  |
| --- | --- |
| **RESPONDENT TO COMPLETE:**  The use of credit cards/purchasing cards by agencies is actively promoted as a payment method.  The Respondent is required to disclose whether it agrees to receive credit card/purchasing card payment.  Does the Respondent agree to receive credit card/purchasing card payments? | |
| Yes | No |
| [Please refer to clause 21.6 of the Request Conditions and General Conditions of Contract for additional information] | |

**(vi)** Software Licence Agreements[delete if not applicable]

|  |  |
| --- | --- |
| **RESPONDENT TO COMPLETE:**  The Respondent is required to disclose the basis of the licensing arrangements for the Licensed Software as proposed under the Customer Contract. This is to include:   1. The name of the legal entity with whom the Customer will enter the software licence agreement; 2. If the entity identified in (A) above is not the same as the legal entity submitting this Offer as identified in Section 2 of Part B, the Respondent must explain the relationship between the two entities; 3. If the entities identified in (A) and (B) are not the same legal entity, the Respondent must provide details of the warranties it is prepared to offer to the Customer in relation to the intended solution; 4. A copy of any software licence agreements applicable to the Respondent’s Offer; and 5. A copy of any software maintenance agreements applicable to the Respondent’s Offer.   The Respondent must address each of the points set out above.  AND  Has the Respondent included copies of any software licence and maintenance agreements applicable to the Respondent’s Offer? | |
| Yes | No |

**(vii)** Competitive Neutrality [for services only - delete if not applicable]

|  |  |  |
| --- | --- | --- |
| If the Respondent is a tertiary institution or statutory or Government body (including a Public Authority), the Respondent’s Offer must:  (A) be calculated on a full commercial basis (in accordance with the guidelines issued by Western Australian Department of Treasury entitled “Costing and Pricing Government Services – Guidelines for use by agencies in the Western Australian Public Sector, June 2015  <https://www.treasury.wa.gov.au/Treasury/Publications/Costing_and_Pricing_Guidelines/>  (B) be certified by the chief executive officer of the Respondent; and  (C) be verified by an independent expert, if required by the Customer.  Certification must be in the form of a letter from the chief executive officer of the Respondent certifying that the Offer has been calculated on a full commercial basis.  **RESPONDENT TO COMPLETE:**  If the Respondent is a tertiary institution or statutory or Government body (including a Public Authority), has the Respondent included certification as required under this clause? | | |
| Yes | No | N/A |
| If no, the reasons why: | | |

**(viii)** Professional Standards Scheme [for selected services only delete if not applicable]

|  |  |
| --- | --- |
| [https://www.psc.gov.au/professional-standards-schemes/Scheme-documents provides a list of schemes some of which are applicable to Western Australia.]  **RESPONDENT TO COMPLETE:**  Is the Respondent a member of an occupational association for which a scheme has been approved under the Professional Standards Act 1997 (WA) or equivalent legislation of another State or Territory of Australia? | |
| Yes | No |
| If yes, the Respondent must provide details: | |

**(ix) Disclosure of Information between State Revenue and the Contract Authority** [ONLY use this clause for CUAs and regional group buys, delete if not applicable]

1. Financial Information

|  |  |
| --- | --- |
| The Respondent, or if a body corporate, any director or majority shareholder, is required to consent to the Contract Authority making enquiries with the Western Australian Commissioner of State Revenue or his or her delegates as to the financial details of the Respondent, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information to the Contract Authority upon application and for the duration of any contract.  **RESPONDENT TO COMPLETE:**  Does the Respondent, or if a body corporate, any director or majority shareholder, consent to the Contract Authority making enquiries with the Western Australian Commissioner of State Revenue or his or her delegates as to the financial details of the Respondent, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information to the Contract Authority upon application and for the duration of any contract? | |
| Yes | No |

1. Related Corporations

|  |  |
| --- | --- |
| The Respondent is required to disclose whether it or if a body corporate, any director or majority shareholder has been a director or majority shareholder of a corporation (other than a publicly listed corporation) which has gone into liquidation, receivership, external administration (or anything analogous to any of these) or any such corporation has entered into an arrangement whereby any Commonwealth or State taxes or charges are outstanding or have been written off either in whole or in part.  **RESPONDENT TO COMPLETE:**  Has the Respondent, or if a body corporate any director or majority shareholder of the Respondent, been a director or majority shareholder of a corporation (other than a publicly listed corporation) which has gone into liquidation, receivership, external administration (or anything analogous to any of these) or any such corporation has entered into an arrangement whereby any Commonwealth or State taxes or charges are outstanding or have been written off either in whole or in part? | |
| Yes | No |
| If yes:   1. the Respondent must provide details; 2. the Respondent consents to the Contract Authority making enquiries of the Western Australian Commissioner of State Revenue or his or her delegates, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information. 3. the Respondent, if requested by the Contract Authority, must obtain the written consent of any such director or majority shareholder to the making of any such enquiries and obtaining information. Failure to provide any such consent may in the Contract Authority’s absolute discretion result in the Respondent’s Offer being excluded from further consideration. | |

1. Number of Employees

|  |
| --- |
| The Respondent is required to disclose how many employees it employs, and of those employees what percentage are full-time, part-time and casual.  **RESPONDENT TO COMPLETE:**  How many employees does the respondent employ?  What percentage of these employees are:   1. full time; 2. part time; 3. casual. |

# QUALITATIVE REQUIREMENTS

The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Qualitative Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address and satisfy any of the Qualitative Requirements.

Each Qualitative Requirement has equal weighting.

OR

The Qualitative Requirements are not weighted equally. Refer to the % weighting (xx% weighting) for each Requirement listed below.

EXAMPLES OF “QUALITATIVE” REQUIREMENTS:

PRODUCTS

1. SUITABILITY OF PROPOSED PRODUCTS (XX% WEIGHTING)
2. The Respondent must demonstrate how the proposed Products are suitable and fit for purpose, in accordance with the description set out in Schedule 2 - Specification / Statement of Requirements; and
3. Provide brochures and any relevant information detailing the features of the specified Products.

RESPONDENT TO COMPLETE:

Respondent to demonstrate suitability of proposed Products.

1. ORGANISATIONAL CAPACITY (XX% WEIGHTING)

(i) The Respondent must demonstrate that it has the organisational capacity to perform the Customer Contract; and

(ii) Provide a comprehensive timeframe for the delivery of the proposed Products and any related services identifying key dates and milestones and outlining how any timing requirements specified in Schedule 2 - Specification / Statement of Requirements, will be met.

RESPONDENT TO COMPLETE:

Respondent to provide the organisational capacity information required under this clause.

1. SERVICE AND MAINTENANCE (XX% WEIGHTING)

The Respondent must provide details in relation to:

1. Conditions and exclusions of the warranty applicable, including duration and any terms and conditions;
2. The availability of spare parts for the proposed Products in Western Australia;

(ii) The frequency of servicing requirements for the proposed Products; and

(iii) The arrangements for repairs and maintenance for the proposed Products, including response times.

RESPONDENT TO COMPLETE:

Respondent to provide the service and maintenance information required under this clause.

