

Schedule 1 - Head Agreement Details and Customer Contract Details

Head Agreement Details

1. Contract Authority	The Contract Authority is the Chief Executive Officer of the Department of Finance (Director General) exercising powers conferred by the <i>Procurement Act 2020</i> (WA).
2. The Term of the Head Agreement	The Term of the Head Agreement is five years.
3. Commencement Date	The Contract Authority will notify the Contractor of the Commencement Date in the Letter.
4. Extensions	The Contract Authority has one option to extend the Term for two years.
5. Notice of Extension	Clause 3.8 of the General Conditions applies.
6. Price Variation	The minimum discount rate is fixed for the Term.
7. Public Liability	<p>Note: Applicable to all Panels.</p> <p>Public liability insurance covering:</p> <ol style="list-style-type: none"> the legal liability of the Contractor and the Contractor 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 any one period of insurance; and indemnification of the Contract Authority as principal to the extent of its liability arising out of the Services.
8. Workers' Compensation	<p>Note: Applicable to all Panels.</p> <p>Workers' compensation insurance in accordance with the provisions of the <i>Workers' Compensation and Injury Management Act 2023</i> (WA) (the WCIM Act).</p> <p>The insurance policy must include:</p> <ol style="list-style-type: none"> common law liability cover for an amount of not less than \$50 million for any one event in respect of workers of the Contractor; and principal's indemnity cover (by policy extension or otherwise), covering any claims or liability that may arise under the principal's indemnity described in section 217 of the WCIM Act.
9. Contract Management Requirements	<p>Reporting</p> <p>The Contractor must provide the Contract Authority with the following reports, at no extra cost:</p> <ul style="list-style-type: none"> Quarterly Sales Reports: The Contractor must submit Quarterly Sales Reports within 30 calendar days of the end of each quarter. Refer to section '9.3 Reporting Requirements' for further information. Sustainability Reporting: The Contractor must submit an annual Sustainability Report within 30 calendar days of the anniversary of the CUATIS2024 Commencement Date. Refer to section '9.3 Reporting Requirements' for further information. Annual WAIPS Reporting: Refer to section 19. 'Western Australian Industry Participation Strategy (WAIPS)' in 'Schedule 1 Head Agreement Details', for further information. Ad Hoc Reports: The Contract Authority reserves the right to request ad hoc reports from the Contractor, as required. The reports are to be provided within 14 calendar days unless otherwise agreed to by both parties.

	<p>Meetings</p> <p>The Contractor must meet the following meeting requirements:</p> <ul style="list-style-type: none"> • The Contractor and the Contract Authority will meet at a minimum once per annum to discuss the Contractor's performance, Sales Reports and any other matter pertaining to this CUA. • The Contractor and the Contract Authority will meet prior to the expiry of the initial Head Agreement Term to discuss the Contractor's performance, potential option to extend the Contractor under the term of the Head Agreement and any other matters pertaining to this CUA. • For ad hoc meetings, the Contractor and the Contract Authority will meet within 10 working days, or at a time agreed between the parties, of one party serving a written request for a meeting upon the other party. The notice must set out the matters to be discussed. The parties may meet either physically or by using an electronic means of simultaneous communication. <p>Key Performance Indicators</p> <p>The Contractor must meet the Key Performance Indicators (KPIs) as defined in 'Schedule 2 - Statement of Requirements' of this Request.</p> <p>Contract Authority's Representative Details</p> <p>Representative : As specified in the Letter.</p> <p>Street Address : Department of Finance Djookanup 16 Parkland Road Osborne Park WA 6017</p> <p>Mailing Address : Locked Bag 11 Cloisters Square Perth WA 6850</p>
10. Confidential Information	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.
11. Panel Arrangement	This Request is to establish a Panel Arrangement. Clause 4(b) of the General Conditions applies.
12. Police Clearance	Clause 18.4 of the General Conditions applies.
13. Confidential Declaration – Prevention of Paedophilia	Clause 18.5 of the General Conditions does not apply.
14. Warranties	For the purposes of clause 19.5 of the General Conditions, no warranties are specified.
15. Intellectual Property Owner	The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions.
16. Publicity	For the purposes of clause 24.4 of the General Conditions, no other State Agency is specified.
17. Government Policies	<p>The following obligation relates to Government procurement policies for the purposes of clause 32 of the General Conditions:</p> <ul style="list-style-type: none"> • The Western Australian Industry Participation Strategy requirements mentioned and/or described in Item 19 of the Head Agreement Details.

