



TASMANIAN GOVERNMENT GS GENERAL CONDITIONS OF CONTRACT: VERSION 2021-01

Important information:

This document (consisting of 46 pages) is the Tasmanian Government's GS General Conditions of Contract: Version 2021-01 (the **General Conditions of Contract**).

The General Conditions of Contract are incorporated in contracts for the purchase of goods and/or services which provide that the General Conditions of Contract apply to, form part of, or are taken to be incorporated by reference in, those contracts.

The General Conditions of Contract may be modified or supplemented by the contract into which they are incorporated.

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Module A: Common Provisions

1 Definitions and interpretation

1.1 Definitions

In the Contract, unless the context otherwise requires:

Acceptance Period (when used in clause 19.2) – see the Contract Information Table.

Asbestos means asbestos as defined by the *Work Health and Safety Regulations 2012* (Tas).

Business Day means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the *Statutory Holidays Act 2000* (Tas)) generally observed in Hobart.

Contract means a contract (including any Formal Instrument of Agreement) that incorporates or adopts the General Conditions of Contract. (**IMPORTANT NOTE:** The Contract also includes the Contract Information Table and any other attachments and annexures to, or documents incorporated by reference in, the Contract.)

Contract Information Table means the table titled 'Contract Information Table' included as part of the Contract.

Contract Material means, if Module C applies, all material brought, or required to be brought, into existence by the Supplier as part of, or for the purposes of, performing the Services, including documents, information and data stored by any means.

Contract Sum means the amount payable by the Principal to the Supplier, in accordance with the Contract, for the Supplies. Details of the Contract Sum are set out in the Contract Information Table.

Contract Variation Request Notice (when used in clause 5.1) – see clause 5.1(a).

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

Correctly Rendered Invoice means an invoice that:

- (a) is a valid tax invoice for the purposes of GST Laws (if GST is applicable to the Supplies);
- (b) relates only to Supplies that have been accepted by the Principal in accordance with the Contract;
- (c) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Sum;
- (d) the Supplier is entitled, in accordance with the Contract, to render to the Principal; and
- (e) is otherwise in a form required by the Principal.

Crown means the Crown in Right of Tasmania.

Date for Delivery means, if Module B applies:

- (a) if the Contract Information Table states the Date for Delivery, that date; and
- (b) if clause 23 in Module B applies, the date for the delivery of the Goods specified in an Official Order (as defined in clause 23 in Module B).

Deal means to:

- (a) assign, transfer or novate the Contract;
- (b) appoint a person (other than as an employee) to provide any Supplies including a subcontractor;
- (c) dispose of the Contract or any Rights under the Contract;
- (d) become the trustee of a trust in respect of the Contract; or
- (e) give a Security Interest in relation to the Contract,

or any combination of the above, and **Dealing** has a corresponding meaning.

Defect means:

- (a) when used in relation to Goods, any defect in the Goods including:
 - (i) a defect in the Goods that is attributable to defective design, defective materials or defective manufacture;
 - (ii) a defect, error or malfunction in the Goods such that the Goods do not comply with, or cannot be used in accordance with, the Contract (including the Specification); and
 - (iii) if the Supplier is responsible for the installation, assembly or configuration of the Goods, a defect in the installation, assembly or configuration of the Goods by the Supplier; and
- (b) when used in relation to Services, the failure of the Services to comply with the Contract (including the Specification).

Delivery Location means, when used in relation to Goods:

- (a) if the Contract Information Table states the location where the Goods are to be delivered, that location;
- (b) if the Goods are ordered pursuant to an Official Order (as defined in clause 23 in Module B), the location specified in the Official Order; and
- (c) in any other case, a location determined by the Principal and notified, in writing, to the Supplier.

Delivery Time means, when used in relation to Goods:

- (a) if the Contract Information Table states the Delivery Time that the Goods are to be delivered, that time; and
- (b) if the Goods are ordered pursuant to an Official Order (as defined in clause 23 in Module B), the time specified in the Official Order.

Department means the department (if any) named in the Contract. The expression includes any department which substantially succeeds to the functions of the Department which relate to the Contract.

Existing Material means, if Module C applies, then in relation to the supply of Services, any material (other than Contract Material):

- (a) created before the date of the Contract; and
- (b) which is made available by the Supplier for the purposes of the Contract (including its precedents and templates).

Force Majeure Event means any event or circumstance, or combination of events or circumstances, beyond the reasonable control of a party but only to the extent that the party claiming the benefit of any such Force Majeure Event proves that:

- (a) the event or circumstance, or combination of events or circumstances:
 - (i) was not within that party's reasonable control;
 - (ii) was unavoidable notwithstanding the exercise by that party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances;
 - (iii) did not involve any breach of Law by that party; and
 - (iv) was not due to any of the following:
 - (A) any negligence by that party;
 - (B) any lack of financial resources by that party;
 - (C) strike or other labour dispute or difficulty that only affects that party;
 - (D) shortages of labour, plant, machinery or equipment; or
 - (E) any delay by that party in procuring goods or services from a third party; and
- (b) the effects of the event or circumstance, or combination of events or circumstances, could not have been prevented, overcome or remedied by the exercise by that party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including by the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons).

Formal Instrument of Agreement means a formal instrument of agreement, made between the Principal and the Supplier, which incorporates these General Conditions of Contract (with, or without, modifications). The expression includes appendixes, attachments or annexures to, or other documents incorporated by reference in, the formal instrument of agreement, including the Contract Information Table.

General Conditions of Contract means these General Conditions of Contract.

Goods means, if Module B applies, the goods supplied, or to be supplied, by the Supplier to the Principal in accordance with the Contract. Details of the Goods to be supplied are set out in the Contract Information Table. The expression includes:

- (a) any software included in the goods; and
- (b) goods supplied to replace defective or rejected Goods.

Government Body includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

GST Laws means applicable Laws relating to GST.

Harmful Code includes:

- (a) any virus, denial of service, disabling or malicious device or code, 'worm', 'trojan', 'time bomb', or other harmful or destructive code, but does not include any 'software lock' or other technical mechanism that is included to manage the proper use of any software; and
- (b) any code that allows any person to remotely monitor any activity of, or collect any data about, the Principal or any person dealing with the Principal.

insurance policy (when used in clause 6) – see clause 6.1.

Intellectual Property includes copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, know-how and all other intellectual property rights resulting from intellectual activity.

Latent Defect means, in relation to Goods, a defect in the Goods:

- (a) that is attributable to defective design, defective materials or defective manufacture;
- (b) that could not have been discovered by the Principal:
 - (i) using the acceptance tests specified in the Contract; or
 - (ii) by reasonable inspection before the acceptance of the Goods; and
- (c) which has an adverse effect on the functionality, performance or capability of the Goods.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Loss means any loss, cost, expense, damage or liability of any type including:

- (a) consequential loss, liability to third parties, economic loss, loss of revenue, loss of anticipated savings and/or loss of profit;
- (b) loss or damage arising out of an injury, disease or death; and
- (c) loss or damage as a result of any destruction of, or damage to, real or personal property.