**OR**

**DELIVERY, TRAINING, SERVICE AND MAINTENANCE** (XX% WEIGHTING)

The Respondent must provide details in relation to:

1. The delivery timeframe for the proposed Products;
2. Availability of training and the nature of the proposed training;
3. Warranty provisions including inclusions and exclusions and response times for warranty repairs;
4. The availability of spare parts in Western Australia;
5. The frequency of servicing requirements for the proposed Products; and
6. The arrangements for post warranty repairs and maintenance for the Products, including response times.

**RESPONDENT TO COMPLETE**

Respondent to provide training, delivery, service and maintenance information requested under this clause.

1. DEMONSTRATED EXPERIENCE (XX% WEIGHTING)

(i) The Respondent must provide details of contracts for similar products and any related services provided for other clients. The Respondent must provide:

(A) A detailed description of the Products and / or Services provided;

(B) Similarities between the previous contracts and this Request;

(C) When the previous contracts were performed; and

(D) The outcome of the previous contracts.

(ii) The Respondent must also provide a minimum of [2] referees in respect of the contracts detailed above. Referee details must include:

(A) The referee’s name and position;

(B) Company name;

(C) The contact telephone number; and

(D) The contract or project title.

RESPONDENT TO COMPLETE:

Respondent to provide the demonstrated experience information required under this clause.

*SERVICES*

1. SUITABILITY OF PROPOSED SERVICES (XX% WEIGHTING)

The Respondent must:

(i) Demonstrate how the proposed Services meet the description set out in Schedule 2 - Specification / Statement of Requirements; and

(ii) Demonstrate an appreciation and understanding of the requirements of the Request and the Respondent must provide an outline of its proposed methodology and approach. Details of the methodology should include:

(A) The scope of work/requirements broken into components including timeframes and the estimated number of hours required to complete each component of the requirements;

(B) Details of the roles of the Specified Personnel and an estimated percentage of time spent by each in completing the requirements;

(C) A description of critical issues, and quality control mechanisms used in undertaking the requirements.

RESPONDENT TO COMPLETE:

Respondent to demonstrate suitability of proposed Services.

1. SPECIFIED PERSONNEL (XX% WEIGHTING)

The Respondent must:

(i) Identify any proposed Specified Personnel together with a brief curriculum vitae for each of them;

(ii) Detail the availability of the proposed Specified Personnel for the Customer Contract during the Term; and

(iii) Describe the skills and industry experience of all proposed Specified Personnel, especially how their experience relates to the requirements set out in Schedule 2 – Specification / Statement of Requirements.

RESPONDENT TO COMPLETE:

Respondent to provide the Specified Personnel information required under this clause.

**OR**

DEMONSTRATED SKILLS AND EXPERIENCE OF THE ORGANISATION TO UNDERTAKE PROJECTS OF A SIMILAR NATURE (XX% WEIGHTING)

The Respondent must provide information regarding:

(i) The skills and experience of the key Specified Personnel who will be involved with this contract. A brief curriculum vitae should be provided outlining their similar experience to the requirements as set out in Schedule 2 – Specification / Statement of Requirements;

(ii) Roles of the Specified Personnel and their availability during the term of the contract; and

(iii) The organisational capacity to perform the Customer Contract including relevant skills and experience within the organisation (other than the specified personnel) in performing similar requirements.

Respondents must provide contact details of referees for Contracts of a similar nature have been successfully completed by the proposed Specified Personnel. These referees may be contacted to verify claims of relevant experience.

RESPONDENT TO COMPLETE:

Respondent to demonstrated skills and experience to undertake projects of a similar nature.

1. ORGANISATIONAL CAPACITY (XX% WEIGHTING)

(i) The Respondent must demonstrate that it has the organisational capacity to perform the Customer Contract.

(ii) The Respondent must provide a comprehensive timeframe for the delivery of the proposed Products and / or Services, identifying key dates and milestones and outlining how any timing requirements specified in Schedule 2 - Specification / Statement of Requirements, will be met.

RESPONDENT TO COMPLETE:

Respondent to provide the organisational capacity information required under this clause.

1. DEMONSTRATED EXPERIENCE (XX% WEIGHTING)

(i) The Respondent must provide details of contracts for similar products and / or services provided for other clients. The Respondent must provide:

(A) A detailed description of the Products and / or Services provided;

(B) Similarities between the previous contracts and this Request;

(C) When the previous contracts were performed; and

(D) The outcome of the previous contracts.

(ii) The Respondent must also provide a minimum of [2] referees in respect of the contracts detailed above. Referee details must include:

(A) The referee’s name and position;

(B) Company name;

(C) The contact telephone number; and

(D) The contract or project title.

RESPONDENT TO COMPLETE:

Respondent to provide the demonstrated experience information required under this clause.

1. STANDARD PARTICIPATION PLAN (10% OR 20%WEIGHTING)

[Use for both Products and Services, for all Requests with estimated contract value of $1 Million and above for contract delivery points in the Metropolitan Area, or $500,000 for delivery points in Regional Western Australia and an exemption from inclusion of the Standard Participation Plan as a qualitative requirement HAS NOT been sought and granted by the Director General, Department of Jobs, Tourism, Science and Innovation]

[Agencies have discretion to choose if this criterion is weighted at 10% or 20%. The decision should consider factors like, but not limited to, contract value, duration, location, market competition and realisable benefits. Refer to the current WAIPS Agency Operations Guide for more detail. Follow the instructions at https://industrylink.wa.gov.au/resources-library to obtain a copy of the guide or email industrylink@jtsi.wa.gov.au]

*[If the procurement has been declared by the Minister for Jobs as a Strategic Project, reflect any prescribed upward variation of the Participation Plan weighting]*

This criterion is a requirement of the Western Australian Industry Participation Strategy (WAIPS). Guidance on the WAIPS may be found at [www.industrylink.wa.gov.au](https://industrylink.wa.gov.au/).

The Participation Plan type required for this Request is a **[choose type - Core or Full] Participation Plan** for goods and services.[Core = total contract value of $1 million to $5 million for Metro delivery points or total contract value of $500,000 to $5 million for Regional delivery points. Full = total contract value of above $5 million for both Metro and Regional delivery points]

The Respondent must download the Standard Participation Plan template, published version 01/07/2019 [Check what the current published version is before releasing Request. Change as required], from the Industry link portal at [www.industrylink.wa.gov.au > Participation Plan](https://industrylink.wa.gov.au/participation-plans/participation-plans).

Respondents are required to complete and submit the Standard Participation Plan with their Offer as a separate attachment.

[If a Core Participation Plan is being requested, insert this paragraph otherwise delete]Respondents are to note, for a Core Participation Plan, all questions except question 7 in Section A and questions 5 and 6 in Section B are to be completed. Even so, do not leave any question blank. All questions should be answered with a valid response or NA if the question is not applicable. In Section B, if you believe a question is not applicable, respond by entering NA and provide a reason why you believe the question isn’t applicable.

[If a Full Participation Plan is being requested, insert this paragraph otherwise delete]Respondents are to note, for a Full Participation Plan, all questions are to be completed. All questions should be answered with a valid response or NA if the question is not applicable. In Section B, if you believe a question is not applicable, respond by entering NA and provide a reason why you believe the question isn’t applicable. Do not leave any question blank.

Guidance on “How to Complete a Participation Plan” is available on the Industry Link portal at [www.industrylink.wa.gov.au > Services to Businesses - Head Contractors > How to Complete a Participation Plan](https://industrylink.wa.gov.au/participation-plans/how-to-complete-a-participation-plan).

