



**STANDARD CONDITIONS  
OF  
QUOTATION AND CONTRACT**

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## **1 CONDITIONS OF QUOTATION**

### **1.1 NATURE OF OFFER**

Unless otherwise provided, the Offer must be for the provision of all Goods and/or Services in the Specification.

### **1.2 PREPARING AN OFFER**

Respondents preparing an Offer should:

- (a) check that this RFQ includes all pages (which are numbered consecutively) and that all attachments referred to are also included;
- (b) carefully read this RFQ;
- (c) ensure that they understand the requirements of this RFQ, and have obtained all the relevant information, and have made any relevant enquiries relevant to the risks, contingencies, and any other circumstances that may apply;
- (g) ensure that, prior to submitting an Offer:
  - the Offer has been completed and the Offer form has been completed and signed;
  - all required information has been provided to the level of detail sufficient to enable the Town to evaluate the Offer; and
  - the quoted prices cover the cost of all things necessary for the due and proper delivery of all the Goods and/or Services in accordance with the Specification.

### **1.3 SUBMISSION OF OFFER**

- (a) Respondents must:
  - submit Offers electronically as mentioned on the cover page of the RFQ;
  - submit by the Closing Date and Time detailed on the front of the RFQ.
- (b) Late, mailed, hand delivered and Offers submitted by facsimile or telephone will not be accepted;
- (d) Respondents must provide copies of certificates of insurance, and where applicable, documents evidencing all registrations, licences and qualifications required; and
- (e) **Offers received after the Closing Date and Time will not be accepted for evaluation.**

### **1.4 AGREEMENT BY RESPONDENT**

In submitting an Offer, the Respondent agrees that:

- (a) all information contained in its Offer is true and correct to the best of its knowledge;
- (b) it has relied entirely on its own enquiries in relation to all matters in respect to this RFQ;
- (c) it has examined and understood this RFQ and each Addendum;
- (d) it has examined all information relevant to the risks, contingencies and other circumstances which may affect its Offer;

- (e) it does not rely on any warranty or representation of the Town or any person actually or ostensibly acting on behalf of the Town;
- (f) it has not colluded and will not collude with any other person in respect of this RFQ;
- (g) its offered price is not inflated or deflated to the advantage of another Respondent;
- (h) it has not entered and will not enter into any unlawful arrangement with any other person in respect to this RFQ; and
- (i) it has not sought and will not seek to influence any decision in respect of this RFQ by improper means.

#### **1.5 RESPONSE/QUOTATION VALIDITY PERIOD**

All Responses will remain valid and open for acceptance for a minimum period of ninety (90) days from the Closing Date or forty-five (45) days from the Town's resolution for determining the Response/Quotation, whichever is the later unless extended on mutual agreement between the Principal and the Respondent in writing.

#### **1.6 CONFORMITY WITH THE RFQ**

The Respondent must prepare its Offer in strict compliance with all Parts of the RFQ.

#### **1.7 RESPONSE TO SPECIFICATION**

It is essential that Respondents address the entire Specification in their written Offer. The Offer will be used to select the preferred Respondent, and failure to provide the required information may render the Offer non-conforming.

#### **1.8 OWNERSHIP OF RESPONSES/QUOTATIONS**

All documents, materials, articles and information submitted by the Respondent as part of or in support of a Response/Quotation shall become upon submission the absolute property of the Principal and will not be returned to the Respondent at the conclusion of the response/quotation process provided that the Respondent shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

Respondents must ensure that the RFQ is kept in a secure place and not used for any purpose other than submitting an Offer. The Respondent must not divulge information contained within the RFQ except as necessary for the preparation of an Offer

#### **1.9 DISCREPANCIES, ERRORS OR OMISSIONS IN THE RFQ**

Should the Respondent identify any discrepancy, error or omission in the RFQ, the Respondent must notify the Town before the Closing Date and Time.

If the Respondent has any doubt as to the meaning of any portion, clause or statement of the RFQ, the Respondent may, in writing, request the Town to provide clarification and direct such enquiries to the officer nominated in clause 1.6. Clarification will only be valid if issued in writing by the Town.

Any clarification given by the Town will be provided in the form of an Addendum, and issued to all persons appearing on the register of Respondents.

By executing the Offer form in Part 3 the Respondent acknowledges each Addendum. A Respondent's Offer will be assessed in accordance with the RFQ, including and incorporating all Addenda.

**The Respondent must not alter or add to the RFQ unless formally required and notified in writing by the Town.** If the RFQ or any part of the RFQ is reproduced by the Respondent and, at any stage, is found to differ from the RFQ issued, in text or otherwise, then the form and content of the RFQ will prevail.

The Town will not be liable for any claim due to misinterpretation by the Respondent of the RFQ or Addenda.

#### **1.10 DUTIES, TAXES AND CHARGES**

Prices quoted must, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the Closing Date and Time.

#### **1.11 COST OF QUOTATIONING**

The Town will not be liable to any Respondent for any costs incurred in connection with this RFQ including (without limitation):

- (a) any costs, expenses or losses incurred by a Respondent in preparing or submitting their Offer (whether conforming or non-conforming); or
- (b) any costs, expenses or losses incurred by a Respondent in respect of any meetings, discussions, enquiries, or requests for details or information made by or on behalf of the Town before or after the submission of an Offer.

#### **1.12 EVALUATION OF OFFERS**

##### **1.12.1 EVALUATION PROCESS**

All Offers will be evaluated in accordance with the terms and conditions of this RFQ, based on the information provided in each Offer.

Respondents acknowledge and agree that they may be required to clarify aspects of their Offer in writing, make a presentation and/or demonstrate the proposal, product or solution offered to the Town.

Referee and due diligence checks are an integral part of the Offer evaluation process. In this respect, the Town may take into account information about the Respondent and its performance, under an existing or previous Contract with any other organisation or body. The Town reserves the right to refer to such information as it deems appropriate in the evaluation of all Offers.

The Town takes no responsibility for the accuracy of information obtained from other organisations, bodies or other sources that may be used in the evaluation of the Respondent's Offer.

##### **1.12.2 SELECTION DECISION**

A Contract may be awarded to the Respondent whose Offer best demonstrates its ability to deliver the Goods and/or Services to a high standard at a competitive price. The Town is not bound to accept the lowest Offer.

##### **1.12.3 THE TOWN'S RIGHTS WITH RESPECT TO THE RFQ PROCESS**

The Town may at its absolute discretion and without providing reasons:

- (a) accept one or more of the Offers received in response to this RFQ;

- (b) accept the whole or, when specified in the Specification, any separable portion of any Offer (as detailed in the schedule of rates or specified pricing structure);
- (c) reject any and all Offers; and
- (d) terminate this RFQ at any time and in any circumstances.