18. Termination Without Cause	<p>Unless stated to the contrary in the Head Agreement Details, the Contract Authority may, in its absolute discretion and for its sole benefit, terminate this Head Agreement without cause in whole or in part at any time by 30 calendar days (or such other period as may be agreed between the parties) prior written notice to the Contractor. The Contractor will immediately comply with any directions given by the Contract Authority in the notice. No compensation will be payable by the Contract Authority to the Contractor in the event of termination pursuant to this clause 18.</p> <p>Termination of the Head Agreement under this clause 18 does not have any effect on any Customer Contracts entered into prior to the date of termination of the Head Agreement, but for the avoidance of doubt the Contractor may not enter into any new Customer Contracts after the date of termination of the Head Agreement.</p>
19. Western Australian Industry Participation Strategy (WAIPS) – Requirements For CUA and Panel Arrangements	<p>a Exemption Reporting</p> <ul style="list-style-type: none"> i The Contractor must submit a completed WAIPS Participation Plan Exemption Report for Common Use Arrangements and agency panel contracts to the Contract Authority: <ul style="list-style-type: none"> (A) annually (Annual Report); and (B) upon the expiry of the Head Agreement (Final Report), in accordance with this clause. ii Each report submitted under subclause a i must use the form of, and must address the matters outlined in, the WAIPS Participation Plan Exemption Report for Common Use Arrangements and agency panel contracts template which is available to download from WA.gov.au. iii Subject to subclause iv below, the Contractor must submit: <ul style="list-style-type: none"> (A) 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 (B) a Final Report no later than two months after the expiry of the Head Agreement. iv 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). v 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. <p>b Use of Information</p> <p>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.</p> <p>c Clause survives</p> <p>This clause survives the termination or expiration of the Head Agreement.</p>

Customer Contract Details

1. Customer	The Customer will be specified in the Order.
2. The Term of the Customer Contract	The Term of the Customer Contract will be specified in the Order.
3. Commencement Date	The Customer will notify the Contractor of the Commencement Date in the Order Form.
4. Price Variation	To be specified in the Order Form.
5. Public and Products Liability	<p>Note: Applicable to all Panels.</p> <p>Public and products liability insurance covering the legal liability of the Contractor and the Contractor's Personnel arising out of the Goods and / or Services for an amount of:</p> <ol style="list-style-type: none"> not less than \$20 million for any one occurrence; unlimited in the number of occurrences happening in any one period of insurance for public liability; and limited in the annual aggregate to \$20 million for products liability for all occurrences in any one period of insurance. <p>The monetary values in this Item are specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.</p> <p>The Contractor's public and products liability insurance cover must include cover for the indemnification of the Customer as principal to the extent of its liability arising out of the Goods and/or Services.</p>
6. Workers' Compensation	<p>Note: Applicable to all Panels.</p> <p>Workers' compensation insurance in accordance with the provisions of the <i>Workers' Compensation and Injury Management Act 2023 (WA)</i> (the WCIM Act).</p> <p>The insurance policy must include:</p> <ol style="list-style-type: none"> common law liability cover for an amount of not less than \$50 million for any one event in respect of workers of the Contractor; and principal's indemnity cover (by policy extension or otherwise), covering any claims or liability that may arise under the principal's indemnity described in section 217 of the WCIM Act.
7. Motor Vehicle Third Party	<p>Note: Applicable to all Panels where the Contractor will be using its own fleet of vehicles to deliver Goods and/or Services to the Customer under this Contract.</p> <p>Motor vehicle third party liability insurance covering legal liability of the Contractor for property loss or 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 Goods and / or Services for an amount of not less than \$30 million for any one occurrence or accident.</p>
8. Compulsory Third Party	<p>Note: Applicable to all Panels where the Contractor will be using its own fleet of vehicles to deliver Goods and/or Services to the Customer under this Contract.</p> <p>Compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Goods and / or Services.</p>
9. Goods in Transit	<p>Note: Applicable to Panel 1 only.</p> <p>Goods in Transit insurance covering loss of or damage to goods from any cause or event not otherwise excluded whilst in transit (including loading, unloading and incidental storage) anywhere in Australia for an amount not less than \$1 million for any one event or occurrence.</p>