Additional assistance may also be sought from the [Industry Link Advisory Service](https://industrylink.wa.gov.au/advisory-services/services-to-businesses-head-contractors/industry-link-advisory-service), Department of Jobs, Tourism, Science and Innovation no later than five (5) business days before the Request Closing Date.

The Contract Authority/Customer will, in its value for money assessment, consider as a Qualitative Requirement the extent to which Section B of the Participation Plan meets the Participation Objectives.

The Contract Authority/Customer reserves the right to reject any Offer that does not contain a Participation Plan which properly addresses the matters outlined in the Participation Plan template.

**RESPONDENT TO COMPLETE:**

A [Drafter to state Participation Plan type][Core or Full] Participation Plan has been completed and attached to our Offer.

Yes  No

If successful, your response to the Participation Plan will be forwarded to the Industry Link Advisory Service (ILAS), Department of Jobs, Tourism, Science and Innovation.

# 

# HEAD AGREEMENT AND (delete if not a CUA or Panel Arrangement) CUSTOMER CONTRACT INSURANCE REQUIREMENTS

[If not a Common Use Arrangement or Panel Arrangement, delete the Head Agreement Insurance Requirements table. IF a Common Use Arrangment or Panel Arrangement, the Head Agreement AND Customer Contract Insurance tables MUST both be included]

**HEAD AGREEMENT INSURANCE REQUIREMENTS** [Delete this section if not applicable]

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Head Agreement Details.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| RESPONDENT TO COMPLETE:  Does the Respondent have the insurance required under Schedule 1 - Head Agreement Details?  (Yes / No)  If yes, the Respondent must complete the following table: | | | | | | |
|  | Insurer | ABN | Policy No | Insured Amount | Expiry Date | Exclusions, if any |
| Public Liability Insurance |  |  |  |  |  |  |
| Workers’ Compensation including common law liability of $50 million |  |  |  |  |  |  |
| OR  If no, does the Respondent confirm that prior to being awarded the Head Agreement, they will obtain the insurance policies specified before the Commencement Date?  (Yes / No)  If no, the reasons why. | | | | | | |

**CUSTOMER CONTRACT INSURANCE REQUIREMENTS**

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Customer Contract Details.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| RESPONDENT TO COMPLETE  Does the Respondent have the insurance requirements set out in Schedule 1 - Customer Contract Details?  (Yes / No)  If yes, the Respondent must complete the following table:  [In the table below, list the insurances specified in the Customer Contract Details] | | | | | | |
|  | **Insurer** | **ABN** | **Policy No** | **Insured Amount** | **Expiry Date** | **Exclusions, if any** |
| Public Liability Insurance [delete row if not applicable] |  |  |  |  |  |  |
| Public and Product Liability Insurance [delete row if not applicable] |  |  |  |  |  |  |
| Professional Indemnity [delete row if not applicable] |  |  |  |  |  |  |
| Workers’ Compensation including common law liability of $50 million |  |  |  |  |  |  |
| Motor Vehicle Third Party Liability [delete row if not applicable] |  |  |  |  |  |  |
| OR  If no, does the Respondent confirm that prior to being awarded a contract, they will obtain the insurance policies set out in Schedule 1 - Customer Contract Details before the Commencement Date?  (Yes / No)  If no, the reasons why. | | | | | | |

SCHEDULE 3 - PRICING

The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Offered Price and Pricing Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address and satisfy any of the Offered Price and Pricing Requirements.

1. **OFFERED PRICE AND PRICE SCHEDULE**
2. The Respondent must include in the Offer this completed Schedule 3 - Pricing.
3. The Respondent must state the basis of its Offered Price in Australian Dollars.
4. The Offered Price will be deemed to include the cost of complying with this Request (including the Head Agreement Details, Customer Contract Details and any Addenda available, if any) and the General Conditions and the cost of complying with all matters and things necessary or relevant for the due and proper performance of the Head Agreement and Customer Contract. Any charge not stated as being additional to the Offered Price will not be payable by the Customer.
5. If the Offered Price is consideration for a taxable supply under the GST Act, the Offered Price will be deemed to be inclusive of all GST applicable to the taxable supply at the rate in force for the time being.

Example 1 Lump Sum (for Products)

|  |  |  |  |
| --- | --- | --- | --- |
| RESPONDENT TO COMPLETE: | | | |
| DESCRIPTION | QUANTITY REQUIRED | PRICE PER UNIT (inclusive of GST) | Total Cost  (inclusive of GST) |
| *SUPPLY AND DELIVERY OF* |  |  |  |
| *TRAINING* |  | |  |
| *POST WARRANTY SERVICE AND MAINTENANCE* |  | |  |
| *OTHER COSTS (PLEASE SPECIFY)* |  | |  |
| *TOTAL COST (inclusive of GST)* |  | |  |

Note: All costs must be fully declared in your response. Any costs that are not clearly identified in your response will not be accepted when approving payments under this contract.

Example 2: Hours (for Services)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| RESPONDENT TO COMPLETE:  The Respondent must provide a fixed fee based on [xx] hours per annum as detailed in the Specification:  $ ………………………. (including GST)\*  Given the hours and fixed fee provided above, the Respondent must also provide the hourly rates proposed to be charged for the provision of the Services, stratified on the basis of the staffing requirements and levels assessed by the Respondent as being required to meet the Specification. The proposed hourly rates must include all management and supervision hours and charges. | | | | |
| DESCRIPTION OF SERVICES | NAME & POSITION OF CONSULTANTS | HOURS ALLOCATED TO SERVICES PER CONSULTANT | HOURLY RATE A$ | TOTAL COST  (inc GST) |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Other Costs – Please Specify:** |  | | |  |
| **TOTAL** |  | | | $ (\*amount shown above) |
| The Respondent should indicate whether the above hourly rates also apply to hours over and above the stated hours. If not, please advise the applicable rates. | | | | |

Note: All fees and charges must be fully declared in your response. Any fees and charges that are not clearly identified in your response will not be accepted when approving payments for engagements under this contract.

Example 3: Schedule of Rates (for Services)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Specified Personnel** | **Hourly Rate**  **(Normal Business Hours) Inc GST** | **Hourly Rate**  **(Outside Business Hours e.g. weekends and Public Holidays) Inc GST** | **Maximum Short-Term Daily Rate**  **(Normal Business Hours) Inc GST** | **Maximum Long-Term Daily Rate**  **(Normal Business Hours) Inc GST** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
|  | ***$*** | ***$*** | ***$*** | ***$*** |
| **Other costs (please list and specify)** | | | | **$** |
| **Travel and accommodation (if applicable provide details)** | | | | **$** |
| Disbursements or other charges (if applicable provide details) | | | | **$** |

Note: All fees and charges must be fully declared in your response. Any fees and charges that are not clearly identified in your response will not be accepted when approving payments for engagements under this contract.

1. SETTLEMENT DISCOUNT

[Only include this clause if payment within 7, 14 or 21 days is feasible. If not feasible then delete the clause. If settlement discounts are offered by the Respondent, then the discounted price/s must be taken into account when evaluating Offers]

The Respondent must state whether it is prepared to offer a discount if payment of the Price or that part of the Price specified in the invoice is made within:

* 1. seven (7) days;
  2. fourteen (14) days; or
  3. twenty-one (21) days,

of the date of the invoice.