#### **1.12.4 RISK ASSESSMENT**

During the selection process, the Town may access and give consideration to:

- (a) any risk assessment undertaken by a credit rating agency;
- (b) any information produced by the Bank, financial institution, or accountant of a Respondent to facilitate assessment of an Offer;
- (c) any information obtained from referees or organisations for which a Respondent has undertaken and completed similar Contracts; and
- (d) any financial analytical assessment undertaken by any agency.

So as to assess that Response/Quotation and may consider such materials as tools in the Response/Quotation evaluation process.

#### **1.12.5 REJECTION OF QUOTATIONS**

The Town may at its absolute discretion reject an Offer.

#### **1.13 ESTABLISHMENT OF CONTRACT**

A Contract will not be formally established until the Town has issued a Letter of Award.

#### **1.14 CANVASSING OF ELECTED MEMBERS, EMPLOYEES OR TOWN'S CONTRACTORS**

If a Respondent, whether personally or by an agent, canvasses any of the Principal's Elected Members, Officers, Contractors or their Representatives with a view to influencing the acceptance of any Response/Quotation made by it or any other Request, then regardless of such canvassing having any influence on the acceptance of such Response/Quotation, the Principal will omit the Response/Quotation from consideration.

#### **1.15 OFFERS OF EMPLOYMENT**

Respondents must not approach any Town employee or Town contractor engaged to assist with the RFQ at any time during the evaluation of this RFQ, from the date this RFQ is published until the award of the Contract, in order to:

- (a) make an offer of employment with the Respondent or any related entity; or
- (b) suggest that employment may be available with the Respondent or any related entity.

If any Respondent contravenes this clause, the Respondent's Offer will be rejected.

#### **1.16 CONFIDENTIALITY**

Respondents must treat all aspects of the RFQ, including oral and written material as confidential.

Respondents must not publicly release any information regarding the Town, including its business operations and strategies to which it becomes privy as a result of the RFQ.

The Town will treat as confidential any information provided by the Respondent in its Offer which the Respondent expressly indicates in its Offer should be kept confidential, or which is by its nature confidential.

The only exception to the duty of confidentiality under this clause is when disclosure is required by law.

#### **1.17 CONFLICT OF INTEREST**

By completing and executing the Respondent's Offer form the Respondent warrants that, unless otherwise stated in its Offer, to the best of its knowledge at the date of submitting an Offer, no conflict of interest exists or is likely to arise in relation to this RFQ during the evaluation period or (if the Respondent is awarded the Contract) during the Contract between the Town and the Respondent, its employees or any proposed Sub-Contractors.

Should a conflict of interest or risk of conflict of interest arise at any time during the evaluation period the Respondent must immediately notify the Town in writing of that conflict of interest or risk of conflict of interest. The Respondent acknowledges that the Town may, in its absolute discretion, determine that such a conflict of interest renders the Respondent's Offer non-conforming.

#### **1.18 RESPONDENT'S WARRANTY**

By completing and executing the Respondent's Offer form the Respondent warrants that it has adequate knowledge of, and experience in, the delivery of the Goods and/or Services and that it has and will continue to have, an adequately skilled, resourced, equipped, competent and trained organisation which is capable of carrying out all aspects of the Contract.

#### **1.19 REPORTING TO THE ACCC**

The Principal reserves the right, as its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate regulatory authority and provide that authority with any relevant Respondent information.

#### **1.20 DISCLOSURE OF SUB-CONTRACTING**

Respondents must indicate if they intend any person (or organisation) who is not an employee to provide the goods and/or perform the services/works, and they must provide their details.

#### **1.21 GOVERNING LAW AND JURISDICTION**

This RFQ is governed by the laws applying from time to time in the State of Western Australia.

The Respondent must comply with all laws of the State of Western Australia affecting or applying to the RFQ.

#### **1.22 THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION**

The Contractor must view and understand the Principal's Policies <https://www.bassendean.wa.gov.au/documents/policies>.



## CONDITIONS OF CONTRACT

### 2 INTERPRETATION

In this Contract (unless the context otherwise requires):

- (a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
- (d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) words in the singular include the plural and vice-versa;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- (i) headings are for convenience only and do not affect interpretation of this Contract;
- (j) a promise on the part of 2 or more persons binds them jointly and severally; and
- (k) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

### 3 ORDER OF PRECEDENCE

To the extent of any inconsistency between the several parts of this Contract, the following parts are listed in order of precedence:

- (a) this document;
- (b) in the case of the Goods, the Specification and, in the case of the Services, the Scope of Services;
- (c) any other schedules, attachments or annexures to this document; and
- (d) any Order.

### 4 NOTICES

4.1 Any notice or other communication under this Contract shall be in legible writing, in English and signed and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
- (b) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.

4.2 Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:

- (a) if by delivery in person, when delivered to the address of the recipient;
- (b) if by post, five (5) Business Days from and including the date of postage;
- (c) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.

4.3 In this Clause 4, reference to a recipient includes a reference to a recipient's officers, agents or employees.

4.4 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

## **5 CONTRACTOR TO HAVE INFORMED ITSELF**

5.1 The Contractor shall be deemed to have:

- (a) examined carefully this Contract and any other information made available by the Principal to the Contractor in connection with the RFQ or this Contract;
- (b) examined the Site and its surroundings (if applicable);
- (c) satisfied itself as to the correctness and sufficiency of its Submission and that the Contract Price covers the cost of complying with all its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of this Contract; and
- (d) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Quotation and which was provided or obtainable by the making of reasonable enquiries.

5.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this Clause will not relieve the Contractor of its obligation to perform and complete this Contract in accordance with this Contract.

## **6 COMPLYING WITH LEGAL REQUIREMENTS**

6.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Goods and/or Services and/or the performance of this Contract.

6.2 Without limiting in any way the generality of the foregoing or Clause 7, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Work Health and Safety Act 2020* and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

6.3 If a Legal Requirement is at variance with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Goods and/or the Services and/or the way in which they must be provided, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

## **7 SAFETY OBLIGATIONS**

The Contractor must perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety.

7.1 The Contractor must supply or arrange to be supplied all things necessary to ensure the Services are carried out and the Goods are provided in a manner that is safe and without risks to health.

7.2 The Contractor must ensure that the Services are performed and the Goods are provided in a manner that is safe and without risks to any person, including by ensuring that the Contractor's Personnel entering the Delivery Point perform in a safe manner.