Module means, as the context requires, Module A, Module B or Module C of these General Conditions of Contract. To avoid doubt:

- (a) Module A comprises clauses 1 to 16 (both inclusive);
- (b) Module B comprises clauses 17 to 23 (both inclusive); and
- (c) Module C comprises clauses 24 to 30 (both inclusive).

Moral Rights means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; or

(c) a right of integrity of authorship,
granted to creators under the *Copyright Act 1968* (Cwlth).

Notice has the meaning in clause 15.1(a).

Official Order – see clause 23.2 (for Goods) and clause 28.2 (for Services). If both clauses 23 and 28 apply to the Contract, an Official Order may be given that relates to both Goods and Services (and, accordingly, is an Official Order for the purposes of each of those clauses).

PIP Act means the *Personal Information Protection Act 2004* (Tas).

Preliminary Information means information provided by, or on behalf of, the Supplier to the Principal, in connection with the negotiation or formation of the Contract including:

- (a) information about the Supplier;
- (b) information about the Supplies; and
- (c) information contained in any quotation or tender submitted by the Supplier.

Principal means the person named in the Contract as the 'Principal' (and includes the Principal's successors and assigns).

Principal's Agents means:

- (a) each officer and employee of the Principal; and
- (b) each agent and contractor of the Principal engaged in any activity related to the Principal's obligations under, or the subject matter of, the Contract,

and **Principal's Agent** means any of them. For the avoidance of doubt, a Principal's Agent does not include the Supplier or any of the Supplier's Personnel.

Principal Material means, if Module C applies, any material provided by, or on behalf of, the Principal to the Supplier for the purpose of the Contract, including documents, equipment, information and data stored by any means.

Relevant Standards means:

- (a) if the procurement process in relation to the Contract was a covered procurement for the purposes of Treasurer's Instructions issued under the *Financial Management Act 2016* (Tas):
 - (i) any international standards applicable to the Supplies; and
 - (ii) to the extent that there are no international standards applicable to the Supplies, then any applicable Australian standards; and
- (b) if paragraph (a) is not applicable:
 - (i) any Australian standards applicable to the Supplies; and
 - (ii) to the extent there are no Australian standards applicable to the Supplies, then any applicable international standards.

Right includes a right, power, remedy, authority and discretion.

Security Interest means a mortgage, charge, lien, arrangement for the retention of title, encumbrance, and any thing that is a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cwlth).

Services means, if Module C applies, the services supplied, or to be supplied, by the Supplier to the Principal in accordance with the Contract. Details of the Services to be supplied are set out in the Contract Information Table.

Specification means the Specification included, or incorporated by reference, in the Contract.

Specified Amount (when used in clause 4.6(a)) – see clause 4.6(a).

Supplier means the person named in the Contract as the 'Supplier' (and includes the Supplier's successors and permitted assigns).

Supplier's Personnel means all employees, officers, agents, sub-contractors (including employees and agents of sub-contractors) and volunteers employed or engaged by the Supplier in or about the performance of the Contract. If the Supplier is an individual and directly engaged in the performance of the Contract, the expression 'Supplier's Personnel' also includes the Supplier.

Supplies means the things delivered or supplied, or to be delivered or supplied, by the Supplier, in accordance with the Contract, to the Principal, and may comprise goods, services, or both goods and services. Details of the Supplies are set out in the Contract Information Table.

Warranty Period (when used in clause 21) – see clause 21(e).

1.2 Interpretation

In the Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule or a party, is a reference to an annexure, an appendix, an attachment, a schedule or a party to the Contract;
- (g) a reference to a Module refers to a Module in these General Conditions of Contract;
- (h) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (i) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (j) a reference to a 'document' includes:
 - (i) any thing on which there is writing;
 - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or

- (iv) a map, plan, drawing or photograph;
- (k) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (l) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (m) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (n) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (o) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (p) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (q) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (r) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (s) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere;
- (t) references to '\$' and 'dollars' are to Australian dollars;
- (u) each Right of the Principal under the Contract may be exercised from time to time; and
- (v) a reference to the termination of the Contract includes its expiry.

1.3 Headings

Headings are included for convenience only and do not affect the interpretation of the Contract.

1.4 Clause numbers in this document

Unless the context otherwise requires, a reference in these General Conditions of Contract to a numbered clause refers to the clause, bearing that number, in these General Conditions of Contract.

1.5 No rule of construction applies to disadvantage party

In relation to the interpretation of the Contract, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of the Contract or any part of it.

1.6 Early commencement

The Contract applies to any delivery or supply of any Supplies before the date of the Contract as if the Contract had been first executed and exchanged between the parties on or before that delivery or supply.

1.7 Delegation

- (a) If the Contract states that a person, or the holder of a position for the time being, is a delegate of the Principal, then until that delegation is revoked by notice, in writing, to the Supplier, that person, or the holder of the position (for the time being) may exercise, on behalf of the Principal, subject to any conditions contained in the Contract, all of the Rights, functions and responsibilities of the Principal under or in connection with the Contract.
- (b) The Principal may by notice, in writing, to the Supplier delegate the exercise of any Right, function or responsibility which the Principal has under or in connection with the Contract. Any such delegation may be:
 - (i) to a person or to the holder of a position (for the time being);
 - (ii) revoked, changed or re-delegated by notice, in writing, to the Supplier; and
 - (iii) unlimited or may be subject to such conditions as the Principal determines from time to time.
- (c) Nothing in this clause 1.7 affects or limits the operation of any delegation given by the Principal independently of the Contract or any power of a person to act on behalf of the Principal.

1.8 Imputed conduct

- (a) The conduct of the Supplier's Personnel, when involved in the performance of the Contract, will be imputed to the Supplier and taken to be the conduct of the Supplier (even if that conduct is not within the scope of the actual or ostensible authority of the Supplier's Personnel).
- (b) The application of this clause is not limited because another provision of the Contract specifically refers to the conduct of the Supplier's Personnel.
- (c) This clause operates in addition to, and not in substitution for, any applicable Law that makes the Supplier responsible for the conduct of the Supplier's Personnel.
- (d) For the purposes of this clause, '**conduct**' includes fraud, a criminal act, an omission or a misrepresentation to the extent that the conduct occurs during the period of the performance of the Contract.

2 Application of Modules to Contract**2.1 Supply of Goods**

Module A and Module B apply if, pursuant to the Contract, the Supplier is required to supply goods to the Principal.

2.2 Supply of Services

Module A and Module C apply if, pursuant to the Contract, the Supplier is required to supply services to the Principal.

2.3 Supply of both Goods and Services

Module A, Module B and Module C apply if, pursuant to the Contract, the Supplier is required to supply both goods and services to the Principal.