10. Professional Indemnity	<p>Note: Applicable to Panel 2 and 3 only.</p> <p>Professional indemnity insurance covering the civil liability of the Contractor and the Contractor Personnel under the Customer Contract, arising out of a breach of professional duty in the performance of the Services under the Customer Contract for an amount not less than \$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.</p> <p>Any monetary value in this Item is specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.</p> <p>The Contractor's professional indemnity insurance must include cover commonly described as cover for:</p> <ul style="list-style-type: none"> a. fraud and dishonesty; b. defamation; c. intellectual property infringement; d. loss of or damage to documents, data and electronic records; e. breach of Australian Consumer Protection Legislation; and f. vicarious liability for acts of agents and consultants. <p>The reference to "Australian Consumer Protection Legislation" in this Item means the <i>Competition and Consumer Act 2010</i> (Cth), <i>Corporations Act 2001</i> (Cth), <i>National Consumer Credit Protection Act 2009</i> (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction.</p>
11. Cyber Insurance	<p>Note: Applicable to Panel 2 and 3 only.</p> <p>Cyber insurance covering the financial loss and legal liability of the Contractor for costs, expenses, loss or claims arising from any:</p> <ul style="list-style-type: none"> a. disclosure of personal or corporate information; b. ransomware and extortion; c. business interruption; d. lost, damaged or destroyed data/records including software and hardware and recovery of such data/records; e. computer virus and hacking including denial of service; f. media liability; or g. regulatory fines and penalties, <p>for an amount not less than \$5 million for any one claim and in the aggregate in any one period of insurance.</p> <p>Any monetary value in this Item is specified by reference to each twelve-month period of insurance during which the Contractor is required to maintain insurance under the Customer Contract. If the Contractor holds insurance which specifies a period of insurance other than annual cover, the policy must provide coverage that is at least equivalent to or greater than the level of cover specified in this Item.</p> <p>The cyber insurance required under this Item must be maintained throughout the Term and for a period of at least 6 years after termination or expiration of the Customer Contract.</p> <p>Survival</p> <p>The Contractor's obligations under this Item are continuing obligations that survive the termination or expiration of the Customer Contract for so long as the obligations of the Contractor under this Item continue.</p>