7.3 The Contractor must:

(a) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident which is notifiable under any Legal Requirement, injury or property damage which:

- (i) occurs during the provision of the Goods and/or Services; or
- (ii) is associated with the Goods and/or Services; and

(b) provide the Principal with any further information when requested by the Principal.

7.4 In performing its obligations under this Contract, the Contractor must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Principal's premises over which it has control:

- (a) the Principal and the Principal's Personnel;
- (b) the Contractor's Personnel; and
- (c) the public.

7.5 The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the Goods and/or Services.

7.6 The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 7.

7.7 If the Principal observes or becomes aware of a condition that breaches this Clause 7, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.

7.8 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 7.6 or 7.7 does not relieve the Contractor from complying with its obligations under this Clause 7.

7.9 All the Principal's buildings/facilities are non-smoking areas and as such the Contractor shall abide by this requirement, and shall comply with the Principal's non-smoking policies.

7.10 Safety and Health Policy Objectives

To accomplish the Town of Bassendean's safety and health policy objectives, the Principal will utilise Contractor/s who meet or exceed the Principal's safety and health standards.

The Contractor shall:

- (a) Be informed of the Principal's safe work procedures and are required to comply with them at all times.
- (b) Comply with the legislative requirements such as:
  - (i) Work Health and Safety Act 2020;
  - (ii) Occupational Safety and Health Regulations 1996(State);
  - (iii) Workers Compensation and Rehabilitation Act 1981; and
  - (iv) Any amendments to such Acts and Regulations.
- (c) Provide the Principal's Representative or Superintendent with a Site Specific Occupational Safety and Health Management Plan (where required or requested by the Principal) which complies with the Occupational Safety and Health Act and Worksafe WA's requirements prior to commencement of work.
- (d) Provide the Principal's Representative or Superintendent with a Traffic Management Plan (TMP) prior to the commencement of work, where the work required under the Contract is of such a type or nature that requires a TMP.
- (e) Provide evidence of safety awareness training by all employees as well as any sub-contractors and their employees for contracts involving construction work when requested by the Principal.
- (f) Conduct a responsible hazard and risk management assessment prior to the commencement of work.
- (g) Notify Worksafe Western Australia of all Notifiable Works and make payment of all inspection and other fees in connection with such goods and services (when required).
- (h) Provide the Goods and Services in accordance with all current statutory requirements, Local Government By-Laws and the provisions of Australian Standard AS 1470, together with any other Code relating specifically to a type of machine, process, handling procedures or materials. The Contractor shall provide their employees with all necessary equipment and protective clothing to allow the safe provision of the goods and services and shall ensure maintenance to all plant and machinery allows for their safe operation.
- (i) On notification from the Principal in respect to any operation, machine or structure being, in the opinion of the Principal, unsafe, the Contractor shall cease use immediately or such operation, machine or structure and shall conduct remedial work to the satisfaction of the Principal before continuing to use the operation, machine or structure. Where no remedial action can ensure continued safe use of an operation, machine or structure, the Contractor shall, in the case of an operation, cease such operation, and in the case of a machine or structure, shall dismantle and remove such machine or structure from the Site.
- (j) Where the general safety of the Public is concerned and time of notification of the Contractor further jeopardises this safety, the Principal may order immediate remedial works to be conducted at the Contractor's expense.

#### 7.11 OSH Induction

Prior to commencement of this Contract and in accordance with Part III, Division 2, Section 19 (1) (b) of the Work Health and Safety Act 2020 the Contractor, all its employees (including hired labour) and subcontractors (including their employees and any hired labour) shall undertake the Principal's OS&H Inductions (when required) as advised by the Principal's Representative.

## 7.12 Fire Protection Impairment

Where any Fire Protection systems and/or equipment (e.g. fire and smoke detector, VESDA or equivalent systems, fire hydrants, fire hose reels, water tankers etc.) are to be isolated or access impaired, a risk assessment shall be completed by the Contractor and the Principal's Representative or Work Coordinator, and a Fire Protection Impairment Procedure form issued, prior to any isolation or impairment taking place.

## 8 ASSIGNMENT AND SUBCONTRACTING

8.1 The Contractor shall not assign this Contract, or any part thereof or any payment thereunder without the Principal's prior written approval (not to be unreasonably withheld or delayed). The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

8.2 Subcontracting:

The Contractor shall not subcontract the whole or any part of this Contract without the Principal's prior written approval (not to be unreasonably withheld or delayed). The Principal's approval to subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

The Contractor shall be responsible for the work of the Sub-Contractor or any employee or agent of the Sub-Contractor and guarantee that the supply of Goods and the provision of Services provided by the Sub-Contractor and furnished under the Contract shall be free from deficiencies in design, performance, materials and workmanship

## 9 CONTRACTOR'S PERSONNEL

The Contractor must, and must ensure the Contractor's Personnel, comply with:

(a) all directions given by the Principal's Representative or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to this Contract or the Goods and/or Services; and

(b) the Standards and Procedures that are applicable to this Contract.

(c) Right to Work – Working Visas

Personnel engaged by the Contractor under this Contract are required by the Principal to be legally allowed to work in Australia. The Contractor shall provide the Principal with a copy of the visa for any personnel who are residing in Australia on a Working Visa, when requested by the Principal's Representative.

(d) Alcoholic Beverages

Neither the Contractor nor the Contractor's Personnel shall consume or store alcoholic beverages in or around the Principal's buildings or facilities.

(e) Personal Identification

The Contractor shall provide all of its staff with a personal identification badge (as approved by the Principal's Representative). The badge shall be worn at all times whilst in or around the Principal's buildings or facilities.

## 10 INDEMNITY

10.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:

(a) any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel;

- (b) any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel; and
- (c) any claim made by a third party against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel,

except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

10.2 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 10.

## **11 INTELLECTUAL PROPERTY RIGHTS**

11.1 The Contractor warrants that the Goods and/or Services and any design, documents or methods of working provided by the Contractor do not infringe any Intellectual Property Right.

11.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.

11.3 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

11.4 Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods and/or Services and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.

11.5 Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.

11.6 The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Goods and/or Services and any documentation provided pursuant to this Contract.

## **12 ORDERS**

12.1 The Principal:

- (a) May require the contractor to provide goods and/or services from time to time by giving the contractor an order;
- (b) may order requirements of any one type or item of the Goods and/or Services either in one single lot or instalments or in such quantities as may be required.

12.2 Within five (5) Business Days after receipt of an Order the Contractor must give notice to the Principal if it:

- (a) disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
- (b) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.