3 General provisions related to delivery of Supplies

3.1 Warranties by Supplier

- (a) The Supplier represents and warrants to the Principal that:
 - (i) all Preliminary Information provided by, or on behalf of, the Supplier to the Principal was true and correct, and not misleading in any way; and
 - (ii) the Supplier did not engage, and no person acting on behalf of the Supplier engaged, in any Anti-competitive Conduct in respect of any quotation or tender process concerning the subject matter of the Contract.
- (b) For the purposes of clause 3.1(a)(ii) **Anti-competitive Conduct** includes any act, omission or thing done, or omitted to be done, with the intention of reducing free and fair competition in relation to any quotation or tender process concerning the subject matter of the Contract. The expression also includes any of the following:
 - (i) any agreement, arrangement or understanding between potential suppliers as to who should be the successful supplier;
 - (ii) if the Principal is not present, any meetings of suppliers to discuss the preparation or submission of a quotation or tender (other than a tender or quotation to be submitted on a joint basis);
 - (iii) any agreement, arrangement or understanding for the giving of any benefit (including the payment of money) to an unsuccessful potential supplier;
 - (iv) any agreement, arrangement or understanding between persons lodging a quotation or tender to fix prices or otherwise collaborate in relation to a quotation or tender (other than a quotation or tender submitted on a joint basis);
 - (v) any assistance to a potential supplier to submit a quotation or tender that was intended to be uncompetitive, and therefore unlikely to be accepted by the Principal.

3.2 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under the Contract, except with the prior consent, in writing, of the Principal.
- (b) Without limiting clause 3.2(a):
 - (i) the Supplier is responsible for the acts and omissions of its subcontractors (and each subcontractor's employees or agents) as if they were the acts and omissions of the Supplier;
 - (ii) subcontracting by the Supplier of any of its obligations under the Contract will not relieve the Supplier from those obligations; and
 - (iii) at the request of the Principal, the Supplier, at no cost to the Principal, must promptly remove from involvement in the Contract any subcontractor that the Principal reasonably considers should be removed.

3.3 No inconsistent activity

The Supplier must not engage in any activity that in any way adversely affects or impairs the Supplier's capacity to perform its obligations under the Contract.

3.4 No conflict of interest

The Supplier represents and warrants, at the date of the Contract, to the Principal that no conflict of interest exists, or is likely to arise, in the delivery of the Supplies. If a conflict of interest arises before the delivery of the Supplies has been completed, the Supplier must notify, in writing, the Principal of the conflict. A conflict of interest includes a personal interest, or a duty owed to a third party, that conflicts, or may conflict, with the diligent and proper performance of the Contract for the Principal's benefit.

3.5 Duty to act honestly

The Supplier must, and must ensure that the Supplier's Personnel, at all times act honestly in its and their dealings with the Principal in connection with the Contract.

3.6 Duty to keep Principal informed, liaison and reporting

The Supplier must:

- (a) keep the Principal fully and regularly informed as to all adverse matters affecting, or relating to, the Contract (including any anticipated delays to the delivery of the Supplies) that are known, or which ought to be known, to the Supplier; and
- (b) liaise with, and report to, the Principal, as the Principal reasonably requires, until the Supplier has fully performed all of its obligations under the Contract.

3.7 No secret profits

The Supplier must not make, and must ensure that none of the Supplier's Personnel make, any secret profit or secret commission in connection with any activity related to the Contract.

3.8 Independent contractor

The Supplier is an independent contractor, and not an employee or agent of the Principal. The Principal is not responsible for any debts, liabilities, costs, charges or expenses incurred by the Supplier in connection with the Contract.

3.9 Data collection and related matters

- (a) Unless the Principal has expressly consented, in writing, the Supplier must not collect any electronic data from the Principal (including from the Principal's systems) in connection with the delivery of the Supplies.
- (b) If the Supplier collects any electronic data from, or on behalf of, the Principal in connection with the delivery of the Supplies, the Supplier must:
 - (i) store the electronic data securely within Australia (except to the extent that the Principal has agreed, in writing, for the electronic data to be stored outside Australia);
 - (ii) ensure that the electronic data is protected against loss, damage, corruption, misuse and unauthorised access by taking security measures that are no less stringent than good industry practice; and
 - (iii) when demanded by the Principal:
 - (A) destroy the electronic data; or

- (B) provide all versions of the electronic data to the Principal (in a format that is accessible to the Principal).
- (c) The Supplier must immediately notify the Principal, in writing, of any of the following:
 - (i) any breach by the Supplier of any of its obligations under this clause 3.9;
 - (ii) any loss, damage, corruption or misuse of, or unauthorised access to, any electronic data to which this clause 3.9 applies.
- (d) This clause 3.9 survives the termination of the Contract.

3.10 Co-operation in relation to work health and safety matters

The Supplier must comply with all reasonable directions and procedures relating to workplace health and safety, record keeping and/or security at premises occupied or used by the Principal.

3.11 Zero tolerance towards violence against women

- (a) Violence against women is defined by the United Nations as 'any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women'.
- (b) The Principal upholds a zero tolerance policy towards violence against any person in the workplace.
- (c) The Supplier must uphold a zero tolerance policy towards violence against any person in the workplace in its interaction with the Principal's Agents, and in the performance of the Contract.
- (d) The Supplier must, and will take reasonable measures to ensure that the Supplier's Personnel, at all times in the performance of the Contract, act in a manner that is non-threatening.
- (e) If the Principal reasonably believes that any of the Supplier's Personnel, involved in the performance of the Contract, are failing to comply with the behavioural standards specified in this clause 3.11, then the Principal may:
 - (i) prohibit access by the relevant Supplier's Personnel to any premises occupied or used by the Principal; and
 - (ii) direct the Supplier to withdraw the relevant Supplier's Personnel from being involved in the performance of the Contract.
- (f) The Supplier must comply with a direction given by the Principal in accordance with clause 3.11(e).

3.12 Tasmanian Industry Participation Plan

The Supplier must, in connection with the supply of the Supplies, implement the Tasmanian Industry Participation Plan (if any) included in the Contract. The Principal may publish the whole or any part of the plan.

3.13 Supplier's trading terms with its Tasmanian based suppliers

The Principal expects the Supplier to trade with its Tasmanian based suppliers on trading terms that include a requirement that the Supplier pays invoices (received from its Tasmanian based suppliers) within 14 days.

4 Contract Sum and related matters

4.1 Contract Sum

The Principal must pay the Contract Sum to the Supplier for the Supplies.

4.2 Adjustment of Contract

The Contract Sum is not subject to adjustment (except to the extent provided for in the Contract Information Table).

