Government of **Western Australia**
Department of Finance

Standing Offer Conditions

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RECITALS

A. These Standing Offer Conditions apply to a Standing Offer established using the Department of Finance's Template Redevelopment Project goods and services procurement templates.

B. The Standing Offer Conditions describe terms and conditions for the supply of the Standing Offer Deliverables.

C. The version (month and year) of these Standing Offer Conditions is as stated on the front page of this document.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Standing Offer, unless the context otherwise requires:

Addendum means any addendum issued by the Requesting Agency in relation to the Request Documents.

Authorisation means any approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver or compliance report by any Government Agency required under any Law, and includes any renewal of, or variation to, any of them, but does not include any act or omission by the Requesting Agency under the Standing Offer.

Authorised Body has the meaning given to that term in the Procurement Act.

Business Day means any day except a Saturday, Sunday or public holiday in Perth Western Australia.

Claim includes any claim, demand, action, proceeding, cause of action or suit of any nature, made under, arising out of, or in any way in connection with, the Standing Offer or any Law.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information in respect of, related to or arising from any of the Standing Offer, Standing Offer Deliverables, a Standing Offer Request for Supply, an Eligible Customer or the Requesting Agency that:

(a) is by its nature confidential;

(b) is specified by the Requesting Agency or an Eligible Customer to be confidential, including any information specified to be confidential in a Standing Offer Request for Supply or the Standing Offer; or

(c) the Supplier knows or ought to know is confidential.

Contract means the contract between an Eligible Customer and the Supplier for the supply of Standing Offer Deliverables by the Supplier.

Contract Conditions means the terms and conditions of contract specified in the approach to market document referred to in paragraph (a) of the definition of RFO.

Copyright Act means the *Copyright Act 1968* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the Eligible Customer specified as the customer in the Contract.

Department CEO has the meaning given to that term in section 4(1) of the *Procurement Act 2020* (WA).

Draft Approval Document means a document that the Supplier is required to prepare under the Standing Offer and submit to the Requesting Agency in draft prior to approval by the Requesting Agency, to which the requirements of clause 17.4 (*Draft Approval Documents*) applies.

Eligible Customer means each State Agency and Authorised Body specified in the Standing Offer Details or specified by the Requesting Agency under clause 2.3(c) (*Scope of Standing Offer*).

Employment Related Information means Records pertaining to employees, payroll and the terms and conditions of employment, or any thereof.

Event of Default means the occurrence of any one of the following events:

(a) the Supplier repudiates the Standing Offer or breaches an obligation under the Standing Offer that cannot be remedied;

(b) the Supplier breaches any other obligation under the Standing Offer and that breach is not remedied within 10 Business Days after the Requesting Agency gives a notice to the Supplier requiring the breach to be remedied;

(c) the Supplier commits three breaches of its obligations under the Standing Offer over any 12 month period, whether or not the Requesting Agency has given the Supplier notice of any such breaches and whether or not the Supplier has rectified such breaches;

(d) a representation or warranty made by the Supplier under the Standing Offer is or becomes untrue or is breached;

(e) an Insolvency Event occurs in respect of the Supplier;

(f) the Supplier ceases, or threatens to cease, to carry on all or a material part of its business;

(g) the Supplier, any Senior Officer of the Supplier or any Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention;

(h) the Supplier, any Senior Officer of the Supplier or any Specified Personnel is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, $10,000;

(i) the Supplier becomes a debarred supplier as defined in section 32 of the Procurement Act;

(j) in the reasonable opinion of the Requesting Agency, the reputation of the Requesting Agency, Eligible Customers, the State or the Government of Western Australia is, or is likely to be, damaged by any act or omission of, or other circumstances relating to or affecting, the Supplier; or

(k) a Probity Event,

on the basis, and provided, that none of the above events limits the operation of any other.

Good Industry Practice means:

(a) the exercise of the degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person with obligations similar to the Supplier's obligations under the Standing Offer and under conditions comparable to those applicable to such obligations;

(b) compliance with applicable standards and codes, being the standards and codes specified in the Standing Offer or, if the Standing Offer does not specify applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and

(c) compliance with applicable Law and Authorisations.

Government Agency means any Australian government or any governmental, semi-governmental, administrative, regulatory fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in Western Australia.

Improved Standing Offer Deliverable means an improved version of a Standing Offer Deliverable.

Insolvency Event means the happening of any of these events in relation to any person:

(a) if the person is a body corporate:

(i) an order is made, or an application is made to a court for an order, that it be wound up;

(ii) except to reconstruct or amalgamate while solvent, it is wound up or dissolved or resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or

(iii) except to reconstruct or amalgamate while solvent, it enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors;

(iv) a liquidator or provisional liquidator is appointed (whether or not under an order), to it, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of it;

(v) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer is appointed to it, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of it or any of its assets or undertakings;

(vi) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any of its assets or undertakings;

(vii) the process of any court or authority is invoked against it, or any of its assets or undertakings, to enforce any judgment or order for the payment of money or the recovery of any property;

(viii) it is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;

(ix) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act; or

(x) it becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;

(b) the person:

(i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation;

(ii) stops or suspends payment of all, or a class of, its debts;

(iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is insolvent or unable to pay its debts when they fall due;

(c) the person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or

(d) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

Intellectual Property Rights means:

(a) patents, copyright, rights in circuit and other eligible layouts, designs and trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and

(b) any application or right to apply for registration of any of those rights,

anywhere in the world, but does not include Moral Rights.

Law means all applicable present and future laws in any relevant jurisdiction including:

(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State, the Commonwealth, any other Australian state or territory, or a local authority;

(b) Authorisations;

(c) principles of common law or equity;

(d) standards and codes; and

(e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) of this definition,

whether or not existing at the Standing Offer Commencement Date.

Letter of Appointment means the letter or other instrument issued by the Requesting Agency that accepts the Offer and which may also specify:

(a) amendments to any of the documents specified in paragraphs (b) to (e) of the definition of Standing Offer Documents;

(b) amendments to the Contract Conditions; and

(c) any other terms and conditions which are to form part of the Standing Offer, a Contract (if awarded) or both,

which the Requesting Agency and the Supplier have agreed.

Loss includes any liability of any kind whatsoever, cost (including all legal and other professional costs on a full indemnity basis), expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit.

Malicious Code means:

(a) any virus, bomb, Trojan horse or computer programming code which would have the effect of impairing, denying or otherwise adversely affecting authorised access to all

or any portion of the Requesting Agency's or Eligible Customer's information and communications technology environment or data; or

(b) any attacks or other code that assists in or enables unauthorised access to, or theft or alteration of, the Requesting Agency's or Eligible Customer's information and communications technology environment or data.

Moral Rights has the same meaning as in the Copyright Act.

New Standing Offer Deliverable means a new deliverable which is similar in nature to, or has the same function as, a Standing Offer Deliverable.

National Police Certificate means a national police certificate issued by the Western Australia Police Force or the police force of another Australian jurisdiction.

Offer means the offer and, if relevant, an alternative proposal, submitted by the Supplier in response to the Request.

Panel means the panel of suppliers (including the Supplier) under the Standing Offer, which enables Eligible Customers to acquire Standing Offer Deliverables from the Supplier or other suppliers on the Panel.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

Price means the price specified in, or determined by applying the formula or method specified in, the Standing Offer.

Privacy Act means the *Privacy Act 1988* (Cth).

Probity Event includes any event, circumstance or thing which occurs or subsists before or after the date of the Standing Offer which:

(a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Supplier, any Related Body Corporate of the Supplier or any Supplier Personnel;

(b) relates to the Supplier, a Related Body Corporate of the Supplier or any Supplier Personnel and has or may have a material adverse effect on the public interest, or public confidence, in the Standing Offer Deliverables and other activities of the Supplier in connection with the Standing Offer or any Contract;

(c) involves a breach by the Supplier, a Related Body Corporate of the Supplier or any Supplier Personnel of any:

(i) Law; and/or

(ii) any equivalent of a Law in a foreign jurisdiction,

in relation to bribery, anti-corruption, dishonesty offences or trust in public office offences;

(d) involves a material failure of the Supplier, a Related Body Corporate of the Supplier or any Supplier Personnel to achieve or maintain:

(i) reasonable standards of ethical behaviour;

(ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Supplier or any Supplier Personnel to carry out and observe its obligations in connection with the Standing Offer or any Contract; or

(iii) other standards of conduct that would otherwise be expected of a party involved in, or associated with, a State procurement;

(e) involves adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier, a related Body Corporate of the Supplier or any Supplier Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or

(f) involves the commencement of legal, regulatory or disciplinary action involving the Supplier, a Related Body Corporate of a Supplier or any Supplier Personnel that may adversely impact on compliance with government policy, the Law or the reputation of any State Agency, the State or the Government of Western Australia.

Probity Requirements means full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics.

Procurement Act means the *Procurement Act 2020* (WA).

Record means any record or information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the Standing Offer or the supply of Standing Offer Deliverables or both, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Reply means a Supplier's response to an Eligible Customer's Standing Offer Request for Supply.

Request means the request issued by the Requesting Agency for supply of the Standing Offer Deliverables, the details of which are contained in the Request Documents.

Request Conditions means the request conditions specified in the approach to market document referred to in paragraph (a) of the definition of RFO.

Request Documents means the RFO and the Response Form.

Requesting Agency means the State Agency that issued the Request, as noted on the front page of the RFO.

Requesting Agency's Representative means a person appointed by the Requesting Agency whose functions and powers are specified in clause 17.1 (*Administration Representatives*).