12.3 If the Contractor:

- (a) gives notice under Clause 12.2, the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or
  - (b) does not give notice pursuant to Clause 12.2 the Contractor must perform its obligations under the Order in accordance with this Contract.
- 12.4 If, pursuant to a notice issued under Clause 12.2, the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
- (a) the contract price applicable to that Order and such contract price will be deemed to be the Contract Price for that Order; and
  - (b) the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.
- 12.5 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Goods delivered to the Delivery Point and any Services provided prior to the date the cancellation is notified to the Contractor.
- 12.6 No Assurance Of Work
- This Contract does not mean that:
- the Contractor has the right to be the sole supplier of the Goods and/or Services to the Principal' and
  - an Order will be placed with the Contractor.
- In addition, the Principal does not provide a warranty or undertaking of the minimum or maximum quantities of work available. Any increase or decrease in the quantities from time to time shall not entitle the Contractor to claim additional costs from the Principal.

### **13 QUALITY OF GOODS**

- 13.1 The Contractor must ensure that all Goods supplied under this Contract::
- (a) conform to the description specified in this Contract and to samples provided (if any) by the Principal;
  - (b) where no standards are specified in this Contract, the Goods shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation;
  - (c) are fit for their intended purpose;
  - (d) are properly, safely and securely packaged and labelled for identification and safety; and
  - (e) are new and of merchantable quality.
- 13.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf if the Principal so requests).

### **14 QUALITY OF SERVICES**

- 14.1 The Contractor must ensure that:

- (a) the Services match the description of the Services in this Contract;
- (b) the Services are fit for their intended purpose; and
- (c) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Contract.

14.2 The Contractor warrants that the Contractor's Personnel engaged to perform the Services:

- (a) have all the necessary skills, training and qualifications (proof of which, must be supplied to the Principal within two Business Days of request) to carry out the Services in accordance with this Contract; and
- (b) are able to:
  - (i) perform the Services without the supervision of the Principal's Personnel; and
  - (ii) resolve any matters arising from the performance of the Services.

14.3 Services Not to Standards

If the Contractor does not carry out the Services or any part thereof pursuant to this Contract and to the standards specified in the Specification and fails to rectify same within forty-eight (48) hours of receiving written notification of the sub-standard services, the Principal may exercise any or all of the following:

- (a) Engage another supplier to perform the Services not carried out to the specified standards. Costs incurred by the Principal under this sub paragraph shall be recoverable from the Contractor and may be deducted from any monies due payable to the Contractor under this Contract.
- (b) Assess the fair and reasonable cost of performing the Services in respect of which default has been made and deduct that sum from any monies due payable to the Contractor under this Contract.
- (c) Withhold any payment or payments claimed for the sub-standard Services until such time as the Services or any part thereof has been completed to the standards specified in the Specification.

## **15 SUPPLY OF GOODS AND SERVICES**

15.1 The Contractor must supply the Goods and/or Services to the Principal in accordance with this Contract during the Term.

15.2 The Contractor shall immediately notify the Principal's Representative of any delay in providing the Goods and/or Services; and advise if the Goods and/or Services are to be sub-contracted (and to whom); to prevent any further delay.

15.3 The Contractor must obtain, at the Contractor's expense, any Approvals necessary for the supply any additional Goods and/or Services to the Principal.

15.4 The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.

15.5 The Principal shall not be required to take or accept all or any of the Services listed except such of the Services as may be ordered by the Principal from time to time during the Term.

15.6 Where the quantity or value set out in Scope of Services is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under this Contract and the Principal shall not be required to take or accept said nominated approximate quantity or value of Services.



- 15.7 If the Contractor:
- (a) delivers more Goods than the quantity specified in this Contract, the Principal may return any quantity of Goods provided by the Contractor in excess of that specified in this Contract to the Contractor at the Contractor's sole risk and expense; or
  - (b) performs more Services than the quantity specified in this Contract, the Principal is not liable to pay for the additional quantity.

## **16 PLANT AND EQUIPMENT**

- 16.1 The Contractor must provide (at its cost) all Plant and Equipment, labour and haulage necessary for the performance of the Contractor's obligations under this Contract.
- 16.2 The Contractor must ensure that all Plant and Equipment and any other items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with this Contract and all Legal Requirements, and are fit for their usual and intended purpose.

## **17 TIME FOR PERFORMANCE**

- 17.1 The Contractor shall deliver the Goods in full to the Delivery Point and perform the Services at the times stated in this Contract. In this respect time shall be of the essence of this Contract.
- 17.2 If the Services are unlikely to be completed and/or that the Goods will not be delivered to the Delivery Point by the Completion Date the Contractor is entitled to an extension to the Completion Date if the delay is due to:
- (a) breach by the Principal of its obligations under this Contract;
  - (b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
  - (c) a Force Majeure Event occurring before the Completion Date;
  - (d) suspension of this Contract under Clause 28, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
  - (e) a Variation being granted under Clause 27.
- 17.3 The Contractor may only claim an extension to the Completion Date if the Contractor:
- (a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;
  - (b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
  - (c) or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.
  - (d) If the Principal's Representative reasonably considers that the claim for an extension of time relates to an event listed in Clause 18.2 and Clause 18.3 have been satisfied, the Principal must notify the Contractor within ten (10) Business Days of the claim for an extension of time that an extension of time to the Completion Date is granted.
- 17.4 The Principal may by written notice to the Contractor direct an extension of time to the Completion Date at:
- (a) any time that the Principal directs a Variation; or
  - (b) at any other time at the absolute discretion of the Principal,

notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Completion Date.

- 17.5 If the Principal, considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within ten (10) Business Days (or any other period agreed in writing by the Parties) of receipt of the claim.

## **18 LIQUIDATED DAMAGES**

- 18.1 If the Contractor does not perform the Services in full, the Contractor must pay to the Principal, Liquidated Damages for every day after and including the earliest of:
- (a) the date the Services are actually performed or delivered in full to the Delivery Points; or
  - (b) termination of this Contract.
- 18.2 The payment of Liquidated Damages will not relieve the Contractor from its obligations to perform the Services in full to the Delivery Points or from any of its obligations and liabilities under this Contract.
- 18.3 Liquidated Damages shall become due upon the issue of a notice by the Principal setting out the amount of Liquidated Damages payable by the Contractor to the Principal.
- 18.4 The Principal may recover the amount of Liquidated Damages:
- (a) on demand from the Contractor; or
  - (b) by deducting such amount from any amount owed to the Contractor by the Principal.
- 18.5 The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this Clause 18 represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if the Services are not performed in full and such sums shall not be construed as a penalty.