RESPONDENT TO COMPLETE:

A discount of:

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within seven (7) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within fourteen (14) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within twenty-one (21) days of the date of the invoice;

1. IMPORTED CONTENT

*[For a WAIPS procurement, that is, the estimated contract value is $1 million and above for contract delivery points in the metropolitan area, or $500,000 and above for delivery points in regional Western Australia, then Imported Content is non-mandatory and the inclusion in the Request is at the discretion of the agency. An agency is to analyse and document the potential impact of the inclusion and/or exclusion of Imported Content in the Request. If Imported Content is included in the Request the impost must be applied as applicable.*

*For a non WAIPS procurement, Imported Content must be included in the Request excepted if procuring services only.]*

The Western Australian Government’s “Buy Local” Policy provides for government agencies to apply a 20% price impost, for evaluation purposes only, to the portion of an Offer that comprises products, services or items that have been imported into Australia from another country, excluding New Zealand and for covered procurements, from FTA countries. A current list of agreements with FTA countries is available at [www.wa.gov.au/government/publications/free-trade-agreement-guidelines](https://www.wa.gov.au/government/publications/free-trade-agreement-guidelines).

The cost of the products, services or items that have been sourced from overseas is referred to as “imported content”.

The imported content is calculated in dollar terms and is defined as the estimated duty paid cost of the portion of the Offer sourced from overseas.

Estimated duty paid cost includes:

1. the cost of any services related to importing the products, services or items (for example – overseas freight and insurance, software in computer tenders, consultancy or engineering effort); and
2. any charges of overseas origin together with customs clearing charges.

The imported content impost is not applied in the case of services purchased separately or in isolation.

The Imported Content Impost can be applied regardless of the location of the contract delivery point, but only in instances where the Respondent is using products, services or items that it has imported directly from overseas for use in the delivery of the contract. Products, services or items of foreign origin that have been purchased through a supplier based in Australia, New Zealand or for a Covered Procurement, FTA countries, will not be considered ‘imported’ for the purposes of the price impost.

|  |  |  |
| --- | --- | --- |
| **RESPONDENT TO COMPLETE:**  All Respondents are required to complete the imported content questionnaire. Respondents that believe there is no imported content in their Offer must enter “Nil” or “Not Applicable” on the questionnaire.  Respondents are required to declare the cost of any portion of their Offer that comprises products, service or items that have been sourced from another country, excluding New Zealand (under the ANZGPA) and, for a Covered Procurement, other FTA countries.  Please list details of any products, service or items included in your Offer that have been sourced from another country excluding New Zealand (under the ANZGPA) and, for a Covered Procurement, other FTA countries. | | |
| **Products/Service/Items Description** | **Country of Origin** | **Cost $** |
|  |  |  |
|  |  |  |
| Total Cost of Imported Content | | **$** |

1. REGIONAL PRICE PREFERENCES[delete if not applicable i.e. Metropolitan based contract]

The Western Australian Government provides price preferences to Western Australian businesses when they are in competition with other Western Australian businesses for government contracts where the purchase or contract delivery point is in regional Western Australia.

The two types of regional price preferences are Regional Business Preference and Regional Content Preference. Respondents participating in goods and services procurements can claim *either* the regional business preference or the regional content preference, but not both.

In circumstances where one or more Offers are received from businesses located in other States or Territories of Australian, New Zealand and, for covered procurements, FTA countries and these Offers are not being considered in the final analysis then the regional business preference and the regional content preference will be applied. A current list of agreements with FTA countries is available at [www.wa.gov.au/government/publications/free-trade-agreement-guidelines](https://www.wa.gov.au/government/publications/free-trade-agreement-guidelines). The Contract Authority or Customer (as the case requires) retains the complete discretion to determine those Offers in the final analysis.

Details regarding the regional price preferences and how they are applied are documented in the Western Australian Government’s “Buy Local” Policy. This policy can be viewed and downloaded at [www.wa.gov.au/government/publications/buy-local-policy](https://www.wa.gov.au/government/publications/buy-local-policy) or copies of this policy are available from the State Supply Commission (telephone (08) 6551 1500).

**The regional contract delivery point(s) for this contract is/are:** [INSERT CONTRACT DELIVERY POINT/S]**.**

**The prescribed distance for this contract is**: [INSERT NUMBER OF KILOMETRES]km.

(i) Regional Business Preference

Respondents who meet the following requirements are eligible to claim the regional business preference:

* have maintained a permanent operational office within the prescribed distance of a regional contract delivery point and conducted business from that office for at least six months prior to the date of the Request being called;
* bid from that office; and
* manage/deliver the majority of the contract outcomes from that office.

An eligible regional business is one that can bona fide answer “yes” to all the listed questions below other than question 2b. and question 6.

The Contract Authority/Customer (as the case requires), when comparing Offers received from an eligible regional business with Offers received from Western Australian businesses located outside the Prescribed Distance, including Zone 1, Perth Region, will reduce the price of the Offer received from the eligible regional businesses, for evaluation purposes only, by 10% of the total Offered Price calculated to a maximum of $250,000 for goods and services not related to housing and works projects. The preference is calculated by the Contract Authority/Customer (as the case requires) assessing the Offers. Eligible regional businesses must show the total cost of their Offer.

Respondents participating in goods and services procurements can claim *either* the regional business preference or the regional content preference, but not both.

To receive the regional business preference and to ensure the preference is applied correctly where appropriate, Respondents that wish to claim eligibility for the regional business preference must complete the following questionnaire.

|  |  |  |  |
| --- | --- | --- | --- |
| **RESPONDENT TO COMPLETE** | | **Please click appropriate box** | |
| 1. Is your business located within the prescribed distance from the contract delivery point shown above (excluding Zone 1, Perth Region)? | | **Yes** | **No** |
| 2a. Does your business maintain a permanent operational office within the prescribed distance? | | **Yes** | **No** |
| 2b. What is the address of this permanent operational office? | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | |
| 3 Has your business maintained and conducted business from this office for the past six months or more prior to the date this Request was called? | | **Yes** | **No** |
| 4. Have you bid from your business location described above? | | **Yes** | **No** |
| 5. Will your business manage/deliver the majority of the contract outcomes from the business location described above? | | **Yes** | **No** |
|  | |  |  |
| 6. What is the total cost of your Offer? | **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | |

(ii) **Regional Content Preference**

A regional content preference is available to Western Australian businesses located outside the prescribed distance, including businesses located in Zone 1, Perth Region. The regional content preference is only applied to the cost of the services or materials that will be purchased from other businesses that are located within the prescribed distance of a regional contract delivery point, and will be used in the delivery of the contract outcomes.

The following costs cannot be claimed under the regional content preference:

* estimated costs associated with ‘wear and tear’ on plant and equipment (for example, vehicle or plant repairs and servicing);
* Contract Authority/Customer/Public Authority supplied materials (provided at nominal or no cost);
* goods and services supplied by government utilities (such as water and electricity); and
* all costs associated with travel, accommodation and meals for workers (including travel, accommodation and meal costs associated with sending people from outside the prescribed distance to work on a regional contract and all ongoing travel, accommodation and meal costs associated with the delivery of the contract).

In comparing Offers received from Western Australian based businesses, the cost of the declared regional content must be reduced, for evaluation purposes only, by 10% calculated to a maximum of $250,000. The preference is calculated by the Contract Authority/Customer (as the case requires) assessing the Offers.