4.3 Payment of Contract Sum

- (a) The Contract Sum is payable in the manner provided for in the Contract Information Table.
- (b) The Principal is not required to pay for the Supplies:
 - (i) that are Goods until:
 - (A) the Goods have been delivered to, and accepted by, the Principal, in accordance with the Contract; and
 - (B) the Principal is satisfied that the Goods are not subject to any Security Interest (except for a Security Interest created or held by the Principal);
 - (ii) that are Services until those Services have been performed in accordance with the Contract;
 - (iii) until the Supplier has supplied to the Principal a Correctly Rendered Invoice for those Supplies (including Supplies that are Goods); or
 - (iv) if the Supplier is in breach of the Contract.
- (c) The Supplier is not entitled to any payment for Services or other work performed outside the scope of the Services or the Contract.
- (d) The Supplier is not entitled to any payment to correct any Defect.

4.4 Time for payment

Subject to clause 4.3, the Principal must make payment within 14 days of receiving a Correctly Rendered Invoice for all or part of the Contract Sum that is due and payable.

4.5 Out-of-pocket expenses and disbursements

The Principal must pay or reimburse to the Supplier out-of-pocket expenses and disbursements but only if, and to the extent, provided for in the Contract Information Table.

4.6 Recoupment of amounts paid by mistake etc.

- (a) If, for any reason (including due to a mistake, an administrative error, mathematical error or fraud), the Principal pays any amount (the **Specified Amount**) to the Supplier to which the Supplier was not legally entitled to be paid in accordance with the Contract, the Principal may demand by notice, in writing, to the Supplier that the Supplier repays the Specified Amount to the Principal:
 - (i) in the case where the Specified Amount was paid by the Principal as a result of the Supplier's fraud, the next Business Day after the date of the notice; and
 - (ii) in any other case, within 20 Business Days of that demand.

- (b) The Supplier must comply with any such demand.
- (c) This clause 4.6 survives the termination of the Contract.

4.7 Underpayment

If for any reason (including due to a mistake, an administrative error, or mathematical error), the Principal fails to pay any amount to the Supplier, to which the Supplier was legally entitled, the Principal must pay that amount to the Supplier as soon as practicable after the Principal becomes aware of the circumstances. This clause 4.7 survives the termination of the Contract.

5 Variations

5.1 General Contract variations

- (a) The Principal may by notice, in writing, to the Supplier (**Contract Variation Request Notice**) request a variation to the Contract in relation to the Supplies.
- (b) A Contract Variation Request Notice must:
 - (i) be in writing to the Supplier;
 - (ii) contain a clear statement that it is a 'Contract Variation Request Notice'; and
 - (iii) give reasonable details of the proposed variation to the Contract in relation to the Supplies.
- (c) If the Principal gives a Contract Variation Request Notice, the Supplier must enter into negotiations with the Principal with a view to reaching agreement in relation to the variation.
- (d) If the parties are unable to reach agreement as to the variation requested in the Contract Variation Request Notice, the Principal may by notice, in writing, to the Supplier:
 - (i) withdraw the Contract Variation Request Notice (in which case, the Contract continues in force as if the notice had not been given); or
 - (ii) require the matters in dispute in relation to the variation requested in the Contract Variation Request Notice to be determined by an independent expert appointed by the President of The Law Society of Tasmania.

5.2 Variation caused by new Law after date of Contract

If a new Law comes into force after the date of the Contract which:

- (a) is inconsistent with the Contract;
- (b) is mandatory, and not capable of being contracted out of;
- (c) necessitates a material change to the Supplies; and
- (d) increases or reduces the Supplier's costs of complying with its obligations under the Contract,

then the application of the new Law will be taken to be a variation to the Contract. If the parties are unable to agree any required changes to the Contract to give effect to the variation, those changes are to be determined by an independent expert appointed by the President of The Law Society of Tasmania at the request of either party.

6 Insurance

6.1 Insurance policies

The Supplier must, in connection with performing the Contract, effect and maintain the policies of insurance (if any) set out in the Contract Information Table (each an **insurance policy**) for the period set out in the Contract Information Table. If directed, in writing, by the Principal, each insurance policy must be on terms and conditions approved, in writing, by the Principal (such approval not to be unreasonably withheld).

6.2 Insurers

The Supplier must effect each insurance policy with an insurer authorised by Law to carry on insurance business in Australia.

6.3 Policy documents

The Supplier must give to the Principal:

- (a) evidence of the currency of each insurance policy at the time each policy is renewed and at any other time upon demand, in writing, by the Principal; and
- (b) if demanded, in writing, by the Principal, a copy of each insurance policy and each document issued by an insurer in relation to an insurance policy.

6.4 Protection of insurances

The Supplier must:

- (a) immediately notify the Principal, in writing, of the cancellation or termination of any insurance policy for any reason, other than by effluxion of time;
- (b) comply with the requirements of each insurance policy; and
- (c) not do anything which may result in:
 - (i) the cancellation of any insurance policy;
 - (ii) the refusal by an insurer to renew any insurance policy; or
 - (iii) the loss of any right to claim under an insurance policy.

6.5 Principal may insure

If the Supplier fails to take out, effect or renew an insurance policy which it is required to take out, effect or renew in accordance with the Contract, then, without being obliged to do so, the Principal may:

- (a) take out, effect or renew any such insurance policy that the Supplier has not taken out, effected or renewed;
- (b) pay any unpaid premium; and
- (c) recover the cost of doing so from the Supplier.

6.6 Supplier's obligations are not limited

The Supplier's obligations and liabilities under the Contract are not limited because of any thing in this clause 6.

7 Indemnity

7.1 Supplier's indemnity

The Supplier must indemnify the Principal, and employees or agents of the Principal, against:

- (a) any legal liability, loss, claim, action or proceeding for:
 - (i) personal injury to, or death of, a third party;
 - (ii) either or both loss of, or damage to, property of a third party; or
 - (iii) economic loss of a third party,
arising out of, or in connection with, the supply, or use, of any thing supplied under the Contract by the Supplier; and
- (b) any costs and expenses that may be incurred in connection with any of the above.

7.2 Indemnity reduction

The liability of the Supplier under the indemnity in clause 7.1 is to be reduced proportionately in respect of any legal liability, loss, claim, action or proceeding that directly results from:

- (a) a breach of the Contract by the Principal; or
- (b) any unlawful, negligent, fraudulent, reckless or deliberately wrongful, act or omission of the Principal or any of the Principal's employees, authorised contractors or agents.

7.3 Indemnity limitations

Each indemnity:

- (a) is a continuing obligation, separate and independent from the other obligations of the Supplier; and
- (b) survives the termination of the Contract.

8 Dealings (including assignment) and change of Control

8.1 Assignment by Principal

The Principal may assign the Contract or any of its Rights under the Contract. The Principal does not require the consent of the Supplier to any such assignment. An assignment by the Principal does not release the Principal from its obligations under the Contract.

8.2 Dealings etc. by Supplier

The Supplier must not assign or otherwise Deal with its interest in the Contract without the Principal's prior written consent, which consent may be given (conditionally or unconditionally) or withheld entirely at the Principal's absolute discretion.