## **19 INSPECTION AND INFORMATION**

- 19.1 The Contractor must keep the Principal fully informed on all aspects of the Goods and/or Services, and must supply on request:
- (a) progress reports on the performance of the Goods and/or Services and in such detail as will allow the Principal to ascertain whether such are in conformity with this Contract; and
  - (b) the Contractor's Technical Material, reports, data and a detailed supply program, relating to the Goods and/or Services.
- 19.2 Any review, inspection, examination or witnessing of testing by the Principal or their results does not relieve the Contractor of its responsibilities under this Contract.
- 19.3 If, as a result of any review, inspection, examination or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply with this Contract and the Contractor is notified in writing of such dissatisfaction, the Contractor agrees to take such steps as are necessary to ensure compliance.

## **20 DELIVERY OBLIGATIONS**

The Contractor must, in delivering the Goods to the Delivery Point:

- (a) not interfere with the Principal's activities or the activities of any other person at the Delivery Point; and

- (b) leave the Delivery Point secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Point immediately prior to the delivery of Goods.

## **21 RECEIPT AND ACCEPTANCE OF GOODS AND SERVICES**

- 21.1 Delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal.
- 21.2 Acceptance of the Goods and/or Services occurs on the earlier of:
  - (a) the Principal's Representative notifying the Contractor in writing that the Goods and/or Services have been accepted; or
  - (b) when after the lapse of 14 days after delivery of the Goods to the Delivery Points without the Principal notifying the Contractor in writing that the Goods have been rejected.
- 21.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to Acceptance remains with the Contractor except where the damage, deterioration, theft or loss is caused by a negligent act or omission of the Principal or its agents or employees.
- 21.4 Where Goods are found to be Defective Goods, the Principal may reject any or all of the Defective Goods.

## **22 FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES**

Where a State of Emergency is declared under the *Emergency Management Act 2005 (WA)* or where the Contractor is unable or fails (for whatever reason) to provide the Goods and/or Services in accordance with this Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Contract Price which relates to the relevant Goods and/or Services), obtain or acquire such goods and services as it requires from a third party.

## **23 PROPERTY AND RISK IN THE GOODS**

- 23.1 Risk in Goods will pass from the Contractor to the Principal on Acceptance of those Goods.
- 23.2 Upon payment for the Goods, property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.
- 23.3 The Contractor warrants that:
  - (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and that it sells the Goods to the Principal on that basis; and
  - (b) the Principal will be entitled to clear title to and complete and quiet possession of the Goods upon payment for them.

## **24 REPRESENTATIVES**

- 24.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.
- 24.2 The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in Clause 34 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.

24.3 The Contractor's Representative is responsible for the quality, timeliness, cost and provision of the Goods and/or Services in accordance with this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

## **25 VARIATION**

25.1 A direction to the Contractor to perform a Variation may only be effected in accordance with this Clause 25.

25.2 If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation ('Variation Proposal'). The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within 5 Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.

25.3 If a Variation requires the omission of Goods and/or Services, the Principal's Representative may have the omitted Goods and/or Services provided by others or not as the Principal sees fit.

25.4 The Variation Proposal must specify:

- (a) the effect the Contractor anticipates the proposed Variation will have on the Completion Date and the Contract Price (if any); and
- (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.

25.5 Following receipt of the Variation Proposal by the Principal, subject to Clause 25.2, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the relevant Completion Date.

25.6 The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.

25.7 The Contractor acknowledges and agrees that, subject to Clause 25.10, the Principal or the Principal's Representative may direct the Contractor in accordance with Clause 25.13 to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the relevant Completion Date.

25.8 The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with Clause 25.13.

25.9 If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.

25.10 If the Parties are unable to agree on:

- (a) the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
  - (i) if this Contract prescribes rates or prices to be applied in respect of the Goods and/or Services, those rates or prices must be used; or
  - (ii) if Clause 1.1(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and

(b) the impact of the Variation on the Completion Date,  
then the Principal's Representative must determine a reasonable impact and amend the relevant Completion Date by notice in writing to the Contractor.

- 25.11 A Variation does not invalidate this Contract.
- 25.12 The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under this Clause 25 or elect not to direct a Variation.
- 25.13 A direction is not a Variation unless a Variation Form has been signed by the Principal and an Official Purchase Order for the Variation or an Amended Official Purchase Order detailing the Variation has been received by the Contractor.

## **26 SUSPENDING THIS CONTRACT**

- 26.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- 26.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- 26.3 Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Losses.
- 26.4 If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with Clause 26.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Completion Date and the End Date are extended by the period of that suspension.
- 26.5 The remedies set out in Clauses 26.3 and 26.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

## **27 WARRANTIES**

The Contractor shall obtain all warranties specified in this Contract including any warranties that are obtained by any Subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

Unless otherwise specified or agreed to; all warranties or guarantees specified in this Contract shall name the Principal as warrantee/guarantee.

## **28 VARIATION TO CONTRACT TERMS**

None of the terms of this Contract shall be varied, waived, discharged or released either under any Legal Requirement, except by the express written agreement of the Principal.

## **29 PRICE BASIS**

- 29.1 Unless otherwise stated in this Contract, the Contractor shall be paid on a Lump Sum basis and/or a Schedule of Rates basis for all Goods and/or Services as per the Price Schedule.
- 29.2 Unless otherwise stated, prices include labour, any overtime, weekend penalty or public holiday loading etc., plant, machinery, tools and equipment, materials, chemicals,

transport/cartage, supervision, administration, travelling expenses and other disbursements etc., and anything else necessary to provide the Goods and carry out the Services required or requested under this Contract; and all applicable levies, duties, taxes and charges.

- 29.3 Unless otherwise provided in this Contract, the Contractor shall pay all packaging, freight, taxes, insurances, and other charges whatsoever, in connection with this Contract and the Goods and/or Services including delivery of Goods to the Delivery Point and the return of Goods wrongly supplied and all packaging.
- 29.4 Any charge not stated in the Quotation and/or Quotation, as being additional will not be allowed as a charge for any transaction under this Contract.

### **30 INVOICING AND PAYMENT**

30.1 The Contractor must provide to the Principal a Progress Claim or if the Principal directs, an Invoice.

30.2 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices within 30 Business Days (or such other period as the Principal's Representative and Contractor agree) of their generation or receipt (as the case may be), except where the Principal:

- (a) is required by any Legal Requirement to pay within a shorter time frame, in which case the Principal must pay within that time frame;
- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
- (c) disputes the Invoice, in which case:
  - (i) to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
  - (ii) if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.

30.3 Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid this Contract.

30.4 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the claim.

30.5 Invoices:

The Contractor shall lodge invoices for the Goods and/or Services provided. All invoices shall have the complete list and costing per item of all the Goods and/or Services provided and itemise the location and day/time of the Goods and/or Services provided. Prior to approval of payment, claims will be subject to verification by the Principal's Representative that the claim is a true and accurate record of the Goods and/or Services provided.