Respondents participating in goods and services procurements can claim *either* the regional business preference or the regional content preference, but not both.

Respondents must show the actual cost of their regional content by completing the following questionnaire.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **RESPONDENT TO COMPLETE** | | | | |  | |
| 1. What is the address of the business location from which you have submitted your Offer? | | | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | |
| 2. Does your business intend purchasing goods and services for use in this contract from regional businesses that are located within the prescribed distance from the contract delivery point (excluding Zone 1, Perth Region)? | | | | **Yes** | | **No** |
| 3. List details of the goods and services, including proposed subcontracting arrangements, your business intends purchasing for use on this contract from regional businesses that are located within the prescribed distance from the contract delivery point. Include the value of the goods and services (attach additional list if required). | | | | | | |
| **Description of the Goods or Services** | **Supplier’s Name & Location** | | | **Cost** **$** | | |
|  |  |  | |  |  | |
|  |  |  | |  |  | |
| **Total Cost of Regional Content:** | | | | $ | | |
|  | | | |  | | |

SCHEDULE 4 - UNCONDITIONAL PERFORMANCE GUARANTEE *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

Deed of Agreement dated [insert date]

Between

[insert name of the Customer] (the ‘Customer)

And

[insert name and ACN/ABN of the Guarantor] (‘the Guarantor’)

Purpose

[Insert name and ACN/ABN of Contractor] (the ‘Contractor’) has agreed to supply Products and/or Services to the Customer pursuant to [describe customer contract] (‘Contract’).

The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Contract.

What is agreed:

The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions:

If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Contract.

If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by this clause, and the Contract is then terminated for default, the Guarantor will indemnify the Customer against costs and expenses directly incurred by reason of such default.

The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed the obligations and liabilities of the Contractor under the Contract.

The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.

Where the Guarantor is required to perform any obligation under the Contract in accordance with this Deed of Guarantee, the Guarantor agrees to the novation of the Contract from the Contractor to the Guarantor if requested by the Customer.

This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the State of Western Australia.

Where the Contractor has failed to perform under the Contract, the obligations of the Guarantor will continue even though the Contractor has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Act 2001 (Cth) or any other Law.

The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.

A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (by electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party can confirm receipt by any other means.

The address for services of notice for a party is, in the case of the:

Customer

Physical address

Postal address

Phone number

Fax number

Email address

Guarantor

Physical address

Postal address

Phone number

Fax number

Email address

or such other address as a party may notify to the other party in writing from time to time.

A notice or other communication is deemed to be received if:

1. delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
2. sent by post from and to an address within Australia, after three (3) working days;
3. sent by post from or to an address outside Australia, after ten (10) working days;
4. sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
5. sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
6. sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

In witness whereof the parties to this Deed of Agreement have executed the Deed as at the date first written.

Signed for and on behalf of the Customer

by

[insert name of Customer Representative] [signature of Customer Representative]

in the presence of

[insert name of witness] [signature of witness]

Execution by the Guarantor

[insert name of Contractor] [affix common seal below]

[insert ACN, ABN or other identifier]

At:

[insert name of city or town]

In the State of:

[insert name of state or territory and country]

by

[insert name of director] [signature of director]

In the presence of:

[insert name of secretary or other permanent officer] [signature of witness]

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Guarantor, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

SCHEDULE 5 - ORDER FORM *****[OR]* NOT APPLICABLE****

[For use with Common Use Arrangements , regional group buys or Panel Arrangements Only – DELETE SCHEDULE CONTENT IF NOT APPLICABLE]

1.1 …

[insert ...]

1.2 …

[insert ...]

SCHEDULE 6 - BUYING RULES *****[OR]* NOT APPLICABLE****

***[For use with Common Use Arrangements or Panel Arrangements Only – DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

*[Use if a CUA]*Potential Customers will purchase the Products and/or Services in accordance with the following Buying Rules:

*[OR]*

*[Use if an Agency Specific Panel Arrangement]* The Customer will purchase the Products and/or Services in accordance with the following Buying Rules:

*[Use the following table if a CUA OR a Panel Arrangement]*

|  |  |
| --- | --- |
| Monetary Threshold | Buying Process |
| 1. Products and/or Services valued at [Insert threshold] | [Insert buying rule] |
| 1. Products and/or Services valued at [Insert threshold] | [Insert buying rule] |
| 1. Products and/or Services valued at [Insert threshold] | [Insert buying rule] |

*[The following table is provided as an example of buying rules.* *Once specified in a CUA or Panel Arrangement, the buying rules set the minimum requirements for the procurement method a Public Authority must use to procure products or services from the CUA or Panel Arrangement, depending on the total estimated price of that procurement and the monetary threshold it falls into]*

|  |  |
| --- | --- |
| EXAMPLE ONLY - BUYING RULES FOR AN AGENCY SPECIFIC PANEL CONTRACT | |
| Monetary Threshold | Buying Process |
| 1. Products valued at up to $250,000 per Order | Panel members may be accessed directly.  A unit price must be quoted. |
| 1. Products valued at $250,000 or above per Order | Formally request sufficient number of written quotations from relevant panel members.  A unit price must be quoted |
| 1. Services valued at up to $250,000 per Order | Panel members may be accessed directly.  A unit rate must be quoted. |
| 1. Services valued at $250,000 or above per Order | Formally request sufficient number of written quotations from relevant panel members.  A unit rate must be quoted. |

[NOTE: SCHEDULES 7 TO 15 APPLY TO ICT CONTRACTS ONLY]

*[IF NOT AN ICT CONTRACT, INSERT THE FOLLOWING AND CHANGE HEADER TO "SCHEDULES 7 TO 15 - NOT APPLICABLE"]* SCHEDULE 7 TO 15 – NOT APPLICABLE

*[OR, IF AN ICT CONTRACT, INCLUDE ALL SCHEDULES AND AMEND CONTENT AS APPLICABLE]* SCHEDULE 7 - PROJECT PLAN *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the Customer has a Project Plan for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide the Project Plan then the Respondent is to “complete and return”.

SCHEDULE 8 - SERVICE LEVEL AGREEMENT *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the customer has a Service Level Agreement for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide the Service Level Agreement then the Respondent is to “complete and return”

SCHEDULE 9 - HARDWARE MAINTENANCE *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

1.1 …

[insert ...]

1.2 …

[insert ...]

If the Customer has a requirement for Hardware Maintenance for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent to provide for Hardware Maintenance then the Respondent is to “complete and return”.

SCHEDULE 10 - SOFTWARE SUPPORT *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

[Insert requirements for Software Support Services including service levels, response times and particulars of specific services which are to be included or excluded.]

Additional terms relating to Software Support Services [delete if or to the extent inapplicable]

1. THE SERVICES

The services will comprise:

* 1. provision of new releases of the Software by the Contractor to the Customer;
  2. help desk support; and
  3. defect correction.