Response Form means:

(a) the response form document issued by the Requesting Agency in connection with the Request for completion by the respondent;

(b) any other document incorporated in the Response Form pursuant to the approach to market document referred to in paragraph (a) of the definition of RFO; and

(c) any Addendum thereto.

RFO / Request for Offers means:

(a) the approach to market document issued by the Requesting Agency in connection with the Request;

(b) any other document incorporated in the RFO pursuant to the approach to market document referred to in paragraph (a) of this definition; and

(c) any Addendum thereto.

Senior Officer has the meaning given to that term in regulation 3(1) of the *Procurement (Debarment of Suppliers) Regulations 2021* (WA).

Specified Personnel means the individuals named as specified personnel in respect of the Standing Offer and/or the Contract.

Standing Offer means the agreement between the Requesting Agency and the Supplier, the terms and conditions of which are contained in the Standing Offer Documents.

Standing Offer Commencement Date means the commencement date of the Standing Offer specified in the Standing Offer Details.

Standing Offer Conditions means this document.

Standing Offer Deliverables means the goods, services, and/or works described in the Standing Offer.

Standing Offer Details means the relevant part of the Request describing specific conditions and requirements of the Requesting Agency in respect of the Standing Offer and the Standing Offer Deliverables.

Standing Offer Documents means:

(a) the Letter of Appointment;

(b) the Standing Offer Details;

(c) the Offer

(d) the Request Documents excluding the Standing Offer Details; and

(e) these Standing Offer Conditions.

Standing Offer Order means a purchase order issued by an Eligible Customer to a Supplier for the supply of Standing Offer Deliverables, whether or not the order is identified as a "Standing Offer Order".

Standing Offer Request for Supply means a request issued by an Eligible Customer to a Supplier requesting information in relation to a potential Standing Offer Order, whether or not the request is identified as a “Standing Offer Request for Supply”.

Standing Offer Term means the initial term specified in the Standing Offer Details and includes any extension of that initial term.

State means the State of Western Australia.

State Agency has the meaning given to that term in the Procurement Act.

Supplier means the person specified as the supplier in the Letter of Appointment.

Supplier Personnel means the officers, employees, agents and subcontractors of the Supplier, and all officers, employees and agents of subcontractors engaged in relation to the Standing Offer or the supply of the Standing Offer Deliverables or both.

Supplier's Representative means a person appointed by the Supplier whose functions and powers are specified in clause 17.1 (*Administration Representatives*).

WHS Laws means all laws (including the *Work Health and Safety Act 2020* (WA), the *Work Health and Safety Regulations 2022* (WA) and mandatory codes of practice or guidelines) relating to work health and safety that are applicable to the Standing Offer or Standing Offer Deliverables or both.

WHS Notification Requirement means any requirement to notify WorkSafe WA or any other regulator about an incident or event under WHS Law.

1.2 Interpretation

In these Standing Offer Conditions, the Letter of Appointment and any other document issued in connection with the Standing Offer, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them, but is not to be taken as implying that performance of part of an obligation constitutes performance of the whole;

(c) a reference to a gender includes other genders;

(d) a reference to a person includes:

(i) a natural person, a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;

(ii) a reference to the person's executors, administrators, successors, substitutes (including a person taking by novation) and permitted assigns;

(e) a reference to a body, other than a party (including an institute, association or authority), whether statutory or not, which ceases to exist, or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

(f) if the Supplier consists of more than one person, then:

(i) an obligation imposed on the Supplier under the Standing Offer binds each person who comprises the Supplier jointly and severally;

(ii) each person who comprises the Supplier is deemed to agree to do all things necessary to enable the obligations imposed on the Supplier under the Standing Offer to be undertaken;

(iii) the act of one person who comprises the Supplier binds the other persons who comprise the Supplier; and

(iv) an Event of Default by one person who comprises the Supplier constitutes an Event of Default by the Supplier;

(g) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;

(h) a reference to a document or another instrument includes all variations and replacements of them despite any change of, or any change in the identity of, the Requesting Agency or the Supplier;

(i) a reference to a subclause or clause, part, section (other than a section in legislation or a policy document), schedule, annexure, appendix, attachment or exhibit is a reference to a subclause or clause, part or section in, or a schedule, annexure, appendix, exhibit or attachment to, the relevant Standing Offer Document;

(j) a document includes all schedules, annexures, appendices, attachments and exhibits (howsoever described) to that document;

(k) headings are included for convenience and do not affect interpretation;

(l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(m) no rule of interpretation is to be applied to disadvantage the Requesting Agency on the basis that it was responsible for issuing these Standing Offer Conditions or any Standing Offer Document or both;

(n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(o) if the word “including”, “includes”, “particularly”, “such as” or a similar expression is used, the words “without limitation” are taken to immediately follow;

(p) a provision of the Standing Offer which says that the Requesting Agency or the Requesting Agency's Representative "may" do or not do something is not to be construed as imposing an obligation on the Requesting Agency or the Requesting Agency's Representative to do or not do that thing.

(q) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means;

(r) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

(s) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;

(t) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

(u) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;

(v) a reference to time means Australian Western Standard Time;

(w) a reference to a monetary amount means that amount in Australian currency;

(x) reference to the Supplier includes the Supplier Personnel;

(y) a reference to a contractor or subcontractor means a contractor or subcontractor at any tier; and

(z) a reference to a party is a reference to a party to the Standing Offer.

2. FORMATION, SCOPE AND TERM OF STANDING OFFER

2.1 Formation of Standing Offer

(a) A Standing Offer is formed when the Requesting Agency issues a Letter of Appointment to the Supplier.

(b) The terms and conditions of the Standing Offer are contained in the Standing Offer Documents.

2.2 Order of Precedence – Standing Offer Documents

(a) The Standing Offer Documents shall be read in descending order of precedence as each document is listed in the definition of Standing Offer Documents in clause 1.1 (*Definitions*).

(b) If there is any inconsistency between the documents making up the Standing Offer Documents, the Standing Offer Document listed higher in the order of precedence prevails to the extent of the inconsistency. If the inconsistency remains incapable of resolution, the inconsistent provisions shall be severed from the Standing Offer Document lower in the order of precedence without diminishing the enforceability of the remaining provisions. Silence shall not constitute or form the basis of any inconsistency.

2.3 Scope of Standing Offer

(a) The Standing Offer is a standing offer by the Supplier to Eligible Customers for the Standing Offer Term to enter into one or more Contracts for the supply of the Standing Offer Deliverables in accordance with the Standing Offer.

(b) The Supplier enters into, and is bound by, the Standing Offer in consideration for the Requesting Agency making the Standing Offer available to Eligible Customers.

(c) The Requesting Agency may from time to time and in accordance with the process provided for in the Standing Offer Details, specify that a State Agency or Authorised Body is added as an Eligible Customer under the Standing Offer.

2.4 Standing Offer Term

(a) The Standing Offer commences on the Standing Offer Commencement Date and, subject to earlier termination under clause 20 (*Expiration or Termination of Standing Offer*), continues for the Standing Offer Term.

(b) The Requesting Agency has the option or options (exercisable in its absolute discretion) to extend the Standing Offer Term for the period or periods (as applicable) specified in the Standing Offer Details.

(c) The Requesting Agency may exercise an option (and extend the Term) by giving the Supplier a notice of the extension:

(i) by the date or dates specified in the Standing Offer Details; or

(ii) if no period is specified in the Standing Offer Details, at least 20 Business Days before the then current expiry date of the Standing Offer Term.

(d) If the Requesting Agency issues a notice of extension under clause 2.4(c), the notice will specify the period of extension by reference to the period specified in the Standing Offer Details.

2.5 No Exclusivity or Minimum Volume

(a) Unless otherwise specified in the Standing Offer Details:

(i) the Supplier is not the exclusive supplier of the Standing Offer Deliverables; and

(ii) an Eligible Customer may acquire the Standing Offer Deliverables from a third party.

(b) The Supplier acknowledges that an Eligible Customer is under no obligation to, and no representation has been made that it will, procure or seek to procure any or any particular volume of Standing Offer Deliverables from the Supplier.

3. ROLE OF REQUESTING AGENCY AND ELIGIBLE CUSTOMERS

3.1 Eligible Customers and the Standing Offer

(a) Eligible Customers are not a party to and do not have any obligations to the Supplier under the Standing Offer.

(b) The Requesting Agency administers the Standing Offer on behalf of Eligible Customers. The Supplier acknowledges that the Standing Offer is intended for the benefit of Eligible Customers and may be enforced by the Requesting Agency on behalf of Eligible Customers.

3.2 Requesting Agency and Contracts

The Requesting Agency is not a party to a Contract and is not liable to the Supplier:

(a) to perform any obligation, satisfy any liability or rectify any breach by a Customer; or

(b) in respect of any Claim or Loss which the Supplier suffers or incurs in connection with a Contract or the Supplier's dealings with a Customer,

unless the Requesting Agency has issued a Standing Offer Order and a Contract has been formed with the Requesting Agency.

4. PANELS

4.1 Suppliers on the Panel

The Requesting Agency reserves the right:

(a) to appoint as many suppliers to the Panel as it sees fit; and

(b) at any time, and from time to time, to supplement the Panel with additional suppliers.

4.2 Supply by any Panel Supplier

The Supplier acknowledges that, without limiting clause 2.5 (*No Exclusivity or Minimum Value*) and clause 4.1 (*Suppliers on the Panel*), Eligible Customers may request Standing Offer Deliverables from any supplier on the Panel.