The Contractor shall provide all information deemed necessary or requested by the Principal's Representative, to enable the Principal's Representative to make a proper assessment of the claim for payment.

30.6 Invoices – Lodgement of:

Claims for payment shall be lodged on the 28th day of each month or as soon as reasonably practicable following the end of each calendar month (or as otherwise agreed by the Parties).

The Principal's preferred method of lodgement is electronically.

Under no circumstances shall the Contractors attach an invoice (s) to the goods being delivered nor hand deliver, fax, email or mail any invoice (s) to any other business/service unit than the Principal's Accounts Payable service unit.

Failure to comply with these requirements may result in the possible loss or misplacement of an invoice(s) and the subsequent delay in the payment of the account(s) for which the Principal shall not be deemed liable, and no late payment penalty shall apply.

30.7 Enquiries – Accounts Payable:

All enquiries, account statements and other correspondence shall be emailed to: [accounts@basendean.wa.gov.au](mailto:accounts@basendean.wa.gov.au)

30.8 Electronic Funds Transfer (EFT):

The Principal shall pay the Contractor by Electronic Funds Transfer (EFT) and the Contractor shall provide all the necessary information required to facilitate EFT payment processing.

The Principal guarantees the confidentiality and security of all such information provided by the Contractor.

### **31 CONFIDENTIAL INFORMATION AND PUBLICITY**

31.1 The Contractor must not advertise, publish or release to the public in any media (including social media):

- (a) the Confidential Information; or
- (b) other information concerning the Goods and/or Services, or this Contract, without the prior written approval of the Principal.

31.2 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:

- (a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or
- (b) disclose the Confidential Information:
  - (i) other than (to the extent they require the information to enable the Contractor to fulfil its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
  - (ii) where disclosure is required by Law (including disclosure to any stock exchange).

31.3 The rights and obligations under this Clause 31 continue after the End Date.

31.4 A breach of confidentiality shall be considered a breach of Contract and shall be grounds for termination of this Contract.

### **32 GOODS AND SERVICES TAX**

32.1 Any reference in this Clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

32.2 Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply ('GST Exclusive Consideration') except as provided under this Clause.

- 32.3 Any amount referred to in this Contract (other than an amount referred to in Clause 32.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 32.4 To the extent that GST is payable in respect of any supply made by a Party ('Supplier') under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 32.5 The recipient must pay the additional amount payable under Clause 32.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 32.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 32.4 or at such other time as the Parties agree.
- 32.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 32.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 32.8 If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 32.4.

### **33 FORCE MAJEURE EVENT**

- 33.1 A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract ('**Affected Obligations**') and must either:
- (a) to the extent practicable, specify in the notice the length of delay in the Completion Date that will result from the Force Majeure Event; or
  - (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.
- 33.2 The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- 33.3 The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- 33.4 If a Force Majeure Event continues to affect the supply of the Goods and/or Services for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

### **34 SETTLEMENT OF DISPUTES**

- 34.1 In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('Notice of Dispute').



- 34.2 The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
- (a) alleged facts on which the claim is based;
  - (b) legal basis on which the claim is made; and
  - (c) relief that is claimed.
- 34.3 Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
- (a) its position in relation to the Dispute; and
  - (b) the basis for its position.
- 34.4 Within 10 Business Days of receipt of the response referred to in Clause 34.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.
- 34.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 34.4, either Party may initiate proceedings in a court of competent jurisdiction.
- 34.6 Either Party may, with the agreement of the other Party, at any time, refer the Goods and/or Services (or any part thereof) to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.

## **35 TERMINATION OF CONTRACT**

- 35.1 If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.
- 35.2 The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 5 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:
- (a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
  - (b) the cost of materials and equipment reasonably ordered by the Contractor for the Goods and/or Services and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,
- and shall have no further liability to the Contractor.
- 35.3 If the Contractor:
- (a) subject to Clause 34, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
  - (b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets

and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;

- (c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
- (d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;
- (e) or any Contractor's Personnel, are found guilty of any criminal act related to the Goods and/or Services that may bring the Principal into disrepute;
- (f) includes in its Quotation any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (g) or the Contractor's Personnel:
  - (i) cause a safety issue, condition or any risk to health in breach of this Contract; and
  - (ii) the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

then the Principal may by notice in writing to the Contractor immediately terminate this Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.

- 35.4 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 35.3 and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.
- 35.5 When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.
- 35.6 The termination of this Contract does not affect:
  - (a) any rights of the Parties accrued before the End Date; and
  - (b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after the End Date.

## **36 INSURANCE**

- 36.1 The Contractor must, at its own cost and expense, as a minimum procure and maintain the Insurances:
  - (a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and
  - (b) from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency and approved by the Principal which either:

- (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
  - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- 36.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- 36.3 Without limiting Clause 36.1, the Contractor must:
  - (a) pay all premiums and all deductibles applicable to the Insurance when due; and
  - (b) promptly reinstate any Insurance required under this Clause 36 if it lapses or if cover is exhausted.
- 36.4 To the extent available at the times of placement and each renewal, each Insurance must:
  - (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
  - (b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and a failure by any insured Party to observe and fulfil the terms and conditions will not affect any other Party
  - (c) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (d) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
  - (e) provide, where the Principal is entitled to cover under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and
  - (f) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
- 36.5 The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.
- 36.6 **Public and Product Liability Insurance**

If mentioned in the RFQ, the Contractor must maintain **public and product liability insurance**. The public and product liability policy must:

  - (a) be endorsed to note the Principal for their respective rights and interests in relation to this Contract;
  - (b) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and unlimited in the amount of occurrences and not less than the amount set out in the Contract Specifics in the aggregate in relation to Products Liability during any one 12 month period of insurance;
  - (c) include a cross liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each Party insured (without increasing the deductibles or reducing the overall limit of indemnity).

- (d) cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
  - (i) loss of, damage to, or loss of use of, any real or personal property; and
  - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers compensation policy),

arising out of or in connection with the performance of this Contract (including the provision of the Goods and/or Services) by the Contractor; and
- (e) be endorsed:
  - (i) to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
  - (ii) to cover sudden and accidental pollution; and
  - (iii) To provide waiver of subrogation in favour of the Principal in relation to this agreement where the Principal is not a named insured.