1. RELEASES
   1. The Contractor will deliver to the Customer any improved version of the Licensed Software (Release) which the Contractor makes available and the Customer will be responsible for using such version subject to the conditions set out below.
   2. Upon delivery of a new Release, the Contractor will make available to the Customer details of such amendments which will be necessary to properly describe the facilities and functions of the new Release and to distinguish it from the previous release.
   3. The Customer will not be obliged to accept or use the new Release if its use would result in any of the facilities and functions set out in the documentation being diminished or curtailed.
   4. The Contractor will deliver to the Customer the object code of the new Release in machine-readable form together with amended documentation.
   5. If required by the Customer, the Contractor will provide training for the Customer's staff in the use of the new Release as soon as reasonably practicable after the delivery of the new Release. Such training will be deemed part of the help desk service described at clause 3 below in this schedule.
   6. Within 3 months of the Customer receiving the new Release the Customer will have tested such Release and will have notified the Contractor of any failure or error of that Release.
   7. If within 3 months after such delivery no such notification is made, the Customer will be deemed to have accepted the new Release.
   8. If the Customer notifies the Contractor of any fault in the new Release then the Contractor will correct the fault in accordance with the defect correction procedures as set out in clause 4 below.
2. HELP DESK
   1. Help desk support will include technical advice in relation to the Software, system advice, problem resolution, training and other general support in respect of the Contract to resolve Customer queries or difficulties in using the Software.
   2. The Contractor will supply up to 150 hours of help desk support in each 12-month maintenance period in respect of all Software supplied under the Contract.
   3. The Contractor will provide help desk services primarily by telephone, facsimile, e-mail and, where consistent with the Customer's internal policies, dial-in support.
   4. Support will be accounted for in 15 minute increments and includes travel time where on-site support is required.
   5. Where on-site support is required the Customer will be liable to additional charges for travel, accommodation and out-of-pocket expenses.
   6. Help desk support may include support for the manipulation of data for input to the system and include amendments to parameter, control files and scripts required to upload data.
   7. Where in the opinion of the Contractor the support for manipulation of data for input requires material Customer specific amendments to the Software, the Contractor will advise the Customer of that opinion and will be excused from providing such support under this agreement.
   8. Where additional support is required, it will be charged at the Contractor's current casual consulting rates.
   9. No additional charges will be made for work which has not been duly authorised by the Customer.
3. DEFECT CORRECTION
   1. If the Customer discovers that the Software fails to operate correctly by reference to the documentation then the Customer will within 14 days notify the Contractor in writing of the defect or error in question and provide the Contractor (so far as the Customer is able) with a documented example of such defect or error.
   2. The Contractor will use its reasonable endeavours to promptly correct such defect or error. When corrections are completed the Contractor will deliver to the Customer the corrected Software along with appropriate amendments to the documentation. The Contractor will provide the Customer with such assistance as is reasonably required by the Customer to enable the Customer to implement the use of the corrected version of the Software.
   3. Defect correction service will not include any service in respect of:
4. any modification of the Software if such modification would result in a departure from the Specification; or
5. defects that are trivial or that do not have a material effect on the operation or outcomes produced
   1. The Contractor will make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by the Contractor:
6. at the request of the Customer but which do not qualify under the error correction service by virtue of any of the exclusions referred to in clause 4 paragraph (c) above; or
7. at the request of the Customer but which the Contractor finds are not necessary
   1. If the Customer discovers any material fault in the documentation then the Customer will notify the Contractor in writing of the fault in question within 14 days. The Contractor will promptly correct the fault and provide the Customer with appropriate amendments to the documentation.
8. CUSTOMER OBLIGATIONS
   1. The Customer will ensure that the Software is used in a proper manner by competent and trained employees only or by persons under their supervision.
   2. The Customer will not alter or modify the Software or the documentation in any way except with the express approval of the Contractor, nor permit the Software to be combined with any other programs to form a combined work.
   3. The Customer will not request, permit or authorise anyone other than the Contractor to provide any Software Support Services in respect of the Software or the documentation except where the Contractor advises that it is unable or unwilling to provide such services.

SCHEDULE 11 - TRANSITION IN PLAN *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

If the Customer has a requirement for a Transition Plan for the Contract insert here, and the Respondent is to “read and keep”.

If the Customer requires the Respondent has a requirement for a Transition Plan then the Respondent is to “complete and return”.

[Insert details of the Contractor's transition-in obligations including, but not necessarily limited to:

1. third party contracts to be assigned or novated;
2. third party contracts to be managed by Contractor;
3. arrangements for the transfer of the Customer's Personnel;
4. arrangements for the secondment of the Customer's Personnel;
5. timeframe for preparation of a procedures manual; and
6. particulars of interim service levels]

SCHEDULE 12 - CHANGE ORDER *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

[If the proposed changes will vary the Specification, the Contract Details or any other technical requirements of the Customer, the following form must be completed]

**The Contract is changed in accordance with the terms of this Change Order and its attachments**

Change order number

Date proposed

Name of party instigating the change

Implementation date of change

Details of change proposal

Clauses affected by the

proposal are as follows

New charges payable to the Contractor or

Customer affected by this change proposal

Plan for implementing the change

The responsibilities of the parties

for implementing the change

The new date for the acceptance

testing of the system

Effect of change on performance

Effect on documentation

Effect on training

Effect on the users of the system

Any other matters which the parties

consider are important

**Execution – Signed for and on behalf of the**

**Customer’s representative**

Name (print)

Position

Signature and date / /

**Contractor’s representative**

Name (print)

Position

Signature and date / /

SCHEDULE 13 - ACCEPTANCE TESTING *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

1.1 Acceptance Test Details

[Insert details]

1.2 Certificate of Acceptance Form

Issued by the Customer’s representative to the Contractor

Name of Customer’s representative

The following items (Service and/or

Product) have been accepted

Conditions attached to the

Certificate of Acceptance

Execution – Signed for and on behalf of the

Customer’s representative

Name (print)

Position

Signature and date / /

Contractor’s representative

Name (print)

Position

Signature and date / /

SCHEDULE 14 - ESCROW *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

Deed of Agreement dated [insert date]

Between

[insert name of the Customer] (the ‘Customer’)

And

[Insert the name of the Contractor] (the ‘Contractor’)

And

[Insert the name of the Escrow Agent] (the ‘Escrow Agent’)

Purpose

By contract made on [insert date of Contract] ('the Contract') the Contractor has agreed to grant or procure a licence to the Customer to use certain software (the ‘Licensed Software’).

The Contractor and Customer have agreed to the appointment of an Escrow Agent as an independent person to hold the source code for the Licensed Software for the purposes of this Agreement.

The Escrow Agent has agreed to hold the source code for the Licensed Software, including the software expressed in human-readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of the Licensed Software and the supporting material being all of the material and data developed and used in and for the purpose of creating the software including (but not limited to) compiled object code, tapes, operating manuals and other items listed in Attachment 3 of this Agreement on the following terms and conditions.

What is agreed:

1. Interpretation

Where an obligation is imposed on a party under this Agreement, that obligation will include an obligation to ensure no act, error or omission on the part of that party's employees, Agents or subcontractors occurs which will prevent discharge of the Escrow Agent's obligation.

1. Duration

This Agreement is in force until the source code is released in accordance with the terms of this Agreement.

1. Appointment of Escrow Agent

The Escrow Agent is appointed jointly by the Customer and the Contractor and, subject to the terms and conditions of this Agreement, is granted full power and authority to act on behalf of each party to this Agreement.