5. STANDING OFFER REQUEST FOR SUPPLY AND SUPPLIER'S REPLY

5.1 Standing Offer Request for Supply

(a) An Eligible Customer may:

(i) issue a Standing Offer Request for Supply requiring information from one or more Suppliers in relation to a potential Standing Offer Order;

(ii) issue any number of Standing Offer Requests for Supply at any time during the Standing Offer Term; and

(iii) at any time, vary, supplement, replace or cancel a Standing Offer Request for Supply by written notice to the Supplier.

(b) A Standing Offer Request for Supply issued under clause 5.1(a) is not a Standing Offer Order and does not create a Contract unless and until the Eligible Customer issues a Standing Offer Order.

(c) An Eligible Customer is under no obligation to issue a Standing Offer Order to any Supplier that submits a Reply.

5.2 Supplier's Reply

(a) If a Standing Offer Request for Supply is issued to the Supplier, it must provide a Reply addressing the information required under the Standing Offer Request for Supply in the format and within the period specified by the Eligible Customer.

(b) In replying to an Eligible Customer's Standing Offer Request for Supply, the Supplier warrants and represents that:

(i) all information in its Reply is true, complete and correct, and not misleading or deceptive at the time of submission;

(ii) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Reply which is obtainable by the making of reasonable enquiries, which enquiries the Supplier hereby warrants it has made; and

(iii) in respect of the Reply and any Standing Offer Order issued to the Supplier in connection with the Reply:

(A) it is not aware of any actual or potential conflict of interest;

(B) it has not paid or received, and will not pay or receive, any secret commission;

(C) it has not colluded, and will not collude, with any other person;

(D) the pricing information is not inflated or deflated to advantage another Supplier;

(E) it has not otherwise engaged in any anti-competitive, unlawful or unethical behaviour that has the potential to advantage or disadvantage itself, any other Supplier or the Eligible Customer;

(F) it has not entered, and will not enter, into any unlawful arrangement with any other person;

(G) it has not sought, and will not seek, to influence any decision in respect of the Reply or any Standing Offer Order by improper means.

(c) In replying to an Eligible Customer's Standing Offer Request for Supply, the Supplier agrees and acknowledges that:

(i) it will pay its own costs and expenses in connection with:

(A) the preparation and submission of its Reply; and

(B) any enquiries, consideration of further information, discussions or negotiations with, or provision of further information to, the Eligible Customer, whether before or after the submission of its Reply,

irrespective of whether its Reply results in a Standing Offer Order; and

(ii) the Eligible Customer will only consider information set out in full in the Reply or in clarificatory information requested from the Supplier by the Eligible Customer

5.3 Reply Information

Subject to clause 5.1 (*Standing Offer Request for Supply*), the Supplier agrees and acknowledges that the Eligible Customer:

(a) is entitled to rely on all information (including pricing information) specified by the Supplier in the Reply when issuing a Standing Offer Order to the Supplier; and

(b) may issue a Standing Offer Order to the Supplier in reliance on the information specified in the Reply at any time up to two months after the date of receipt of the Reply, or such later date as may be agreed by the Eligible Customer and the Supplier.

5.4 Property in the Reply

(a) A Reply is, upon submission, the property of the Eligible Customer and will not be returned to the Supplier.

(b) Notwithstanding clause 5.4(a), this clause 5.4 does not affect the ownership of Intellectual Property Rights of the Supplier in the Reply.

6. STANDING OFFER ORDERS AND FORMATION OF CONTRACTS

6.1 Standing Offer Orders

(a) An Eligible Customer may issue any number of Standing Offer Orders to the Supplier at any time during the Standing Offer Term.

(b) Each Standing Offer Order creates a separate Contract between the Supplier and the Eligible Customer for the supply of the Standing Offer Deliverables specified in the Standing Offer Order.

(c) Subject to:

(i) the Eligible Customer and Supplier having engaged in a Standing Offer Request for Supply and Reply process under clause 5 (*Standing Offer Request for Supply and Supplier's Reply*); and

(ii) clause 6.2 (*Provision of Standing Offer Deliverables to Eligible Customers*) and clause 6.3 (*Standing Offer Orders to be Consistent with Standing Offer*),

a Standing Offer Order may amend terms or specify additional terms that will apply to the Contract created by the Standing Offer Order. Any such amended or additional terms do not affect the terms and conditions of this Standing Offer or any other Standing Offer Order.

6.2 Provision of Standing Offer Deliverables to Eligible Customers

(a) The Supplier agrees that if an Eligible Customer issues a Standing Offer Order to the Supplier, it must provide the Standing Offer Deliverables in accordance with the Standing Offer Order and the Standing Offer.

(b) Unless the Requesting Agency otherwise agrees:

(i) the Supplier will not provide any Standing Offer Deliverables to any Eligible Customer except under a Contract resulting from the Standing Offer; and

(ii) any Standing Offer Deliverables provided to an Eligible Customer are deemed to be provided pursuant to, and on the terms and conditions of, a Contract under the Standing Offer, notwithstanding any agreement or arrangement between the Supplier and the Eligible Customer to the contrary.

6.3 Standing Offer Orders to be Consistent with Standing Offer

The Supplier agrees that Standing Offers Orders and any variations to Standing Offer Orders must be within the scope of the Standing Offer and not erode, undermine or conflict with the Standing Offer.

6.4 Price

(a) The Price specified in the Standing Offer is, subject to the terms of the Standing Offer Order, the price payable by an Eligible Customer that issues a Standing Offer Order.

(b) No amount (other than the Price) is payable to the Supplier for the performance of its obligations under the Standing Offer.

6.5 GST

(a) A reference in this clause 6.5 to a term defined in the GST Act has, unless the context otherwise requires, the meaning given by the GST Act.

(b) The Price and any other amounts specified in the Standing Offer are inclusive of GST.

7. CHANGE REQUESTS AND VARIATIONS

7.1 New, Improved or Unavailable Deliverables

(a) The Supplier must promptly notify the Requesting Agency if:

(i) it offers to supply a New Standing Offer Deliverable or an Improved Standing Offer Deliverable on a general commercial basis or to other customers; or

(ii) it knows or suspects that a Standing Offer Deliverable may be discontinued or become unavailable or obsolete.

(b) The Supplier must promptly provide any information or samples requested by the Requesting Agency in respect of any New Standing Offer Deliverable, Improved Standing Offer Deliverable or proposed substitute Standing Offer Deliverable.

7.2 Requesting a Change

Either party may, by notice to the other party, request:

(a) an addition to the Standing Offer Deliverables, including the addition of a New Standing Offer Deliverable or Improved Standing Offer Deliverable;

(b) the deletion of a Standing Offer Deliverable; or

(c) the temporary or permanent substitution of another deliverable for a Standing Offer Deliverable, including the substitution of a New Standing Offer Deliverable or Improved Standing Offer Deliverable for a Standing Offer Deliverable.

7.3 Supplier Change Proposal

(a) The Supplier must:

(i) at the time of submitting a request under clause 7.2 (*Requesting a Change*); or

(ii) within 10 Business Days of receipt of a request issued by the Requesting Agency under clause 7.2,

submit a change proposal to the Requesting Agency which complies with clause 7.3(b).

(b) The Supplier must ensure:

(i) that the change proposal specifies details of the change and all proposed changes to the Price, timeframes for delivery and any other Standing Offer terms reasonably required to implement the change, together with reasons for each proposed change to the Standing Offer terms;

(ii) if the addition, deletion or substitution is due to a Standing Offer Deliverable becoming obsolete or unavailable or being discontinued:

(A) that the price for the New Standing Offer Deliverable, Improved Standing Offer Deliverable or substitute Standing Offer Deliverable in the proposal is no greater than the price of the applicable obsolete, unavailable or discontinued Standing Offer Deliverable; and

(B) continuity and adequacy of supply of the Standing Offer Deliverables and/or any New Standing Offer Deliverable, Improved Standing Offer Deliverable or substitute Standing Offer Deliverable;

(iii) that if the change proposal is accepted by the Requesting Agency, the Price of the additional Standing Offer Deliverable:

(A) incorporates any cost savings to the Supplier through the change;

(B) if clause 7.3(b)(ii) applies, is in accordance with clause 7.3(b)(ii)(A); and

(C) to the extent that clause 7.3(b)(ii) does not apply, is limited to the Supplier's actual costs of the change plus a reasonable allowance for profit; and

(iv) that the change proposal is within the scope of the Standing Offer and does not erode, undermine or conflict with the Standing Offer.

7.4 Acceptance of Change Proposal – Variation to Standing Offer

(a) The Requesting Agency may, by notice to the Supplier within 20 Business Days of receipt of the change proposal under clause 7.3 (*Supplier Change Proposal*), accept a change proposal, in which case the changes to the Standing Offer specified in the change proposal will take effect as a variation to the Standing Offer from the date specified in the Requesting Agency's notice.

(b) A variation to the Standing Offer under this clause 7 does not affect any existing Contract unless the Customer exercises its rights under the Contract to incorporate the Standing Offer variation into its Contract.

8. RECORDS AND AUDIT COSTS

8.1 Access and Records

(a) The Supplier must:

(i) keep accurate, complete and current written Records in respect of the Standing Offer;

(ii) comply with the directions of the Requesting Agency in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Standing Offer Term;

(iii) keep all Records for at least seven years after the later of the expiry or termination of the Standing Offer Term, or the last of the Contracts entered into pursuant to the Standing Offer; and

(iv) do everything necessary to obtain any third party consents which are required to enable the Requesting Agency to have access to Records under this clause 8.1.