8.3 Change of Control in relation to Supplier

- (a) If the Supplier is a corporation, the Supplier must not permit, during the Relevant Period, any change in the Control of the Supplier (whether by a single transaction or event, or a series of transactions or events), without the consent, in writing, of the Principal.
- (b) The Principal's consent will not be required if the change in Control occurs by reason of dealings in securities listed or quoted on the stock exchange market operated by ASX Limited.
- (c) In this clause 8.3:

Control means the direct or indirect holding of more than 50% of the issued shares of the Supplier.

Relevant Period means the period commencing on the date of the Contract and ending on the date on which the Supplier has fully performed all of its obligations under the Contract.

9 Termination

9.1 Principal's right to terminate for default and other events

The Principal may terminate the Contract by notice, in writing, to the Supplier to that effect:

- (a) **(breach not capable of being remedied)**: if the Supplier breaches any of its obligations, warranties or representations under the Contract, and the breach is not capable of being remedied;
- (b) **(failure to remedy breach capable of being remedied)**: if:
 - (i) the Supplier breaches any of its obligations, warranties or representations under the Contract;
 - (ii) the breach is capable of being remedied; and
 - (iii) the Supplier fails to remedy the breach within the period (being a period of not less than five Business Days) specified by the Principal in a notice given to the Supplier detailing the breach;
- (c) **(multiple breaches)**: if the Supplier commits more than four breaches of the Contract (irrespective of whether the breaches have been remedied or are capable of being remedied);
- (d) **(repudiation)**: if the Supplier repudiates the Contract;
- (e) **(corporate events)**: if the Supplier is a corporation:
 - (i) the Supplier becomes an externally administered body corporate (as defined in section 9 of the Corporations Act) or a person becomes a controller (as defined in section 9 of the Corporations Act) of any of its property;
 - (ii) any steps are taken to pass, or there is passed, a resolution for the winding up or dissolution of the Supplier other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Principal;

- (iii) an application or order is sought or made in any court for the winding up or dissolution of the Supplier other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Principal;
 - (iv) it fails to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) anything analogous or having a substantially similar effect to any of the events specified above occurs under any applicable Law of another jurisdiction;
- (f) **(natural person)**: if the Supplier is a natural person:
- (i) the Supplier was not at the time of entering into the Contract, or at any later time ceases to be, of full legal capacity; or
 - (ii) the Supplier was at the time of entering into the Contract, or at any later time becomes, of unsound mind or subject to any Law relating to mental health;
- (g) **(insolvency – general)**: if the Supplier:
- (i) is unable to pay its debts as and when they fall due for payment or determines that it is insolvent or is likely to become insolvent at some future time;
 - (ii) is a natural person:
 - (A) the Supplier becomes an insolvent under administration (as defined in section 9 of the Corporations Act) or any action is taken by any person that could result in that event; or
 - (B) any mortgagee or receiver takes control of any property of the Supplier;
 - (iii) convenes a meeting of its creditors or proposes or enters into any scheme of arrangement with its creditors or any of them; or
 - (iv) seeks protection from its creditors under any applicable Law;
- (h) **(warranties)**: if any warranty or representation given by the Supplier to the Principal is, or becomes, untrue, false or misleading;
- (i) **(invalidity)**: if the Contract is or becomes void, voidable, illegal, invalid, unenforceable, or of limited or reduced force or effect, or is claimed to be so by the Supplier;
- (j) **(distress/execution)**: if any distress or execution for an amount exceeding \$100,000, or its equivalent in another currency, is levied or enforced upon or against any assets of the Supplier and that distress or execution is not withdrawn or satisfied within 10 Business Days of its levy or issue;
- (k) **(judgment)**: if a final judgment in an amount exceeding \$100,000, or its equivalent in another currency, is obtained against the Supplier and is not satisfied within 15 Business Days of it becoming final; or
- (l) **(cease business)**: if the Supplier ceases, or threatens to cease, carrying on business or is otherwise unable to pay its debts as and when they fall due for payment.

9.2 Principal's right to terminate Contract for supply of professional services

If the Contract is for the supply of Services that are professional services, the Principal, without cause, may terminate the Contract at any time by immediate notice, in writing, to that effect to the Supplier.

9.3 Principal's right to terminate contract for supply of cleaning services

- (a) This clause 9.3 applies if the Contract involves the supply of cleaning services by the Supplier to the Principal.
- (b) The Principal may terminate the Contract by immediate notice, in writing, to that effect to the Supplier if:
 - (i) the Supplier contravenes any of sections 357(1), 358 or 359 of the *Fair Work Act 2009* (Cwlth);
 - (ii) the contravention occurred in relation to an individual who performed any work for the supply of the Services; and
 - (iii) in respect of that contravention, the Supplier is ordered to pay a pecuniary penalty under the *Fair Work Act 2009* (Cwlth).

9.4 Termination – Force Majeure Event

If a delay or failure to perform, in part or in full, an obligation under the Contract as a result of a Force Majeure Event continues for a period of more than one month, the Principal may terminate the Contract by notice, in writing, to that effect to the Supplier.

9.5 Consequences of termination

If the Contract is terminated in accordance with clauses 9.1, 9.2, 9.3 or 9.4, the following provisions apply:

- (a) The Principal may use other suppliers to complete delivery of the Supplies.
- (b) The Principal is not required to perform any of its obligations under the Contract which relate to any period after that termination.
- (c) The Supplier must give the Principal such information, and take all such action, that the Principal requires in order to facilitate the orderly and systematic termination of the Contract.
- (d) In the case of termination pursuant to clause 9.1, the Principal may take action to recover any Loss in connection with that termination and/or any default by the Supplier related to that termination.
- (e) If the Contract Sum is a lump sum amount, the amount payable by the Principal to the Supplier, in respect of the termination of the Contract, is limited to the Relevant Proportion of the Contract Sum less any payments in respect of the Contract Sum previously paid by the Principal. The **Relevant Proportion of the Contract Sum** is that amount which bears the same proportion to the Contract Sum as the part of the Supplies actually supplied, in accordance with the Contract, up to the date of termination, bear to all of the Supplies that would have been supplied if the Contract had not been terminated.
- (f) If the Contract Sum is calculated on the basis of rates, the amount payable by the Principal to the Supplier, in respect of the termination of the Contract, is limited to the amount payable for any Supplies actually delivered or supplied, in accordance with the Contract, by the Supplier up to date of termination, calculated in accordance with the applicable rates, and not previously paid for by the Principal.

- (g) In addition to any amounts payable pursuant to this clause, the Principal must pay or reimburse to the Supplier any out-of-pocket expenses or disbursements (if any) incurred by the Supplier before the date of termination, and which the Principal is required to pay or reimburse in accordance with clause 4.5.
- (h) Except to the extent provided for in this clause 9.5, no other amounts are payable by the Principal to the Supplier in respect of the termination of the Contract pursuant to clauses 9.1, 9.2, 9.3 or 9.4.