1. Contractor's obligations
   1. The Contractor will deliver to, and deposit with the Escrow Agent, one copy of the source code and supporting material within seven (7) days of the date of the contract.
   2. The Contractor agrees to:
   3. maintain the source code and supporting material on a quarterly basis following the initial deposit; and
   4. subject to clause 4.2(a), ensure the source code and supporting material deposited with the Escrow Agent accurately reflects the Licensed Software including all modifications, amendments, updates and new releases made to, or in respect of, the Licensed Software.
   5. The Contractor warrants that the source code is, to the best of Contractor's knowledge, free from any virus or program device, which would:
2. prevent the Licensed Software from performing its desired function; or
3. prevent or impede a thorough and effective checking of the Licensed Software.
4. Escrow Agent's Obligations
   1. The Escrow Agent must accept custody of the source code on the date of delivery in accordance with clause 4.1 of this Agreement and, subject to the terms of this Agreement, will hold the source code on behalf of the Customer and the Contractor.
   2. The Escrow Agent agrees to take all reasonable steps to ensure the preservation, care, maintenance, safe custody and security of the source code while it is in its possession, custody or control, including storage in a secure receptacle and in an atmosphere which does not harm the source code and supporting material.
   3. The Escrow Agent will bear all risks of loss, theft, destruction of or damage to the source code while it is in Escrow Agent's possession, custody or control where such loss, theft, destruction or damage is caused by the negligence, default, wilful or damage or recklessness of the Escrow Agent or its employees or agents, or the failure of the Escrow Agent or its employees or agents to otherwise comply with any specific obligations set out in this Agreement.
   4. If the source code is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent must, obtain from Contractor a further copy of the source code. If the loss, theft, destruction or damage to the source code is the result of a breach by the Escrow Agent of its obligations under this Agreement, or is in any event embraced by clause 5.3, the Escrow Agent must bear the costs of paying for a further copy of the source code pursuant to this clause 5.4.
   5. The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the source code lodged with it.
5. Escrow Fee and Expenses
   1. The escrow fee will be paid as set out in Attachment 1 to the Escrow Agreement.
   2. All expenses and disbursements incurred by the Escrow Agent in connection with this Agreement will be borne by the Escrow Agent.
   3. All expenses and disbursements incurred by the Contractor in connection with the contract will be borne by the Contractor.
6. Testing and Verification
   1. The Customer may, in the presence of and under the supervision of the Contractor, analyse and conduct tests in relation to the source code and supporting material to verify that the source code and supporting material consists of the material specified in Attachment 2 and Attachment 3 of this Escrow Agreement.
   2. The Customer may engage an independent assessor who, upon proof of their engagement, will have the same rights of access to the source code and supporting material as the Escrow Agent to undertake analysis and tests of the source code and supporting material for verification purposes, on its behalf.
   3. The Escrow Agent agrees to release the source code and supporting material to an independent assessor, upon presentation of a release form signed by the Customer and the Contractor stating the material to be released and identifying the person to whom that material may be released.
   4. At the completion of the testing and clarification process, the Customer or the independent assessor (as the case may be) must return the source code and supporting material to the Escrow Agent. The Escrow Agent will advise all parties in writing that the source code has been returned to its custody.
   5. The cost of verification pursuant to this clause will be borne by the Customer unless the verification process reveals a discrepancy, in which case the cost will be borne by the Contractor without prejudice to any other rights or remedies of the Customer arising in such circumstances.
7. Release of the Source Code and Supporting Material
   1. The Escrow Agent agrees to not release, or allow access to, the source code and supporting material except in accordance with this Agreement.
   2. Subject to Clause 8.3, the Escrow Agent agrees to release the source code to the Customer upon receipt of written notice from the Customer that:
8. the Contractor has become subject to any form of insolvency administration;
9. the Contractor has ceased for any reason to maintain or support the Licensed Software;
10. the license agreement has been terminated by the Customer for breach of Contract by the Contractor; or
11. the contract is terminated following the default of the Contractor.
    1. The Escrow Agent will not release the source code to the Customer pursuant to Clause 8.2 if, and to the extent that, the Contract Documents stipulates an alternative procedure to be adopted upon the occurrence of one or more of the events described in Clause 8.2.
    2. Where the Contract has been terminated by the Contractor or where the Customer has agreed to the release of the source code and so advises the Escrow Agent in writing, the Escrow Agent will, upon written request from the Contractor release the source code and supporting material to the Contractor.
12. Termination
    1. The Escrow Agent may, by giving 3 months prior written notice to the Customer and Contractor, terminate this Agreement subject to a pro-rata refund of any advance payment of the escrow fee.
    2. The Customer and Contractor may jointly terminate this Agreement immediately if the Escrow Agent:
13. has become subject to any form of insolvency administration; or
14. is in breach of any obligation under this Agreement so that there is a substantial failure by the Escrow Agent to perform or observe this Agreement.
    1. If this Agreement is terminated in accordance with this clause 9 while the licence of the Licensed Software remains in force, the Customer and Contractor will enter into a new escrow agreement on the same terms and conditions as are set out in this Agreement, with an alternative escrow agent who is acceptable to both the Customer and the Contractor.
    2. The Customer and Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Agreement but no refund of advance payment of the escrow fee will be payable in such circumstances.
15. Confidentiality
    1. The Escrow Agent must not, except as permitted by the contract, make public or disclose to any person any information about this Agreement, the Contract or the source code.
    2. The Escrow Agent must not reproduce a copy of the source code or any part thereof.
    3. The obligations under this clause 10 will survive termination of this Agreement.
16. Compliance With Laws

In carrying out this Agreement, the Escrow Agent, must, comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State or local authority.

1. Applicable law

This Agreement will be governed by and construed in accordance with the laws from time to time in force in the State of Western Australia.

1. Variation and waiver
   1. This Agreement will not be varied except by agreement in writing signed by each of the parties.
   2. A waiver by one party of a breach of a provision of this Agreement by another party will not constitute a waiver in respect of any other breach, or of any subsequent breach of this Agreement.
   3. Failure of a party to enforce a provision of this Agreement will not be interpreted to mean that the party no longer regards that provision as binding.
2. Assignment

Neither the Contractor nor the Escrow Agent may assign in whole or in part any responsibilities or benefits under this Agreement without the written consent of the Customer.

1. Notices
   1. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or by facsimile) to the address last advised by one of them to the other.

A notice or other communication is deemed to be received if:

1. sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent; or
2. sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
3. sent by electronic mail, only in the event that the other party acknowledges receipt by any means;
4. sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
5. delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

Address of the Customer

Physical address

Postal address

Phone number

Fax number

Email address

Address of the Contractor

Physical address

Postal address

Phone number

Fax number

Email address

Address of the Escrow Agent

Physical address

Postal address

Phone number

Fax number

Email address

1. This Agreement has been properly executed if the section below has been completed.

Execution – Signed for and on behalf of

Customer’s representative

Name (print)

Position

Signature and date / /

Contractor’s representative

Name (print)

Position

Signature and date / /

Escrow Agent’s representative

Name (print)

Position

Signature and date / /

Attachment 1 - Details of escrow fees

**(Clause 6 of Escrow Agreement)**

[Insert the following details:

* 1. Party responsible for payment
  2. Deposit fee
  3. Storage fee
  4. Retrieval fee
  5. Release fee
  6. Collection fee]

Attachment 2 - **Details of the licences for the Licensed Software covered by this Escrow Agreement**

**(Clause 7 of Escrow Agreement)**

[Insert details of the licenses covered by this Agreement]

Attachment 3 - **Supporting material**

**(Clause 7 of Escrow Agreement)**

[Insert details of any supporting material for the Licensed Software held in escrow]

SCHEDULE 15 – SOFTWARE LICENCE TERMS *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

[Attach any alternative software licence terms and conditions.]