(b) Subject to the Requesting Agency:

(i) giving reasonable prior notice to the Supplier; and

(ii) complying with all reasonable directions and procedures of the Supplier relating to work health and safety, security and confidentiality in connection with the Supplier's premises,

the Supplier must allow the Requesting Agency to:

(iii) have reasonable access to any premises used or occupied by the Supplier;

(iv) have reasonable access to all Records in the custody or control of the Supplier;

(v) examine, audit, copy and use any Records in the custody or control of the Supplier; and

(vi) photograph, film or otherwise record anything done by the Supplier in relation to the Standing Offer or Standing Offer Deliverables, if reasonably required by the Requesting Agency.

8.2 Audit Identifies Breach

Where any audit performed in accordance with the Standing Offer shows that the Supplier has breached the Standing Offer, then, without limiting the Requesting Agency's rights under the Standing Offer or under any Law in respect of a breach:

(a) the Supplier must promptly remedy the breach and provide the Requesting Agency with any evidence or assistance requested by the Requesting Agency in order to verify that the breach has been remedied; and

(b) any reasonable costs incurred by the Requesting Agency in performing such audit will be a debt due from the Supplier to the Requesting Agency and will be payable on the Requesting Agency's demand.

9. DATA, INFORMATION AND SYSTEMS SECURITY

9.1 Data and Information Security

(a) The Supplier must at all times and in accordance with Good Industry Practice, maintain and comply with processes for the secure storage and handling of Personal Information and other data and information which it collects or has access to in the course of performing its obligations under the Standing Offer.

(b) Without limiting clause 9.1(a), the Supplier must:

(i) comply with all data and information security requirements in respect of access to and use of data and information as specified in the Standing Offer, in addition to any statutory obligation relevant to data or information security;

(ii) with respect to data and information of the type referred to in clause 9.1(a):

(A) prohibit and prevent any Supplier Personnel who does not have the appropriate level of security clearance from gaining access to the data and information;

(B) without limiting clause 9.1(b)(ii)(A), use reasonable endeavours to prevent any unauthorised person from gaining access to the data and information; and

(C) ensure that the data and information is used and disclosed only for the purposes of performing the Supplier's obligations under the Standing Offer; and

(iii) if the Supplier becomes aware of any contravention of the data and information security requirements under the Standing Offer:

(A) notify the Requesting Agency immediately, and comply with all directions of the Requesting Agency; and

(B) do all things necessary to mitigate the consequences of that contravention.

9.2 Malicious Code

(a) In communications with, and provision of information to, the Requesting Agency and Eligible Customers, the Supplier must take all reasonably prudent steps to check for Malicious Code and prevent Malicious Code from affecting data and the hardware, software, systems and network infrastructure and services of the Requesting Agency and Eligible Customers.

(b) The Supplier must immediately notify the Requesting Agency and any Eligible Customer, and provide all information reasonably requested by them, if Malicious Code affects (or it is reasonably possible that it will affect) their data and hardware, software, systems and network infrastructure and services.

(c) To the extent that the effect of Malicious Code would have been avoided if the Supplier complied with the Standing Offer, the Supplier must reimburse, on demand, all costs and expenses incurred by the Requesting Agency and any Eligible Customer in dealing with the Malicious Code.

10. SUPPLIER PERSONNEL

10.1 Supplier Personnel Generally

The Supplier must ensure that all Supplier Personnel:

(a) are properly qualified and suitable for the tasks that they are to do;

(b) hold all necessary permits, licences and authorities required by Law; and

(c) act, in all circumstances, and at all times, in compliance with the Law, and in a fit and proper manner and in accordance with Probity Requirements.

10.2 Specified Personnel

(a) If the Requesting Agency requires, or the Standing Offer specifies, Specified Personnel, then the Supplier must:

(i) ensure that all Specified Personnel are available to carry out, and do carry out, the roles and tasks required of them by the Requesting Agency or under the Standing Offer; and

(ii) not allow the roles and tasks required of those Specified Personnel under the Standing Offer to be carried out by any other person without the prior written consent of the Requesting Agency.

(b) If the Supplier is unable to comply with clause (a)10.2(a) because a specified individual is unavailable, the Supplier will, as soon as practicable (and in any event within two Business Days following the date the individual becomes unavailable), notify the Requesting Agency specifying:

(i) the reason for the unavailability and expected length of absence or unavailability; and

(ii) the proposed substitute who must have at least equivalent skills, experience and knowledge as the unavailable individual, for the Requesting Agency's approval,

(iii) and in such circumstances the Requesting Agency may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary.

(c) The Supplier must promptly replace any unavailable specified individual pursuant to the Requesting Agency's approval under clause 10.2(b), and must ensure that any and all conditions specified by the Requesting Agency under clause 10.2(b) are complied with.

(d) If an individual is replaced under this clause, then references to Specified Personnel are taken to include the replacement personnel.

10.3 Subcontracting

(a) The Supplier must not subcontract any of the Supplier's obligations under the Standing Offer without the prior consent of the Requesting Agency.

(b) Any consent given under clause 10.3(a) is, unless otherwise stated in the consent, conditional on the subcontract document containing provisions:

(i) consistent with:

(A) clause 8 (*Records and Audit Costs*);

(B) clause 10 (*Supplier Personnel*);

(C) clause 13 (*Information, Confidentiality, Publicity and Privacy*);

(D) clause 14 (*Insurance*); and

(E) clause 16 (*Conflicts, Probity, Modern Slavery and Anti-Competitive Behaviour*),

as if references in those clauses to the Supplier referred instead to the subcontractor; and

(ii) requiring that the remuneration and terms of employment of any employee employed by the subcontractor for the performance of the subcontract will, for the duration of the subcontract, be consistent with the remuneration and terms of employment that comply with the Law and reflect the industry standard as

expressed in awards and agreements and any code of practice that may apply to a particular industry.

(c) The Supplier's obligations under the Standing Offer are not lessened or otherwise affected by it subcontracting the performance of those obligations.

(d) The Supplier must, if requested by the Requesting Agency, provide the Requesting Agency with a copy of any subcontract, which copy may exclude commercially sensitive information but must nonetheless contain sufficient detail to allow the Requesting Agency to determine whether the subcontract complies with the requirements of this clause 10.3.

(e) An act or omission of a subcontractor in connection with the Standing Offer is deemed to be an act or omission of the Supplier.

10.4 Removal of Supplier Personnel

(a) The Requesting Agency may, acting reasonably, and without prejudice to its other rights under the Standing Offer, direct the Supplier to remove from any activity connected with the Standing Offer, any individual Supplier Personnel (which direction may be via any medium, including orally or by email).

(b) On receipt of a direction under clause 10.4(a), the Supplier must, at its cost, remove the individual as directed and appoint a replacement with at least equivalent experience, skill and knowledge who is acceptable to the Requesting Agency.

10.5 Awards and Workplace Agreements

(a) The Supplier must comply with, and ensure that the Supplier Personnel will comply with, all Laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)).

(b) The Supplier must ensure that the remuneration and terms of employment of all Supplier Personnel for the duration of the Standing Offer will be consistent with all Laws and remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

10.6 Audit of Employment and Industrial Relations Practices

(a) The Requesting Agency or an agent or representative of the State may commission an audit of the Supplier's or any of its subcontractor's (at any tier) employment or industrial relations practices (including terms of employment) in connection with the Standing Offer.

(b) Upon the commissioning of an audit under clause 10.6(a), the Supplier shall, and shall ensure that its subcontractors, fully cooperate with the commissioning entity and any auditor appointed by them in any audit including to:

(i) allow access to all Employment Related Information in the Supplier's or subcontractor's (as the case may be) ownership, possession or control;

(ii) allow the audit of all employment and payroll records in the Supplier's or subcontractor's (as the case may be) ownership, possession or control;

(iii) allow auditors to communicate directly with Supplier Personnel, and to have access to sites and premises in the ownership, possession or control of the Supplier or relevant subcontractor (as the case may be) for the purposes of the audit;

(iv) ensure that all Employment Related Information (including access to such Records), in the Supplier's or relevant subcontractor's ownership, possession or control, is promptly provided to the commissioning entity or auditor on request;

(v) allow the commission entity or auditor to communicate with (including providing Records to) the Supplier Personnel; and

(vi) promptly rectify any problem or wrong identified by the auditor and notified to the Supplier or relevant subcontractor (as the case may be).

(c) The Supplier acknowledges and agrees, and shall ensure that each of its subcontractors acknowledge and agree, that an entity that commissions an audit under this clause may refer any problem or wrong identified to any Government Agency having an oversight role in respect to employment or industrial relations matters.

11. SECURITY SCREENING

11.1 National Police Certificates

(a) The Requesting Agency may request the Supplier, at any time and from time to time, to provide it with a National Police Certificate in respect of any Supplier Personnel or any other person engaged by the Supplier in connection with the performance of the Standing Offer, and the Supplier must comply with the request within 15 Business Days of the request.

(b) The issue date of the National Police Certificate produced by the Supplier under clause 11.1(a) must be no more than two years prior to the date of production.

(c) If any National Police Certificate evidences that a person contemplated by clause 11.1(a) has committed a criminal or statutory offence that relates to:

(i) crimes of a violent or sexual nature;

(ii) dealing or trafficking in illegal drugs;

(iii) fraud or dishonesty; or

(iv) other criminal convictions that are punishable by a term of imprisonment or by a fine or penalty of $10,000 or more,

then:

(v) the Requesting Agency may, without prejudice to its other rights under the Standing Offer, request the Supplier to promptly remove that person from involvement in the Standing Offer; and

(vi) the Supplier must promptly, at its cost, remove that person from all involvement in the Standing Offer and arrange for a suitable replacement of that person.