9.6 Termination of Contract for convenience

- (a) The Principal may terminate the Contract for convenience, and for any reason (regardless of default), by giving notice, in writing, to that effect to the Supplier.
- (b) Subject to clause 9.6(c), if the Principal terminates the Contract pursuant to clause 9.6(a), the Principal must pay to the Supplier:
 - (i) the amount that would have been payable to the Supplier under clause 9.5 if the termination of the Contract had occurred pursuant to clause 9.1; and
 - (ii) any Loss incurred by the Supplier as a result of the early termination of the Contract, being a loss that the Supplier cannot reasonably avoid or mitigate.
- (c) The maximum amount payable by the Principal to the Supplier in respect of the termination of the Contract pursuant to clause 9.6(a) is not to exceed the amount of the Contract Sum that has not been paid to the Supplier as at the date of termination.
- (d) For the purposes of clause 9.6(b)(ii), Loss is not to include loss of prospective profits.
- (e) Except to the extent provided for in this clause 9.6, no other amounts are payable by the Principal to the Supplier in respect of the termination of the Contract pursuant to clause 9.6(a).
- (f) If the Principal terminates the Contract pursuant to clause 9.6(a), the Principal may use other suppliers to complete delivery of the Supplies.

9.7 Termination of an Official Order for convenience

- (a) The Principal may terminate an Official Order for convenience, and for any reason (regardless of default), by giving notice, in writing, to that effect to the Supplier.
- (b) If an Official Order is terminated by the Principal for convenience, clause 9.6 applies as if:
 - (i) each reference to 'the Contract' in that clause was a reference to the Official Order; and
 - (ii) each reference to the 'Contract Sum' in that clause was a reference to the part of the Contract Sum payable in respect of that Official Order.
- (c) In this clause '**Official Order**' means an Official Order for the purposes of either, or both, Module B or Module C.

9.8 Interpretation

- (a) Nothing in clause 9 limits the generality of any thing else in that clause.
- (b) A reference to the '**Supplier**' in clause 9.1 includes:

- (i) any person who is named in the Contract as part of the Supplier; and
- (ii) if the Supplier, for the purposes of the Contract, is a partnership, any of the partners of that partnership.

10 Force Majeure

10.1 Force Majeure Event

- (a) Subject to clause 10.1(b), a party is not:
 - (i) in breach of the Contract; or
 - (ii) liable in damages to another party in relation to that breach, if it delays or fails to perform, in part or in full, an obligation under the Contract to the extent that the delay or failure is due to a Force Majeure Event.
- (b) Clause 10.1(a) only applies:
 - (i) for as long as the Force Majeure Event continues; or
 - (ii) until the parties agree and implement a commercially reasonable alternative method of performance.

10.2 Notice of Force Majeure Event

A party must notify each other party promptly upon becoming aware of a Force Majeure Event which may cause a delay or failure in the performance of an obligation under the Contract.

11 Disclosure, confidentiality, privacy and personal information

11.1 Disclosure of contract

- (a) Subject to clauses 11.1(b) and 11.2, despite any confidentiality or Intellectual Property right subsisting in the Contract, or any tender or quotation relating to the Contract, a party may publish all or any part of the Contract without reference to another party.
- (b) Nothing in clause 11.1(a) affects the operation of clause 27.

11.2 Confidential Provisions

- (a) This clause 11.2 only applies if the Contract Information Table states that this clause 11.2 is applicable.
- (b) The parties must keep confidential, so far as the Law allows, each provision of the Contract that is designated as a 'Confidential Provision' in the Contract Information Table for the period set out in the Contract Information Table.
- (c) A party is not required to comply with clause 11.2(b) to the extent that:
 - (i) a Confidential Provision ceases to be confidential otherwise than as a result of breach of the Contract;
 - (ii) a Law requires a party to disclose the Confidential Provision;
 - (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a Government Body;

- (iv) it is necessary or advisable to disclose the Confidential Provision to a taxation or fiscal authority;
- (v) it is necessary to disclose a Confidential Provision in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister's obligations to Parliament;
- (vi) the Confidential Provision is disclosed confidentially to a party's professional advisers to get professional advice about the Contract or to enforce the Contract; or
- (vii) the parties otherwise agree in writing.

11.3 Privacy

Nothing in this clause 11 derogates from a party's obligations under the PIP Act or the *Privacy Act 1988 (Cwlth)*.

11.4 Personal information protection

If, in connection with the Contract, the Supplier is, or becomes, a personal information custodian (for the purposes of the PIP Act), the Supplier must:

- (a) comply with its obligations under the PIP Act as a personal information custodian;
- (b) immediately notify, in writing, the Principal if the Supplier becomes aware of a breach, or possible breach, of those obligations; and
- (c) ensure that the Supplier's Personnel who are required to deal with personal information (for the purposes of the PIP Act) in the course of delivering the Supplies are aware of, and comply with, the Principal's obligations under the PIP Act in relation to that information.

12 *Professional Standards Act 2005 (Tas)*

- (a) In this clause 12, **Act** means the *Professional Standards Act 2005 (Tas)*.
- (b) If no scheme (for the purposes of the Act) applies to the Supplier, the Supplier waives all present and future rights, as against the Principal, to claim any limitation of liability provided by any future scheme, in connection with claims concerning or arising out of the Contract.
- (c) If a scheme (for the purposes of the Act) applies to the Supplier as at the date of the Contract:
 - (i) the level of the Supplier's liability under the Contract will be limited by the scheme and the Act; and
 - (ii) if required by the Principal, and to the extent that the scheme allows, the Supplier must obtain approval under the scheme for a level of liability not lower than the level (if any) stated in the Contract Information Table.

13 GST

- (a) Unless otherwise stated in the Contract, all amounts payable by one party to another party are exclusive of GST.

- (b) If GST is imposed or payable on any supply made by a party under the Contract, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time, and in the same manner, as the consideration for the supply.
- (c) A party that makes a taxable supply under the Contract must provide a tax invoice to the recipient of the supply.
- (d) A party is not liable to pay for a taxable supply under the Contract unless the party making the supply has provided a tax invoice to the recipient of the supply. Nothing in this clauses affects or limits the operation of clause 4.3(b).
- (e) If the consideration for a supply under the Contract is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under the Contract is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 13 as if it were an actual payment made pursuant to the Contract.
- (g) Unless the context otherwise requires, expressions used in this clause 13 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

14 Dispute resolution

14.1 Application

This clause 14 does not apply to any dispute or difference between the parties concerning the exercise by any party of any Right under legislation.

14.2 Negotiations

If a party gives written notice to each other party of a dispute or difference concerning the Contract, the parties must undertake negotiations with a view to resolving the dispute or difference.