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12. Insurance Review	<p>a. The Customer reserves the right, from time to time, to review the adequacy and appropriateness of the policies of insurance effected by the Contractor in relation to the Customer Contract. As part of the review, the Customer may ascertain whether, in the Customer's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Contractor in relation to the Customer Contract and maintained at the time of the review are still required or require amendment.</p> <p>b. The Contractor must commence negotiations to obtain insurances or amend the policies of insurance effected by the Contractor in relation to the Customer Contract within 10 business days of receiving notice from the Customer to do so, and must, as soon as practicable thereafter at the Contractor's own cost, obtain insurances or amend the policies of insurance effected by the Contractor in relation to the Customer Contract to reflect the recommendations made by the Customer following its review.</p> <p>c. The Contractor must promptly notify the Customer if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the Customer review. The parties must determine what action, if any, is to be taken following receipt of this notice.</p> <p>d. Each party warrants to the other that it will act reasonably and in good faith with respect to any action taken under or in connection with this Item.</p>
13. Contract Management Requirements	<p>The following Customer Contract Management requirements will be specified in the Order Form:</p> <ul style="list-style-type: none"> • Customer's representative and contact details. • Reporting. • Meetings. • Key Performance Indicators, as per section '7.5 Key Performance Indicators' in 'Schedule 2 – Specifications / Statement of Requirements', unless otherwise specified in the Order Form.
SPECIAL CONDITIONS	
14. Confidential Information	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.
15. Police Clearance	Clause 18.4 of the General Conditions applies.
16. Confidential Declaration – Prevention of Paedophilia	Clause 18.5 of the General Conditions applies.
17. Warranties	<p>As per Schedule 2, Section 4 'Warranty Requirements'.</p> <p>If the warranty specified exceeds the Term of the Customer Contract, the Warranty survives the expiry or termination of the Customer Contract.</p>
18. Intellectual Property Owner	The Contractor is the owner of the Intellectual Property Rights in New Material for the purposes of clause 23.2 of the General Conditions.
19. Working Papers	Copyright and property in all Working Papers vest in the Contractor.
20. Publicity	For the purposes of clause 24.4 of the General Conditions, no other State Agency is specified.
21. Government Policies	For the purposes of clause 32 of the General Conditions, no obligations relating to Government procurement policies are specified.
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).

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(b) Third Party Indemnity by Contractor	<p>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:</p> <ul style="list-style-type: none"> a) 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 b) arises from a claim made or threatened against the Customer in which it is alleged that a Service or Good (including the Customer's use of a Service or Good) 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 <i>Patents Act 1990</i> (Cth) s.163, the <i>Designs Act 2003</i> (Cth) s.96, the <i>Copyright Act 1968</i> (Cth) s.183 and the <i>Circuits Layout Act 1989</i> (Cth) s.25, constitute an infringement; or c) 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	<p>Where the Customer wishes to enforce an indemnity in sub-clause (b), it must</p> <ul style="list-style-type: none"> a) not admit liability for the alleged breach, or tortious, unlawful, or wilfully wrong act or omission, or infringement; b) give written notice to the Contractor as soon as practicable; c) 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 d) 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	<p>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:</p> <ul style="list-style-type: none"> a) obtain for the Customer the right to continued use of the Good; or b) replace or modify the Good so that the alleged infringement ceases so long as the Good continues to provide the Customer with equivalent functionality and performance as required in the Specifications.
(e) Third Party Indemnity by the Customer	<p>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.</p>
(f) Contractor's Obligations to Customer	<p>Where the Contractor wishes to rely on the indemnity in sub-clause (e) it must:</p> <ul style="list-style-type: none"> a) not admit liability for the alleged breach or tortious act or omission; b) give written notice to the Customer as soon as practicable; c) 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 d) provide all reasonable assistance to the Customer in the handling of negotiations and litigation.

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(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	<p>Any release from loss or liability does not apply to loss or liability for:</p> <ul style="list-style-type: none"> a) 3rd party claims; b) personal injury, sickness and death; c) subject to sub-clause (k), loss of, or damage to, tangible property which does not include data or Software; d) infringement of Intellectual Property Rights; e) breach of confidence or privacy by the Contractor; f) a conflict of interest in respect of the Contractor; g) matters that cannot be excluded at law; h) to the extent that a party is able to recover the loss from its insurer; i) an abandonment of the Customer Contract by a party; j) reckless acts or omissions carried out with a wilful disregard for the consequences; k) wilful and intentional breach by a party; l) any statutory fines or penalties levied against a party; <p>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.</p>
(i) Customer – Contractor (Party- Party) Liability	Loss or liability arising from a breach of the Contract or tortious act or omission is unlimited.
(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 <i>Hadley v Baxendale</i> (1854) 9 Ex 341.
(k) Loss of data etc.	<p>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 \$5 million.</p> <p>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.</p>
(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	<p>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.</p> <p>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.</p>
(n) Survival	This clause survives the termination or expiry of the Contract.