(d) An individual removed under this clause 11 must not be employed or engaged in respect of the Standing Offer without the Requesting Agency's prior written approval.

(e) A breach of clause 11.1(c)(v) or 11.1(d) will be deemed an Event of Default which cannot be remedied.

12. WARRANTIES, UNDERTAKINGS AND OBLIGATIONS

12.1 Supplier's General Warranties

The Supplier warrants in favour of the Requesting Agency, on the Standing Offer Commencement Date and at all times during the Standing Offer Term, that:

(a) neither the Supplier nor any Senior Officer of the Supplier, nor any Standing Offer Specified Personnel:

(i) have a conflict of interest arising out of or in connection with the Standing Offer and the contracts contemplated by the Standing Offer;

(ii) have been convicted of a criminal offence that is punishable by imprisonment or detention; or

(iii) have been convicted of a criminal offence or statutory offence that is punishable by a fine or penalty of, or exceeding, $10,000;

(b) the Supplier is properly authorised and has the power to enter into, and to perform the Supplier's obligations under, the Standing Offer and contracts contemplated by the Standing Offer;

(c) the Supplier's obligations under the Standing Offer and contracts contemplated by the Standing Offer are valid, binding and enforceable against the Supplier;

(d) all information provided and representations made by or on behalf of the Supplier to the Requesting Agency or any Eligible Customer under, in anticipation of, preparatory to, or otherwise in connection with the Standing Offer or a Standing Offer Order (if any) or both is and shall remain comprehensive, true and correct;

(e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Supplier which could have a materially adverse effect on the Supplier's ability to supply the Standing Offer Deliverables in accordance with the Standing Offer and any Standing Offer Order; and

(f) except where lawfully excused under the Standing Offer, there is nothing that prevents the Supplier from complying with any obligation under the Standing Offer,

unless, and to the extent that, the Requesting Agency has given its prior written consent to a matter disclosed by the Supplier.

12.2 Supplier's General Undertakings

The Supplier must:

(a) properly provide for the care, safety, security and protection of all Records (whether created by the Requesting Agency, an Eligible Customer, the Supplier or any other person) that are in the custody or control of the Supplier and comply with the Requesting Agency's record keeping plan;

(b) promptly notify the Requesting Agency if any warranty under this clause 12 is breached or becomes untrue;

(c) act ethically in connection with the Standing Offer;

(d) comply with all Law relevant to the Standing Offer;

(e) cooperate fully with the Requesting Agency in the administration of the Standing Offer;

(f) act in accordance with good corporate governance practices;

(g) use its best endeavours to ensure that none of the Supplier Personnel cause the Supplier to breach the Standing Offer; and

(h) not directly or indirectly offer (or cause or suffer to be offered) a bribe, gift or inducement to any officer or employee of the Requesting Agency or any Eligible Customer in connection with the Standing Offer.

12.3 Government Policy

If any obligations relating to Government policies are specified in the Standing Offer, then those obligation form part of the Standing Offer and the Supplier must comply with them.

12.4 Performance Guarantees and Financial Undertakings

The parties acknowledge their respective rights and obligations in relation to any performance guarantee or financial undertaking referred to in the Standing Offer.

12.5 Work Health and Safety

(a) The Supplier must at all times discharge its responsibilities under all statutory requirements relating to work health and safety, including the WHS Laws, that are applicable to activities related to the Standing Offer or provision of Standing Offer Deliverables or both including identifying and exercising all necessary precautions for the safety and health of all persons including:

(i) the Supplier Personnel;

(ii) the Requesting Agency's officers, employees, contractors, agents and nominees; and

(iii) any other person,

who may be affected directly or indirectly by or as a result of activities related to the Standing Offer or provision of Standing Offer Deliverables or both.

(b) Without limiting the Supplier's obligations under the Standing Offer, the Supplier must:

(i) comply with its WHS Notification Requirements and notify the Requesting Agency as soon as practicable after any incident which necessitates such notification being made; and

(ii) consult, co-operate and co-ordinate with the Requesting Agency in respect of the discharge of the parties' obligations in connection with the Standing Offer or Standing Offer Deliverables or both under WHS Laws and provide all information and documents to the Requesting Agency that are reasonably necessary to facilitate the process of consultation, coordination and cooperation.

13. INFORMATION, CONFIDENTIALITY, PUBLICITY AND PRIVACY

13.1 Use and Disclosure of Offer and Information

(a) The Supplier agrees and acknowledges that the Requesting Agency, the State, each State Agency and each Eligible Customer may:

(i) reproduce and communicate (as those terms are defined in the Copyright Act) and use the Offer, any Reply and all information submitted by the Supplier in connection with its Offer, any Reply, the Standing Offer and any Standing Offer Order (**Information**); and

(ii) provide the Offer, any Reply and any Information to its officers, employees, agents and contractors and to any officer, employee or agent of the State and any other State Agency and Eligible Customer,

for the purposes of considering the Offer, any Reply and Information, and for any reviews, audits or investigations.

(b) The Supplier agrees and acknowledges that its Offer, any Reply and Information:

(i) are subject to the *Freedom of Information Act 1992* (WA);

(ii) may be disclosed by the Requesting Agency, the State, each State Agency and each Eligible Customer under a court order, upon request by a Minister, Parliament or any committee or subcommittee of Parliament or if otherwise required by Law; and

(iii) may be disclosed by the Requesting Agency, the State, each State Agency and each Eligible Customer in response to a request made under section 275 of the *Personal Property Securities Act 2009* (Cth), or otherwise as required by that Act.

(c) The Respondent releases the Requesting Agency, the State, each State Agency and each Eligible Customer from all liability whatsoever (including for negligence) for any Claim and Loss resulting from any disclosure, use, reproduction and communication of its Offer, any Reply or Information under this clause 13.1.

13.2 Public Disclosure by Requesting Agency and Customers

Without limiting clause 13.1, the Requesting Agency and Customers may publicly disclose:

(a) the identity of the Supplier;

(b) the value of any Contract entered into pursuant to the Standing Offer; and

(c) a general description of the Standing Offer Deliverables supplied under any Contract entered into pursuant to the Standing Offer.

13.3 Confidential Information

(a) The Supplier must keep the Requesting Agency's, Eligible Customer's and any Customer's Confidential Information confidential and not use or disclose such information to any person except:

(i) as authorised in writing by the Requesting Agency, Eligible Customer or Customer (as applicable);

(ii) to the extent that the Confidential Information is public knowledge (other than because of a breach of the Standing Offer or any Law by the Supplier, or because of any other breach of confidentiality);

(iii) as required by any Law;

(iv) where necessary for the purpose of supplying the Standing Offer Deliverables; or

(v) when required (and only to the extent required) to the Supplier's professional advisers, provided that the Supplier ensures that such advisers are bound by the confidentiality obligations imposed on the Supplier under this clause 13.3.

(b) Except to the extent that the Supplier is required by Law to retain any Records, the Supplier must return all Records containing the Requesting Agency's and Eligible Customers' Confidential Information to the relevant party immediately on request or otherwise at expiration or termination of the Standing Offer.

13.4 Supplier's Use of Documents

(a) The Request Documents, these Standing Offer Conditions, the Letter of Appointment and each Standing Offer Request for Supply (and all Intellectual Property Rights therein) are the property of the Requesting Agency, State Agency or Eligible Customer or licensed to them.

(b) The Supplier must not:

(i) divulge or use information contained in any document described in clause 13.4(a); and

(ii) reproduce and/or communicate (as those terms are defined in the Copyright Act) all or any part of these documents,

for any purpose other than to comply with its obligations under the Standing Offer.

13.5 Publicity

(a) The Supplier must not, unless required to do so by Law or if it has the Requesting Agency's prior written consent, in any publication (including on social media), advertisement or media release:

(i) use the Standing Offer, any Contract entered into pursuant to the Standing Offer, or the Requesting Agency's, any Eligible Customer's or any Customer's name or logo;

(ii) refer to the Supplier's association with the State or the Government of Western Australia which results from the Standing Offer; or

(iii) make any statement concerning the Standing Offer.

(b) The Requesting Agency may, in its discretion, use the Standing Offer, each Contract entered into pursuant to the Standing Offer and the Supplier's name and logo for reasonable promotional or publicity purposes and will acknowledge the role of the Supplier to the extent that is reasonable in the circumstances.

13.6 Privacy

(a) The Supplier agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act to the extent relevant to the Standing Offer.

(b) The Supplier also agrees to comply with:

(i) such other Law related to privacy which is relevant to the Standing Offer;

(ii) any directions made by a Privacy Commissioner relevant to the Standing Offer;

(iii) any privacy procedures stated in the Standing Offer or specified by the Requesting Agency from time to time; and

(iv) any other reasonable request or direction relating to privacy which is given by the Requesting Agency.

(c) Whether or not the Supplier is an organisation which is bound by the Privacy Act or other privacy laws, the Supplier must comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation.