14.3 Status of negotiations

- (a) Unless otherwise agreed, in writing, by the parties and subject to applicable Laws, other than the fact of occurrence, all aspects of negotiations for the purpose of clause 14.2 will be without prejudice and treated as confidential including:
 - (i) any settlement proposal made to, or considered by, a party;
 - (ii) the willingness of a party to consider a settlement proposal;
 - (iii) any statement made by, or on behalf of, a party during the negotiations; and
 - (iv) any document prepared for the purposes of the negotiations.
- (b) Nothing in clause 14.3(a):
 - (i) prevents a party from enforcing any signed settlement agreement made by the parties in relation to the dispute or difference;

- (ii) prevents an agent or instrumentality of the Crown (that is a separate legal entity) from disclosing any matter to the Crown; or
- (iii) prevents a Minister of the Crown from making a statement to Parliament or exercising any Right.

14.4 Further action

If, after 10 Business Days following receipt by a party of a notice under clause 14.2, the parties are unable to resolve the dispute or difference by negotiation, a party may take any lawful action as that party sees fit (including commencing legal proceedings) in relation to the dispute or difference.

14.5 Continuation of performance

Despite the existence of any dispute or difference, unless the Contract has been terminated, each party must continue to perform its obligations in accordance with the Contract.

14.6 Injunctive and other discretionary relief

Nothing in this clause 14 prevents a party from commencing legal proceedings to seek an injunction (whether interim or permanent), a writ of specific performance, declaratory relief, or any urgent or other interlocutory relief.

15 Notices

15.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under the Contract must be:
 - (i) in legible writing in the English language;
 - (ii) subject to clause 15.1(b), signed by or on behalf of the sender or by a lawyer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Contract applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 15.2.
- (b) A Notice sent by email is taken to have been signed by the sender.
- (c) A Notice must not be given orally.

15.2 Method and address for delivery

- (a) Subject to clause 15.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Contract;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Contract; or
 - (iii) sent by email to the intended recipient's email address (if any) set out in the Contract.

- (b) If the intended recipient of a Notice has notified the sender of another address or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or email address (as applicable) last notified by that intended recipient.

15.3 Time of receipt

- (a) Subject to clause 15.3(b), a Notice is taken to have been received by the intended recipient:
- (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the fifth Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting; and
 - (iii) if sent by email, four hours after the time the email was sent (as recorded by the device or software used to send the email) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 15.3(a) and 15.3(b) (unless a later time is specified in the Notice, in which case the Notice takes effect from that time).

15.4 Other modes or places of service

Nothing in the Contract limits or excludes any other mode or place of service required by an applicable Law.

15.5 Email address

If the Notice details for a party state an email address for that party, that party must ensure that it maintains a valid email system and email address for the receipt of Notices by email.

16 Miscellaneous

16.1 Governing law

The Contract is governed by the Laws applying in Tasmania.

16.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with the Contract.

16.3 Entire agreement clause

The Contract forms the entire agreement of the parties in respect of its subject matter. All prior agreements in relation to the subject matter of the Contract are merged in and superseded by the Contract unless expressly incorporated in the Contract as an annexure, an appendix, an attachment or by reference. Nothing in this clause affects or limits any warranty given by the Supplier to the Principal relating to matters occurring before the making of the Contract.

16.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of the Contract, binds them jointly and each of them severally.

16.5 Benefit

An obligation, a representation, a warranty or an indemnity, in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

16.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under the Contract:
 - (i) comply with the provisions of the Contract related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of the Contract or that, if the conduct was undertaken by the party, would result in the party being in breach of the Contract.
- (b) If a party is prohibited from doing any thing under the Contract, that party must not knowingly assist, authorise or allow any other person to do that thing.

16.7 Severance

If a provision of the Contract is, or at any time becomes, illegal, prohibited, void or unenforceable for any reason, that provision is severed from the Contract and the remaining provisions of the Contract:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of the Contract.

16.8 Counterparts

- (a) The Contract may be entered into in any number of counterparts.
- (b) A party may execute the Contract by signing any counterpart.
- (c) All counterparts, taken together, constitute one agreement.

16.9 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to the Contract.

16.10 Business Days

If the day on or by which an act, matter or thing is to be done under the Contract is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

16.11 No partnership or agency

- (a) Nothing contained or implied in the Contract will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;

- (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust.
- (b) The Supplier must not represent or hold itself out to be, and must ensure that none of the Supplier's Personnel hold themselves out to be, an officer, employee, partner, joint venturer, agent or representative of the Principal.

16.12 Legal costs

Each party must bear the party's own costs in preparing and negotiating the Contract.

16.13 Amendment

The Contract may only be amended or supplemented in writing signed by the parties. Accordingly, and without limitation, no agreement or understanding varying or extending the Contract will be legally binding on the parties unless that agreement is in writing and agreed to by the parties.

16.14 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

16.15 Successors and assigns

The Contract is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

16.16 Rights cumulative

Each Right provided for in the Contract:

- (a) operates independently of any other Right provided for in the Contract;
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document; and
- (c) may be exercised from time to time as the occasion requires or permits.

16.17 Set-off

The Principal may set-off against any moneys payable by the Principal to the Supplier under the Contract any debt or other moneys from time to time due and owing by the Supplier to the Principal. This right of set-off does not limit or affect any other right of set-off available to the Principal.

16.18 Consent and approvals

- (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with the Contract. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of the Contract is not effective unless given in writing.

- (d) A consent or approval may be given subject to conditions.
- (e) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with a condition, that failure is taken to be a breach of the Contract.

16.19 Doctrine of merger

The doctrine or principle of merger does not apply to the Contract or to any thing done under or in connection with the Contract. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to the Contract.

16.20 Civil Liability Act 2002 (Tas)

The parties agree that:

- (a) Part 9A of the *Civil Liability Act 2002* (Tas) does not apply; and
- (b) the Rights, obligations and liabilities (whether such Rights, obligations or liabilities are sought to be enforced as a claim in contract, in tort or otherwise) of the parties in connection with the Contract are those that would exist if Part 9A of the *Civil Liability Act 2002* (Tas) did not apply.

16.21 No interference with executive duties or powers

Nothing in the Contract is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Principal, of any duties or authorities of his or her office. Any provision of the Contract that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

16.22 No reliance on Principal etc.

Subject to any specific representations and warranties given by the Principal in the Contract, the Supplier warrants that it has entered into the Contract based on its own investigations, interpretations, deductions, information and determinations and that it has not relied on any representations, warranties or advice (if any) given by the Principal or on behalf of the Principal.

16.23 Surviving provisions and termination

- (a) The termination of the Contract does not affect or limit the operation or effect of clauses or parts of the Contract:
 - (i) that are expressed to survive the termination of the Contract;
 - (ii) that, at Law, survive the termination of the Contract; or
 - (iii) that are necessary to survive the termination of the Contract:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of the Contract;
 - (B) to enable a party to make, enforce or defend any claims related to the Contract; or
 - (C) to give full force and effect to the operation of clause 16.23(b) or clause 16.23(d).
- (b) The termination of the Contract does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, the Contract before the date on which the Contract is terminated.