### 36.7 **Comprehensive Vehicle and Equipment Insurance**

In addition to any **compulsory third party motor vehicle insurance** required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain **comprehensive vehicle and equipment insurance** for the Contractor's vehicles, plant and equipment used in connection with this Contract whether owned, hired or leased ('**Contractor's Vehicles**'). The vehicle and equipment liability policy must:

- (a) cover against all loss and/or damage to the Contractor's Vehicles;
- (b) come into effect on or before the Start Date and be maintained until the Insurance End Date;
- (c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
- (d) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the number of occurrences;
- (e) other than compulsory third party motor vehicle insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal; and

36.8 The Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law. This insurance cover must:

- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
- (b) be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor; and
- (c) be for not less than the amount set out in the Contract Specifics in respect of any one event.

### 36.9 **Professional Indemnity Insurance**

If mentioned in the RFQ, the Contractor must maintain **professional indemnity insurance**. The professional indemnity policy must:

- (a) come into effect on or before the Start Date and be maintained without interruption until the date set out in the Contract Specifics;
  - (b) be for not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in any one twelve (12) month period of insurance;
  - (c) include one full automatic reinstatement of the limit of liability;
  - (d) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Contract;
  - (e) cover claims in respect of this Contract under the Competition and Consumer Act 2010 (Cth), Fair Trading Act 2010 (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice; and
  - (f) be endorsed to contain a principal's indemnity extension in favour of the Principal
- 36.10 The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.
- 36.11 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- 36.12 The Contractor must ensure that its Subcontractors are insured as required by this Clause 36, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- 36.13 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal current and updated Certificates of Insurance or the terms and conditions (including schedules) of the Insurances, to demonstrate compliance with this Contract. Nothing in this Clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- 36.14 If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
- 36.15 Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.
- 36.16 The Contractor must:
- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
  - (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
- 36.17 The Insurances are primary, and not secondary, to the indemnities referred to in this Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.

- 36.18 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS ISO 31000-2009 Risk Management.

### **37 INDUSTRIAL AWARDS**

- 37.1 With respect to all work done in Western Australia under this Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and this Contract.
- 37.2 Failure by the Contractor to comply with Clause 37.1 hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate this Contract, but without prejudice to any other rights or remedies of the Principal.

### **38 GOVERNING LAW**

This Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by, construed and take effect in accordance with the Laws of the **State of Western Australia** and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes).

### **39 PROPORTIONATE LIABILITY**

Each Party agrees that Part 1F of the *Civil Liability Act 2002 (WA)*, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- (c) this Contract; and
- (d) any of the Contractor's Subcontractors or the Subcontractor's personnel.

### **40 SPECIFICATION TO BE TREATED AS A WHOLE**

Where the Specification is separated into titled sections it is for convenience only and not to dictate or determine the trade or craft involved. Such separations shall not operate to make the Principal an arbiter for the division of responsibility between the Contractor and Sub-Contractors, and between Sub-Contractors, nor shall separation relieve the Contractor of responsibility for the satisfactory completion of the entire work.

### **41 VARIATIONS – GOODS AND/OR SERVICES**

The Principal reserves the right to vary the goods and/or services required under this Contract when the following occurs:

- (a) the sale, closure or vacation of a building / facility;
- (b) the refurbishment of a building / facility;
- (c) a change of owner and/or use of a building / facility; and
- (d) a change in goods and/or services requirements for a building / facility.

The Principal shall provide seven (7) days notice in writing to the Contractor, where there is a substantial variation (e.g. an increase or reduction in the number of buildings/facilities) to the Specification.

The Contract price shall be varied by an amount mutually agreed upon and in writing, between the Principal and the Contractor.

If an agreement is unable to be reached, then the matter may be referred to an independent arbiter, in accordance with Clause 38.

## **42 DOCUMENTS GENERALLY, DRAWINGS AND SPECIFICATIONS**

### **42.1 Documents – General:**

It is the Contractor's responsibility to ensure that the latest revision of the Specification and each drawing is issued to all relevant personnel and the superseded document is withdrawn.

### **42.2 Drawings – Interpretation of:**

The Principal does not warrant or guarantee that the information made available shows completely the existing site conditions. The Contractor shall make its own interpretation from the information made available and shall accept full responsibility for any conclusions drawn.

The Contractor shall check all relevant dimensions on site before proceeding with the works. Under no circumstances shall dimensions be scaled from the Drawings unless authorised in writing by the Superintendent. No claim for additional costs arising from failure to obtain measurements and other information on site will be considered.

### **42.3 Discrepancies:**

All discrepancies shall be immediately notified by the Contractor in writing to the Principal for a Determination.

## **43 RECORD MANAGEMENT RESPONSIBILITIES**

In accordance with the provisions of the State Records Act 2000, some records as reasonably created or collected by the Contractor in the course of undertaking this Contract that are not commercial in confidence, will be deemed a government-owned asset i.e. ownership and propriety interest of said documentation shall remain vested in the Principal's name in perpetuity.

Refer to the Principal's Records Keeping Policy.

### **43.1 Record Keeping**

The Contractor shall ensure that it creates, receives, stores and maintains full and complete records in accordance with the State Records Act 2000 (copies of which are available from the State Law Publisher's website [www.slp.wa.gov.au](http://www.slp.wa.gov.au) ) and State Records Commission Standard 6 (Outsourced Functions) as outlined in the Principal's Record Keeping Plan (and published on the State Records Office of WA's website: [www.sro.wa.gov.au](http://www.sro.wa.gov.au) ); in a format that Survival

The obligations under this Clause continue from the expiry or termination of this Contract for a period in accordance with the requirements of the State Records Office's General Disposal Authority for Local Government Records available from their website [www.sro.wa.gov.au](http://www.sro.wa.gov.au) or until such time that all records have been returned or transferred to the Principal's records management system.

## **44 WORKING HOURS**

The Contractor, unless with prior approval in writing from the Principal, shall not conduct works on Sundays and Public Holidays or between the hours of 5:00pm on any day and 7:00am on the following day except those works required in respect to health and safety.

The Contractor shall be liable for any additional costs the Principal may incur as a result of work outside the normal hours.

In particular, the Contractor may be liable for all expenses in connection with additional attendance by the Principal's consultants.

#### **45 STANDARDS – MATERIALS AND WORKMANSHIP**

Where an Australian Standard is specified, the Contractor shall provide the Goods and/or Services in accordance with the provisions of that Standard. Where an Australian Standard has not been specified, the Contractor shall allow for the provision of the Goods and/or Services in compliance with the provisions of the Australian Standard covering the class or type of Goods and/or Services being provided.

In the event that a Standard other than an Australian Standard is specified, the Contractor shall allow for complying with the provisions of the specified Standard.

The Standard applying shall be the latest edition published prior to the closing date for quotations unless otherwise specified.