(d) The Supplier must, in relation to any Personal Information which it collects or has access to in the course of performing its obligations under the Standing Offer or otherwise in connection with the Standing Offer:

(i) not modify or disclose the Personal Information except with the Requesting Agency's prior written approval;

(ii) use or disclose the Personal Information only for the purposes of performing its obligations under the Standing Offer;

(iii) take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure;

(iv) ensure that the Personal Information is returned to the Requesting Agency (or is permanently destroyed if the Requesting Agency so elects) when it is no longer required for the performance of the Supplier's obligations under the Standing Offer;

(v) where any breach of privacy occurs due to the Supplier's failure to comply with any obligation under this clause 13.6, do all things necessary to mitigate the consequences of that breach; and

(vi) co-operate fully with the Requesting Agency to resolve any complaint alleging a breach by any party of their respective privacy obligations.

(e) The Supplier must immediately notify the Requesting Agency (providing full details) if it:

(i) receives any complaints concerning its or the Requesting Agency’s compliance with privacy obligations, including full details of how the Supplier intends to resolve the complaint;

(ii) becomes aware that a disclosure of Personal Information may be required by Law; or

(iii) is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.

(f) The Supplier must co-operate fully with the Requesting Agency to resolve:

(i) any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or

(ii) any complaint alleging a breach by any party of their respective privacy obligations in connection with,

the Standing Offer.

14. INSURANCE

14.1 Insurance Policies

The Supplier must effect and maintain the insurances specified in the Standing Offer:

(a) with an insurer acceptable to the Requesting Agency which is:

(i) an Australian Prudential Regulatory Authority authorised insurer; or

(ii) an overseas insurer with a Standard and Poor's, or other internationally recognised financial rating agency, credit rating of at least A minus (A-); or

(iii) a self-insurer approved under the Laws of the State, Commonwealth or any other Australian state or territory; or

(iv) a State, Commonwealth or any other Australian state or territory self-insurance arrangement, established under Law;

(b) on the terms and for the amounts specified in the Standing Offer; and

(c) for the period of time specified in the Standing Offer Details or, if no period of time is specified:

(i) the professional indemnity insurance required (if any) is to be maintained throughout the Standing Offer Term and for a period of six years after the expiration or termination of the Standing Offer Term and all Contracts under the Standing Offer; and

(ii) all other insurances are to be maintained throughout the Standing Offer Term and until expiration or termination of all Contracts under the Standing Offer.

14.2 Insurance Obligations

The Supplier must:

(a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under this clause 14;

(b) not vary or cancel any insurance required under the Standing Offer, or allow it to lapse during the Standing Offer Term, or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a Claim;

(c) without limiting clause 14.2(b), promptly reinstate any insurance required under the Standing Offer if it lapses or if cover is exhausted; and

(d) give to the Requesting Agency sufficient evidence of the insurances required under this clause 14 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Requesting Agency at any time.

14.3 Incidents and Claims

(a) If the Requesting Agency or the Supplier becomes aware of any event, circumstance, or incident which has or could materially erode, reduce or exhaust the available limits under the insurances required under this clause 14 or which may involve the Supplier or Requesting Agency in any action or litigation in connection with the Standing Offer, it must as soon as reasonably practicable notify the other party in writing of that event, circumstance or incident.

(b) Failure to comply with clause 14.3(a) will not invalidate or otherwise affect any indemnities, liabilities and releases of the Standing Offer.

14.4 No Limitation of Other Liabilities

Nothing in this clause 14 limits the Supplier's other liabilities under the Standing Offer or restricts the Supplier from insuring for sums or risks greater than those required under the Standing Offer.

15. LIABILITY AND INDEMNITY

15.1 Liability

The liability of either party for breach of the Standing Offer or for any other common law or statutory cause of action arising out of the operation of the Standing Offer 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.

15.2 Supplier Indemnity

(a) The Supplier indemnifies the Requesting Agency, Eligible Customers, the State and all their respective officers, employees and agents (**Indemnified Party**) against all Loss and Claims (including legal costs and expenses) as a result of any Claim taken or made against any Indemnified Party by any third party arising from or in connection with:

(i) any breach of the Standing Offer by the Supplier;

(ii) any wilful, tortious or unlawful act or omission of the Supplier or any Supplier Personnel;

(iii) any breach of a Law relevant to the Standing Offer by the Supplier or any Supplier Personnel;

(iv) any breach of equitable duty, including breach of confidentiality or breach of fiduciary duty by the Supplier or any Supplier Personnel; or

(v) any illness, personal injury or death occurring in relation to the Standing Offer that is caused or contributed to by any act or omission of the Supplier or any Supplier Personnel.

(b) The Supplier's liability to indemnify an Indemnified Party under clause 15.2(a) will be reduced proportionally to the extent any Claim or Loss results from by the negligence of an Indemnified Party.

15.3 Conduct of Claims

The Requesting Agency will use its reasonable commercial endeavour to cooperate with the Supplier, at the Supplier's cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party Claim the subject of the indemnity under clause 15.2 (*Supplier Indemnity*).

16. CONFLICTS, PROBITY, MODERN SLAVERY AND ANTI-COMPETITIVE BEHAVIOUR

16.1 Conflict of Interest

Without limiting clause 16.2 (*Probity Allegations and Investigations*) or clause 16.3 (*Probity Events*), if an actual or perceived conflict of interest arises or looks likely to arise in respect of the Supplier, the Supplier must:

(a) promptly notify the Requesting Agency of the conflict and provide full details; and

(b) take reasonable steps in consultation with the Requesting Agency to avoid or manage the conflict.

16.2 Probity Allegations and Investigations

(a) The Supplier must immediately notify the Requesting Agency on becoming aware of any allegation that a Probity Event has occurred or is likely to occur.

(b) The Supplier agrees that the Requesting Agency may, or may require the Supplier at any time to, conduct an investigation, at the Supplier's cost, into any allegation a Probity Event has occurred in respect of the Supplier, any Related Body Corporate of the Supplier, any Supplier Personnel or any person who is proposed to become Supplier Personnel.

(c) The Supplier must obtain all relevant consents from any person in connection with an investigation in respect of an alleged or actual Probity Event.

(d) Where the Requesting Agency requires the Supplier to conduct an investigation in accordance with clause 16.2(b), the Supplier must promptly:

(i) conduct the investigation;

(ii) communicate the findings of that investigation to the Requesting Agency in the form required by the Requesting Agency; and

(iii) provide the Requesting Agency with any additional information regarding the Probity Event within three Business Days of any request unless a different timeframe is agreed in writing by the Requesting Agency.

(e) The Supplier must bear all costs incurred by the Requesting Agency in connection with a Probity Event or any investigation that finds a Probity Event has occurred.

(f) The Requesting Agency's rights under this clause 16.2 are in addition to and do not otherwise limit any other rights the Requesting Agency may have under the Standing Offer.

16.3 Probity Events

(a) The Supplier must immediately notify the Requesting Agency on becoming aware that a Probity Event has occurred or is likely to occur.

(b) The notice issued under clause 16.3(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, the persons involved and the circumstances giving rise to the Probity Event.

(c) The Requesting Agency may notify the Supplier in writing that an event is to be considered a Probity Event for the purposes of this clause, and where this occurs the Supplier must issue a notice (containing the content described) in clause 16.3(b) in relation to the event within three Business Days of being notified by the Requesting Agency unless a different timeframe is agreed in writing by the Requesting Agency.

(d) Where reasonably requested by the Requesting Agency, the Supplier must provide the Requesting Agency with any additional information regarding a Probity Event within three Business Days of the request unless a different timeframe is agreed in writing by the Requesting Agency.

16.4 Probity Remediation Plan

(a) For the purposes of this clause, a **Probity Remediation Plan** is a probity remediation plan approved by the Requesting Agency pursuant to clause 16.4(f).

(b) If requested by the Requesting Agency, the Supplier must prepare a draft probity remediation plan and submit that draft plan to the Requesting Agency's Representative for approval by the Requesting Agency within 10 Business Days of the request unless a different timeframe is agreed in writing by the Requesting Agency.

(c) Each draft probity remediation plan is a Draft Approval Document and the Supplier must prepare and submit the draft document in accordance with clause 17.4 (*Draft Approval Documents*).

(d) A draft probity remediation plan prepared by the Supplier under clause 16.4(b) must include the following information:

(i) how the Supplier will address the Probity Event including confirmation that the implementation of the probity remediation plan will not in any way impact on

the delivery of the Standing Offer Deliverables or compliance by the Supplier with its other obligations under the Standing Offer;

(ii) how the Supplier will ensure events similar to the Probity Event do not occur again; and

(iii) any other matter reasonably requested by the Requesting Agency.

(e) The Supplier must make any changes to the draft probity remediation plan requested by the Requesting Agency and resubmit the draft remediation plan to the Requesting Agency for approval within three Business Days of the request unless a different timeframe is agreed in writing by the Requesting Agency. This clause 16.4(e) will apply to any resubmitted draft remediation plan.

(f) The Requesting Agency is not obliged to accept a draft probity remediation plan. No draft probity remediation plan has any effect on the Standing Offer until such time as the draft is approved by the Requesting Agency in writing, and signed in accordance with the Requesting Agency's approved delegation authorities.

(g) Without limiting its other obligations under the Standing Offer, the Supplier must comply with the Probity Remediation Plan. The Supplier agrees promptly to provide reports and other information about the Supplier's progress in implementing the Probity Remediation Plan as reasonably requested by the Requesting Agency.

(h) The Requesting Agency's rights under this clause 16.4 are in addition to and do not otherwise limit any other rights the Requesting Agency may have under the Standing Offer.

(i) The performance by the Supplier of its obligations under this clause 16.4 will be at no additional cost to the Requesting Agency.