SCHEDULE 16 - ADDITIONAL DOCUMENTS *****[OR]* NOT APPLICABLE****

***[DELETE SCHEDULE CONTENT IF NOT APPLICABLE]***

[Attach all other relevant documents to the Contract here.]

APPENDIX 1 - PRO BONO LEGAL SERVICES

***[DELETE APPENDIX IF NOT APPLICABLE]***

[This Appendix must be included in all Requests for Legal Services – See Schedule 1 Head Agreement Details Clause 20 and Customer Contract Details Clause 31. Contractors who provide legal services to the State of Western Australia are required to provide Pro Bono Legal Services in accordance with this Pro Bono Legal Services Appendix].

1. INTERPRETATION

In this Appendix, unless expressed to the contrary:

* 1. Approved Causes is defined in clause 3(b)
  2. Excluded Services is defined in clause 3(c)
  3. Government means the State of Western Australia
  4. Law Firm means a Contractor that is party to a Panel
  5. Legal Services means the Services
  6. Pro Bono Legal Services is defined in clause 3(a)
  7. Pro Bono Hourly Rate is defined in clause 5

1. GUIDING PRINCIPLES
   1. The Government is committed to the provision of Pro Bono Legal Services as a means to contribute to the administration of justice.
   2. The Government recognises that the provision of Pro Bono Legal Services complement, rather than substitute, Government funded legal aid and legal assistant services.
   3. The Government seeks to strengthen the community legal sector through the provision of Pro Bono Legal Services.
2. PRO BONO LEGAL SERVICES
   1. Pro Bono Legal Services means:

(i) pro bono legal work provide according to the Australian Pro Bono Centre’s National Pro-Bono Target definition;

(ii) services within the definition of 'Approved Causes' in clause 3(b) and otherwise within the terms of the Pro Bono Guidelines; or

(iii) services as approved from time to time by the Attorney General and notified in writing to the Service Provider by the Executive Contract Manager,

but does not include 'Excluded Services'.

* 1. Approved Causes means the provision of Pro Bono Legal Services:

(i) to individuals in Western Australia who cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial or other hardship;

(ii) which will enhance access to justice for disadvantaged people in Western Australia;

(iii) to Law Access, a community legal centre in Western Australia, the Aboriginal Legal Services of Western Australia, and to bodies whose primary focus is representation of Aboriginal people; or

(iv) by way of secondment of legal staff to Law Access, a community legal centre in Western Australia, the Aboriginal Legal Services of Western Australia, or bodies in Western Australia whose primary focus is representation of Aboriginal people.

* 1. Excluded Services means any services which under this Appendix are not recognised as Pro Bono Legal Services, and include:

(i) giving legal assistance to any person for free, or at a reduced fee, without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;

(ii) free first consultations with clients who are otherwise billed at a Law Firm's normal rates;

(iii) legal assistance provided under a grant of legal assistance from Legal Aid;

(iv) contingency fee arrangements, or other speculative work, which is undertaken with a commercial expectation of a fee;

(v) the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; and

(vi) time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

1. REQUIREMENTS

Law Firms who provide Legal Services to Government must:

* 1. be a signatory to the Australian Pro Bono Centre's National Pro Bono Target ([www.probonocentre.org.au/provide-pro-bono/target/](http://www.probonocentre.org.au/provide-pro-bono/target/)); and
  2. undertake Pro Bono Legal Services for Approved Causes to the value of at least 10% of the total value of each Law Firm's contract for Legal Services with the Government.

1. Pro Bono Hourly Rates
   1. The Pro Bono Hourly Rate for a Law Firm is calculated as an average of the Law Firm’s hourly rate for lawyers under the relevant contract for Legal Services with Government.
   2. To avoid doubt and by way of illustration if a Law Firm charges the following hourly rates under a contract for Legal Services with Government:

Partner: $700

Senior Associate: $550

Associate: $400

Restricted Partner: $250

then the Pro Bono Hourly Rate for that Law Firm is $475.

* 1. To avoid doubt the Pro Bono Hourly Rate applies to calculating the requirement set out in Requirements clause 4(a)(b) only.

1. CONFLICTS OF INTEREST

A Pro Bono Coordinator located at the State Solicitor's Office will manage conflicts of interest that may arise for law firms undertaking Pro Bono Legal Services where the Government is the counter-party.

1. REPORTING
   1. Law Firms are required to complete the Reporting Template at Table 1 for each contract for Legal Services with the Government by no later than 12 weeks from the end of the financial year in respect of which the Pro Bono amount is calculated and send it to the State Solicitors Office (SSO) at **probono@sso.wa.gov.au**.
   2. Law firms are not required to disclose the names of their pro bono clients in the Reporting Template.
   3. A report using disaggregated data will be tabled in Parliament annually.

Table 1 – Pro Bono Reporting Template

|  |  |  |
| --- | --- | --- |
| Item | Category | Description |
| 1 | Law Firm |  |
| 2 | Department | Department, agency or entity the Law Firm has a contract for Legal Services with. Law Firms are required to complete a report for each contract for Legal Services. (I.e. if a Law Firm has two contracts for Legal Services, then it is required to complete two reports). |
| 3 | Signatory to the National Pro Bono Aspirational Target | Yes/No |
| 4 | Total dollar value of the contract for Legal Services for the financial year. | The dollar amount over the relevant financial year. |
| 5 | Total hours of Pro Bono Legal Services (on Approved Causes AND under the Australian Pro Bono Centre’s National Pro Bono Target) | The aggregate sum of hour the Law Firm’s lawyers have provided Pro Bono Legal Services during the financial year.  To avoid doubt, Pro Bono Legal Services on Approved Causes hours can be used to satisfy the requirements of the Australian Pro Bono Centre’s National Pro Bono Target. |
| 6 | Total hours provided on Pro Bono Legal Services for Approved Causes | Aggregate sum of hours for the relevant Law Firm’s lawyers during the financial year. |
| 7 | Total dollar amount on Pro Bono Legal Services on Approved Causes | Calculated as the number of aggregate hours (listed in item 5) multiplied by the Pro Bono Hourly Rate. |
| 8 | Is the amount in Item 7 at least 10% of the total value of Legal Services work provided to Government in the financial year the subject of this report (i.e. the amount listed in item 4). | Yes/No |
| 9 | Total hours provided on Pro Bono Legal Services on Approved Causes for   1. Individuals; and 2. Organisations. | Aggregate sum of hours for the relevant Law Firm’s lawyers during the financial year, broken down into the categories of individuals and organisations (respectively). |
| 10 | Total dollar amount on Pro Bono Legal Services on Approved Causes for:   1. Individuals; and 2. Organisations. | Calculated as the number of aggregate hours (listed in Item 8) multiplied by the Pro Bono Hourly Rate broken down into the categories of individuals and organisations (respectively). |
| 11 | No FTE lawyers (excluding paralegals) |  |
| 12. | Hours provided on Pro Bono Legal Services on Approved Causes per lawyer |  |
| 13. | Internal Pro Bono Legal Services hours per lawyer target | (if any) |
| 14. | Brief overview of Pro Bono activities | Does not need to identify pro bono clients. |