The requirements of the relevant local, state and federal authorities are applicable to the Goods and/or Services. In cases where different standards are required between an Authority's document and the Contract Documents, the higher standard of requirement shall prevail.

Australian Standards can be obtained from SAI Global's website: [www.saiglobal.com/shop](http://www.saiglobal.com/shop)

#### **46 CLEANING UP**

The Contractor shall remove from site all rubbish, salvaged materials, pallets, packaging, wrapping or any other debris on completion of the provision of the goods and services whether caused by this Contract or not, and as nominated by the Principal.

#### **47 REFUSE DISPOSAL**

All debris, spoil, rubbish or materials shall be suitably contained and covered in vehicles during transportation to or from the site to prevent spillage or contamination of adjoining and other areas or property.

All Site refuse (including foodstuffs) shall be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Principal.

The Contractor shall allow for all costs and charges in relation to rubbish disposal.

All rubbish, debris and other deleterious matter shall be removed from the Site to an approved waste recycling centre or landfill site.

#### **48 TRADE OR PROPRIETARY ITEMS**

A proprietary item shall be any item identified by graphic representation on the drawings, or by naming one or more of the following: manufacturer, supplier, installer, trade name, brand name, catalogue or reference number, and the like.

The identification of a proprietary item shall not necessarily imply exclusive preference for the item so identified, but shall be deemed to indicate the required properties of the item, such as type, quality, appearance, finish, method of construction, performance and the like.

The Contractor may offer a similar alternative item having the required properties. The Principal may in their absolute discretion adopt or reject the alternative.

Such approval shall not be anticipated because of similar approval having been given in a previous contract.

Rejection or adoption of an alternative shall not be grounds for any claim for variation to cost or time.

When offering an alternative for approval, provide all available technical information, and any other relevant information requested by the Principal.



State whether the use of the alternative will require alteration to any other part of the Works. If the alternative is adopted, carry out any such alteration without extra charge.

## **49 CONDUCT ON THE JOB**

### **49.1 Labour, Direction and Coordination:**

- (a) All labour and workmanship shall be first class.
- (b) The Contract shall direct and coordinate the work of all subcontractors.

Employment of effective methods of execution of the Services, if given by the Principal, shall be without prejudice and shall not relieve the Contractor of their responsibility for such methods.

### **49.2 Liaison with Other Contractors:**

The Contractor shall liaise closely with others who may be contracted to carry out part of the Services/Works or other Services/Works.

### **49.3 Vehicle Speeds:**

Vehicle speeds on the Principal's parks and reserves shall not exceed fifteen (15) kilometres per hour.

### **49.4 Inconvenience to the Public:**

Should members of the public be present at the time the Contractor wishes to carry out the Services (scheduled or otherwise); then the Contractor shall:

- (a) Take all due care to prevent inconvenience to the public.
- (b) Warn the public that work is about to take place.
- (c) At no time ask the public to leave so that work can be carried out.
- (d) Cease work for the time being, should it become impractical to carry out the work.
- (e) Return and complete the work later the same or no later than the following working day, at no additional cost to the Principal.

### **49.5 Direct Contact from Members of the Public:**

In the event that members of the public make direct contact with the Contractor, or their staff; onsite, the Contractor and their staff shall:

- (a) Be courteous at all times;
- (b) Limit responses to inquiries relating to the specific activity being undertaken at the time; and
- (c) Explain that they are not authorised to answer inquiries of a complex nature, or those that relate to other aspects of the Principal's operations.

## **50 SATISFACTORY PERFORMANCE OF WORK**

The Contractor shall perform all work under this Contract to the satisfaction of the Principal.

All Goods and/or Services rendered shall conform to the Specification and the standards specified.

If the Contractor does not perform the work or any part thereof pursuant to the Contract to the standards specified in the Specification, the Principal may exercise any or all of the following options:

- (a) Engage another Contractor to perform the work not carried out to the specified standards. Any monies expended by the Principal under this sub paragraph shall be recoverable from the Contractor and may be deducted from any monies payable to the Contractor under the Contract.
- (b) Assess the fair and reasonable cost of performance of the work in respect of which default has been made and deduct that sum from any monies payable to the Contractor under the Contract.
- (c) Withhold any payment or payments under the Contract until such time as the work or any part thereof has been carried out to the standards specified in the Specification.

## **51 ACCESS AND INCLUSION**

The Contractor shall comply, to the extent practicable, with the Principal's [Access and Inclusion Plan](#) 2019-2024.

## **52 SECURITY – KEYS & ACCESS CARDS**

The Contractor shall, when attending the Principal's facilities, comply with all reasonable directions and procedures relating to security in effect for those facilities, as notified by the Principal.

The Principal shall supply the Contractor with keys or other security access devices for the purpose of entering and securely locking the buildings or facilities. The Contractor shall safeguard such keys/security devices in a manner satisfactory to the Principal's Representative.

The Contractor shall report immediately the loss of any such keys and/or security devices to the Principal's Representative. The Contractor shall be liable for any costs relating to the replacement of lost keys or security devices.

Failure to report the loss of keys or security devices shall entitle the Principal to terminate the Contract.

## **53 POLICIES – TOWN OF BASSENDEAN**

The Contractor is to ensure that all goods and services are provided in accordance with all relevant policies <https://www.bassendean.wa.gov.au/documents/policies> and position statements of the Principal.

## **54 REFERENCE DOCUMENTS**

Listed below are the key reference documents applicable to this Contract.

The Contractor is required to obtain their own copy of these and any other relevant reference documents.

- (a) Electronic Transactions Act 2011 (WA);
- (b) Freedom of Information Act 1992;
- (c) Public Interest Disclosure Act 2003;
- (d) Local Government (Functions and General) Regulations 1996;
- (e) Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015;
- (f) Workplace Gender Equality Act 2012 (Commonwealth);
- (g) State Records Act 2000;
- (h) Work Health and Safety Act 2020;

- (i) Occupational Safety and Health Regulations 1996 (State);
- (j) Workers Compensation and Rehabilitation Act 1981 (State);
- (k) AS/NZS 4801-2001 – Occupational Health and Safety Management Systems – Specification with Guidance for Use;
- (l) AS/NZS ISO 9001-2016 – Quality Management Systems – Requirements; (o) Building Code of Australia;
- (m) National Standard for Construction Work (NOHSC: 1016) April 2005;
- (n) Disability (Access to Premises – Buildings) Standards 2010 (1 May 2011);
- (o) Guidelines on Application of the Premises Standards – Version 2, February 2013 – Australian Human Rights Commission;
- (p) Disability Discrimination Act 1992 (Commonwealth); and
- (q) Disability Services Act 1993 – Amended 2004 (State).