16.5 Modern Slavery

(a) For the purposes of this clause:

(i) Modern Slavery has the meaning given to that term in the *Modern Slavery Act 2018* (Cth) and any analogous conduct prohibited by any other Law which applies to the Requesting Agency, the Supplier or a subcontractor; and

(ii) Modern Slavery Laws mean any of the following:

(A) *Modern Slavery Act 2018* (Cth);

(B) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);

(C) any Law relating to Modern Slavery; and

(D) any other law relating to Modern Slavery which applies to the Requesting Agency, the Supplier or a subcontractor.

(b) The Supplier represents, warrants and undertakes that, as at the Standing Offer Commencement Date, neither the Supplier, nor any entity that it owns or controls or,

to the best of its knowledge, any of the Supplier Personnel, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.

(c) The Supplier must:

(i) comply with the Modern Slavery Laws; and

(ii) not do anything that would constitute Modern Slavery or put the Requesting Agency in breach of the Modern Slavery Laws (applicable to State Government Agencies).

(d) Before any subcontractor or supplier is engaged by the Supplier in the operations and supply chains used in the provision of the Standing Offer Deliverables, the Supplier must carry out reasonable due diligence on the subcontractor's historical compliance, and ability to comply, with the Modern Slavery Laws.

(e) The Supplier must implement and maintain throughout the Standing Offer Term appropriate procedures and processes to identify, assess and address risks of Modern Slavery practices in its operations and supply chains used in the provision of the Standing Offer Deliverables.

(f) The Supplier must notify the Requesting Agency in writing as soon as possible after it becomes aware of any actual or potential breach of this clause 16.5. The notice must set out full details of the actual or potential breach.

(g) The Supplier must provide the Requesting Agency with all information and assistance reasonably requested by the Requesting Agency in connection with:

(i) the Supplier's compliance with clause 16.5(c), (d), (e) and (f); and

(ii) any reporting obligations of the Requesting Agency, or Eligible Customers, under the Modern Slavery Laws (or associated regulatory requirements of the Commonwealth or the State) in relation to the Standing Offer.

16.6 Anti-Competitive Behaviour

(a) The Requesting Agency reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by the Supplier or any of the Supplier Personnel to a Government Agency and to provide the Government Agency with any relevant information about the Supplier and the Supplier Personnel.

(b) Any obligation to keep information confidential will not be breached if the information is disclosed by the Requesting Agency to the Government Agency because of suspected collusive or anti-competitive behaviour.

(c) The Supplier must promptly notify the Requesting Agency if, at any time during the Term, the Supplier or any of the Supplier Personnel are, or have been, subject to proceedings related to anti-competitive conduct in Australia or overseas.

(d) Notification given by the Supplier under clause 16.6(c) must include:

(i) the names of the parties to the proceedings;

(ii) the case number;

(iii) the general nature of the proceedings; and

(iv) the outcome or current status of the proceedings.

17. STANDING OFFER ADMINISTRATION

17.1 Administration Representatives

(a) The Requesting Agency's Representative may administer the Standing Offer, and such administration is deemed to be administration by the Requesting Agency for the purposes of the Standing Offer.

(b) The Requesting Agency may by notice to the Supplier at any time:

(i) vary or terminate the appointment of the Requesting Agency's Representative; and

(ii) appoint any other person to act as the Requesting Agency's Representative in relation to the Standing Offer.

(c) The Supplier's Representative may administer the Standing Offer, and such administration is deemed to be administration by the Supplier for the purposes of the Standing Offer.

(d) The Supplier may by notice to the Requesting Agency at any time:

(i) vary or terminate the appointment of the Supplier's Representative; and

(ii) appoint any other person to act as the Supplier's Representative in relation to the Standing Offer.

17.2 Performance Management

The Supplier will duly and punctually comply with any performance management requirements in the Standing Offer.

17.3 Provision of Information and Notification of Issues

The Supplier must promptly provide to the Requesting Agency on request any information requested by the Requesting Agency, acting reasonably, from time to time in connection with the Standing Offer Deliverables, or in connection with the Supplier's compliance with its obligations under the Standing Offer.

17.4 Draft Approval Documents

(a) The Supplier must:

(i) prepare (in accordance with the Standing Offer, Good Industry Practice and to a standard that will facilitate approval by the Requesting Agency) each Draft Approval Document in the format reasonably requested by the Requesting Agency from time to time; and

(ii) submit the Draft Approval Document in the manner reasonably required by the Requesting Agency from time to time.

(b) The Requesting Agency is not required to check any Draft Approval Document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Standing Offer.

(c) The Requesting Agency will communicate to the Supplier its approval or rejection of, or required amendments to, each Draft Approval Document.

(d) If the Requesting Agency rejects or communicates required amendments to any Draft Approval Document pursuant to clause 17.4(c) the Supplier must promptly (and in any event within the timeframe specified by the Requesting Agency, or if no timeframe is specified, within 10 Business Days after the Requesting Agency communicates feedback to the Supplier) amend and resubmit the relevant Draft Approval Document to the Requesting Agency for further review in accordance with this clause 17.4, and must continue this process until the Requesting Agency communicates its approval (such approval not to be unreasonably withheld).

(e) Review, approval or rejection of a Draft Approval Document does not:

(i) waive, limit or prejudice any right the Requesting Agency has under the Standing Offer or at Law; or

(ii) relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities under the Standing Offer or at Law.

(f) The Supplier remains responsible for the delivery of the Standing Offer Deliverables in accordance with the requirements of the Standing Offer notwithstanding any review, acceptance or approval of, comments upon, rejection of, or failure to review or comment upon any Draft Approval Document.

17.5 Notices

(a) Each request, submission, direction, consent, approval, agreement, notice or other communication (in each case, "**notice**") that may or must be made or given under or in connection with the Standing Offer, if given or made, to be valid and effective, must be:

(i) in writing; and

(ii) signed by the party making it or (on that party's behalf) by an authorised officer, attorney, solicitor or authorised agent of that party.

(b) All notices or other communications must be:

(i) delivered or posted by prepaid post to the address; or

(ii) sent by email attaching the notice or other communication in the form of a PDF file (containing a letter or such other document format agreed by the Requesting Agency) to the email address,

of the addressee stated in the Standing Offer or as notified by a party to the other party from time to time.

(c) Subject to clause 17.5(d), a notice or other communication is taken to be received by the addressee:

(i) in the case of prepaid post, on the fifth Business Day after the date of posting to an address within Australia, and on the fifteenth Business Day after the date of posting by airmail to an address outside Australia;

(ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic delivery notification received by the party sending the email (or, if there is no delivery notification, then the time and date of the dispatch of the email will be prima facie evidence of its receipt by the addressee); and

(iii) in the case of delivery by hand, on delivery.

(d) If the notice or other communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

(e) In connection with notices or other communications sent by email:

(i) only the PDF file attached to the email and any attachments referred to in the PDF file and attached to the email, will form part of the notice or other communication in accordance with this clause 17.5, and text in the body of the email or the subject line will not form part of the notice or other communication; and

(ii) each party must ensure that its firewall and/or mail server (as applicable):

(A) allows messages of up to 14 MB to be received;

(B) does not trap any messages in the spam filter which have been sent from the State or other relevant domain; and

(C) automatically sends a receipt notification to the sender upon receipt of a message; and

(f) each party must ensure that its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

18. DISPUTE RESOLUTION

18.1 No Litigation Pending Dispute Resolution

The parties agree that unless and until a party has complied with the requirements of this clause 18, a party may not commence any court proceedings in respect of any dispute except if:

(a) a party seeks urgent interlocutory, injunctive or declaratory relief; or

(b) the Requesting Agency considers that an Event of Default has occurred under the Standing Offer.

18.2 Referral to Representatives

If at any time a dispute exists:

(a) either party may refer the dispute to the Requesting Agency's Representative or the Supplier's Representative for resolution by the Requesting Agency or the Supplier (in each case, as applicable); and

(b) the representatives will consider the dispute referred to them and in doing so, give due consideration to submissions by the parties in connection with the dispute.

18.3 Further Referral

(a) If a dispute remains unresolved 10 Business Days after the referral of the dispute to the representatives under clause 18.2 (*Referral to Representatives*), a party may give notice to the other party (**Dispute Notice**) which must:

(i) state that the notice is given under this clause 18.3;

(ii) describe the nature of the dispute; and

(iii) nominate the party's authorised officer for resolution of the dispute (**Authorised Officer**).

(b) Within two Business Days after receipt of a Dispute Notice, the recipient must give notice to the other party nominating its Authorised Officer.

(c) The parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the dispute within seven Business Days after the receipt of the Dispute Notice.

(d) If the parties' Authorised Officers fail to resolve the dispute within 10 Business Days after receipt of the Dispute Notice, the parties' Authorised Officers may agree a dispute resolution process for the resolution of the dispute in which case the dispute will be resolved in accordance with such process.

(e) Either party may commence litigation if:

(i) the parties fail to resolve the dispute in accordance with clause 18.3(c) and fail to agree a dispute resolution process in accordance with clause 18.3(d) within 10 Business Days after the receipt of a Dispute Notice;

(ii) either party fails to comply with any of the requirements of this clause 18; or

(iii) either party fails to comply with any dispute resolution process agreed in accordance with clause 18.3(d).

18.4 Continue to Perform Obligations

The parties must continue to perform their obligations under the Standing Offer despite the existence of any dispute between the parties.

19. SUSPENSION OF STANDING OFFER

(a) The Requesting Agency may at any time by notice to the Supplier temporarily suspend the Standing Offer for a period of time not exceeding three months per suspension, except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

(b) Suspension of the Standing Offer by the Requesting Agency under clause 19(a) shall suspend the Standing Offer except for the following clauses:

(i) clause 1 (*Definitions and Interpretation*);

(ii) clause 8 (*Records and Audit Costs*);

(iii) clause 10 (*Supplier Personnel*);

(iv) clause 12 (*Warranties, Undertakings and Obligations*);

(v) clause 13 (*Information, Confidentiality, Publicity and Privacy*);

(vi) clause 14 (*Insurance*);

(vii) clause 15 (*Liability and Indemnity*);

(viii) clause 16.1(*Conflict of Interest*);

(ix) clause 17 (*Standing Offer Administration*);

(x) clause 19 (*Suspension of the Standing Offer*);

(xi) clause 20 (*Expiration or Termination of Standing Offer*); and

(xii) clause 21 (*General*).

(c) The Requesting Agency:

(i) does not need to give a reason for temporary suspension of the Standing Offer for the suspension to be valid; and

(ii) may end the suspension at any time by notice to the Supplier.

(d) At the end of each suspension, the rights and obligations of the parties under the Standing Offer shall recommence.

20. EXPIRATION OR TERMINATION OF STANDING OFFER

20.1 Termination by Requesting Agency

The Requesting Agency may terminate the Standing Offer by notice to the Supplier, or reduce its scope:

(a) at any time after an Event of Default occurs (except to the extent that the right to terminate is stayed by operation of section 415D, 434J or 451E of the Corporations Act) effective from the time stated in the Requesting Agency's notice, or if no such time is stated, at the time the notice is given to the Requesting Agency; or

(b) if a Customer is entitled to terminate a Contract entered into pursuant to the Standing Offer.

20.2 Consequences of Termination

(a) On expiration or termination of the Standing Offer, the Supplier must:

(i) except to the extent the Supplier is required by Law to retain any Records:

(A) immediately return all of the Requesting Agency's and any Eligible Customer's Confidential Information to the Requesting Agency and Eligible Customer respectively; and

(B) deliver to the Requesting Agency all Records as required by the Requesting Agency;

(ii) not enter into any new Contracts in respect of Standing Offer Orders;

(iii) not represent that the Supplier is in any way connected to the Requesting Agency; and

(iv) in every other respect co-operate with the Requesting Agency as reasonably required by the Requesting Agency in order to minimise any Loss, damage or inconvenience to the Requesting Agency, Eligible Customers and Customers resulting from the expiration or termination of the Standing Offer.

(b) The expiration or termination of the Standing Offer does not:

(i) affect any Contract entered into pursuant to the Standing Offer; or

(ii) affect any rights, liabilities or obligations of a party which accrue prior to the expiration or termination.

(c) The Supplier is not entitled to any compensation for loss or damages for future profits, loss of income, or punitive damages from the Requesting Agency as a result of, or in connection with, the expiration or termination of the Standing Offer or any Contract entered into pursuant to the Standing Offer.

(d) Other that where the Requesting Agency has repudiated the Standing Offer or damages are not an appropriate remedy, if the Requesting Agency breaches the Standing Offer, then the remedies are limited to damages, subject to clause 20.2(c).

21. GENERAL

21.1 Relationship

(a) The Supplier is an independent contractor, and nothing in the Standing Offer may be construed to make the Supplier a partner, agent, employee or joint venturer of the Requesting Agency.

(b) The Supplier must not represent that the Supplier or any Supplier Personnel are the employees, agents, partners or joint venturers of the Requesting Agency or any Eligible Customer.

21.2 Variation of Standing Offer

The Standing Offer may only be varied by agreement in writing signed by the Requesting Agency and the Supplier.

21.3 Assignment, Novation or Change in Control

(a) The Supplier must not sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Standing Offer without the prior consent of the Requesting Agency.

(b) If the Supplier is a corporation (other than a public company as defined in the Corporations Act), the Supplier is taken to have assigned the Standing Offer if:

(i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Supplier to another person; or

(ii) there is any change in control of the Supplier or any parent company of the Supplier (where "control" has the same meaning as given in the Corporations Act).

(c) The Requesting Agency may, without the consent of the Supplier, assign any of its rights under the Standing Offer, or delegate or novate its rights and obligations under the Standing Offer, to a State Agency.

(d) The Supplier must promptly do all things and execute all documents necessary to give effect to any assignment or novation under this clause.

21.4 Agency

(a) A Customer which is a State Agency appoints the Requesting Agency as their agent to exercise all functions conferred on the Requesting Agency under the Contract.

(b) The Requesting Agency is not personally liable for any Claim or Loss which the Supplier suffers or incurs as a consequence of, or in connection with, any function undertaken by the Requesting Agency while acting as agent under this clause 21.4.

21.5 Survival

(a) The following clauses survive the expiry or termination of the Standing Offer:

(i) clause 8 (*Records and Audit Costs*);

(ii) clause 12 (*Warranties, Undertakings and Obligations*);

(iii) clause 13 (*Information, Confidentiality, Publicity and Privacy*);

(iv) clause 14 (*Insurance*);

(v) clause 15 (*Liability and Indemnity*);

(vi) clause 20 (*Expiration or Termination of the Standing Offer*); and

(vii) clause 21 (*General*).

(b) Clause 21.5(a) does not oust or limit the operation of any Laws relating to the survival of contractual provisions after a contract ends.

21.6 Waiver

(a) Any waiver by the Requesting Agency or Supplier:

(i) must be in writing and signed by the party waiving the right; and

(ii) does not affect its rights in respect of any other breach of the Standing Offer.

(b) Subject to clause 21.6(a)(i), any failure by the Requesting Agency or Supplier to enforce any right under the Standing Offer will not, by itself, be construed as a waiver of its rights under the Standing Offer.

21.7 Entire Agreement

The Standing Offer supersedes all prior negotiations, understandings and agreements between the Requesting Agency and the Supplier relating to the matters covered by the Standing Offer and constitutes the full and complete agreement between the Requesting Agency and the Supplier relating to the matters covered by the Standing Offer.

21.8 Severability

Any term of the Standing Offer which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Standing Offer is not affected. The previous two sentences of this clause do not apply if the severance would, without more, materially disadvantage a party.

21.9 Rights are Cumulative

Unless otherwise stated, the rights, powers and remedies in the Standing Offer are in addition to, and not exclusive of, the rights, powers and remedies existing at Law.

21.10 Electronic Execution and Counterparts

(a) Unless stated to the contrary in the Standing Offer, any document entered into under the Standing Offer may be executed electronically (including through an electronic platform) and in one or more counterparts.

(b) Notwithstanding the manner in which a document under the Standing Offer is submitted or accepted, the terms of the Standing Offer will apply and any click-wrap, "pop-up" or other like terms and conditions of the Supplier appearing in the course of such submittal or acceptance will have no force or effect.

21.11 Governing Law and Jurisdiction

(a) The Standing Offer is governed by the laws of the State of Western Australia.

(b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

21.12 Auditor General

(a) The powers and responsibilities of the State's Auditor General under any Law are not limited or affected by the terms of the Standing Offer.

(b) The Supplier must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Supplier's Records concerning the Standing Offer.

21.13 Department CEO

(a) The powers and responsibilities of the Department CEO under the Procurement Act are not limited or affected by the terms of the Standing Offer.

(b) The Supplier must allow the Department CEO, or an authorised representative of the Department CEO, to have access to and examine the Supplier's Records concerning the Standing Offer.

21.14 Consent

Whenever the consent of the Requesting Agency is required under the Standing Offer:

(a) that consent may be given or withheld by the Requesting Agency in the Requesting Agency's absolute discretion and may be given subject to such conditions as the Requesting Agency may determine;

(b) the Requesting Agency is not required to provide a reason or reasons for giving or refusing its consent; and

(c) the Supplier agrees that any failure by it to comply with or perform a condition imposed under clause 21.14(a) will constitute a breach of a condition by the Supplier under the Standing Offer.

21.15 Further Assurance

The Requesting Agency and Supplier must do everything reasonably necessary, including signing further documents, to give full effect to the Standing Offer.

21.16 Costs

(a) Unless otherwise expressly agreed, the Supplier must comply with all obligations of the Supplier at the Supplier's cost.

(b) The Requesting Agency and the Supplier must pay their own legal and other costs in connection with the preparation and signing of the Standing Offer.

(c) The Supplier must pay all stamp duty on the Standing Offer.

21.17 Trusts

If the Supplier has entered into the Standing Offer in the capacity of trustee whether or not the Requesting Agency has any notice of the trust, the Supplier:

(a) is taken to enter into the Standing Offer both as trustee and in the Supplier's personal capacity and acknowledges that the Supplier is personally liable for the performance of the Supplier's obligations under the Standing Offer;

(b) will take any action necessary to ensure the assets of the trust are available to satisfy any Claim by the Requesting Agency for any default by the Supplier; and

(c) warrants that:

(i) the Supplier has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Standing Offer;

(ii) the assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 21.17(c)(i) and all other obligations in respect of which the Supplier has a right to be indemnified out of those assets; and

(iii) the Supplier has the power and authority under the terms of the trust to enter into and perform the Standing Offer.

~ END OF DOCUMENT ~

TRP Standing Offer Conditions

This document has been developed by the Department of Finance (**Finance**) in collaboration with the State Solicitor's Office. It is designed for use by State Agencies that are subject to the Western Australian Procurement Rules and has been issued by Finance in connection with the Template Redevelopment Project (**TRP**) Pilot – Phase 1.

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