- (c) Nothing in this clause 16.23 affects or limits the operation of another provision of the Contract which gives a party Rights, or imposes obligations on a party, on or after the termination of the Contract.
- (d) Without limiting clause 16.23(a), the following provisions survive the termination of the Contract:
 - (i) any special terms and conditions included in the Contract Information Table;
 - (ii) if Module A applies to the Contract, clauses 3.9, 4, 7, 9, 11, 12, 13, 14;
 - (iii) if Module B applies to the Contract, clauses 17.2, 17.3, 17.4, 17.5, 17.6, 21 and 22; and
 - (iv) if Module C applies to the Contract, clauses 25, 26 and 27.

Module B: Supply of Goods

17 Supply of Goods

17.1 Supplier's obligation to supply Goods

The Supplier must, subject to clause 23, supply the Goods to the Principal in accordance with the Contract (including for the avoidance of doubt, and without limitation, in accordance with any terms and conditions included in the Contract Information Table or the Specification).

17.2 Supplier's warranties

The Supplier warrants to the Principal that:

- (a) the Goods conform to the Specification;
- (b) the Goods comply with all applicable Laws;
- (c) the Goods comply with all Relevant Standards;
- (d) the Goods are reasonably safe to use for their normal use;
- (e) the Goods are of merchantable quality;
- (f) the Goods are reasonably durable (having regard to the nature of the Goods);
- (g) the Goods are new (except to the extent that the Contract specifically states that the Supplier may supply Goods that are not new or are 'second-hand');
- (h) the Goods are free from Defects (including scratches and dents, and defects in installation if the Supplier is responsible for installation);
- (i) the Goods are free from Latent Defects;
- (j) the Goods do not contain Asbestos (unless specifically required by the Specification);
- (k) the Goods do not contain any Harmful Code;
- (l) at the time of delivery, the Goods will be free from any Security Interest;
- (m) the Goods are reasonably fit for the purpose stated in the Specification, or if no purpose is stated or there is no Specification, then reasonably fit for the purpose for which the Goods would ordinarily be used;

- (n) the Goods comply with any manufacturer's specification for the Goods provided by the Supplier to the Principal; and
- (o) without limiting any thing else in this clause 17.2, the Goods:
 - (i) conform with any sample provided by the Supplier to the Principal;
 - (ii) can be operated in accordance with any demonstration model used by the Supplier to demonstrate the Goods to the Principal; and
 - (iii) comply with any manufacturer's specification for the Goods provided by the Supplier to the Principal,
 before the making of the Contract or delivery of the Goods, and relied upon by the Principal.

17.3 Place of manufacture of Goods and Dumped Goods etc.

- (a) If the Contract specifies a place or factory where the Goods are to be, or have been, manufactured, constructed or assembled, the Supplier must only supply Goods manufactured, constructed or assembled in that place or factory.
- (b) The Supplier must not supply any Goods that are Dumped Goods.
- (c) If the Supplier breaches clauses 17.3(a) or 17.3(b), the Principal may by notice, in writing to the Supplier, terminate the Contract and reject any Goods that have already been delivered by the Supplier. If the Principal so elects, the following provisions apply:
 - (i) Any Loss suffered by the Principal (including any difference between the cost of acquiring goods in substitution for the rejected Goods and the original Contract Sum for the rejected Goods) will be a debt due by the Supplier to the Principal.
 - (ii) The Principal will not be liable for any Loss suffered by the Supplier or liable to make any payment for the rejected Goods.
 - (iii) The Supplier must:
 - (A) immediately refund to the Principal any payment previously made for the Goods that are rejected; and
 - (B) at its cost, collect and remove the rejected Goods from the Principal as soon as practicable. If the Supplier fails to collect the rejected Goods within five Business Days of the Goods being rejected, the Principal may, at the Supplier's expense, either store the rejected Goods until collected by the Supplier or return the rejected Goods to the Supplier.
- (d) In this clause **Dumped Goods** means:
 - (i) goods imported into Australia at less than their normal value; or
 - (ii) goods that are subject to any dumping duty under a law of the Commonwealth of Australia.

17.4 Title and possession

The Supplier must at the time of delivery of the Goods give to the Principal:

- (a) good title to the Goods free from any Security Interest (other than a Security Interest created by the Principal); and
- (b) the right to undisturbed possession of the Goods.

17.5 Intellectual Property

The Supplier warrants that the supply of the Goods by the Supplier to the Principal, and the use of the Goods by the Principal, will not breach any Intellectual Property rights of any person.

17.6 Availability of parts, servicing and maintenance

If the Goods are plant and/or equipment, the Supplier must ensure that, for a reasonable period (having regard to the durability of the Goods), there will be available to the Principal:

- (a) a reasonable supply of spare parts for the repair and maintenance of the Goods;
- (b) a reasonable supply of any consumables required for the continued use or operation of the Goods; and
- (c) reasonable access to maintenance support in respect of the Goods.

18 Delivery of Goods**18.1 General obligations related to delivery**

- (a) Subject to clause 18.3, the Supplier must, at its cost, deliver the Goods to the Principal at the Delivery Location on the Date for Delivery at the Delivery Time.
- (b) If no Date for Delivery or Delivery Time is specified, or otherwise ascertainable in accordance with the Contract, then, unless otherwise directed by the Principal, the Supplier must at its cost:
 - (i) effect delivery of the Goods within a reasonable period;
 - (ii) give to the Principal at least two Business Days' notice, in writing, of the actual date on which delivery will be effected (which date must be a Business Day); and
 - (iii) only deliver the Goods on the date specified in that notice between 9.00am and 4.00pm.
- (c) If required by the Principal, the Supplier must give reasonable notice as to the date and time when the Goods will be delivered.
- (d) The Supplier must comply with any lawful directions issued by the Principal (or a Principal's Agent) when entering the Delivery Location to deliver the Goods.
- (e) If the Goods include plant or equipment, then, subject to the Specification, delivery of the Goods will be taken to be incomplete until the Supplier has delivered to the Principal:
 - (i) all operating manuals reasonably required for the use or operation of the Goods; and
 - (ii) all licences required to use any software that is included with the Goods.

18.2 Early delivery

The Principal is not required to accept delivery of the Goods before the Date for Delivery or the Delivery Time.

18.3 Variation of delivery etc.

The Principal may at any time (including up to the actual date of delivery and/or actual time of delivery) vary the Delivery Location, the Date for Delivery or the Delivery Time, by notice in writing, to the Supplier. The Principal must reimburse to the Supplier any reasonable costs and expenses resulting from the variation to Delivery Location, the Date for Delivery or the Delivery Time, made by the Principal in accordance with this clause 18.3.

18.4 Installation of Goods

If required by the Specification, the Supplier must install, assemble and/or configure the Goods in accordance with the requirements of the Specification. Delivery of the Goods will be taken to be incomplete until the Supplier has installed, assembled and/or configured the Goods in accordance with the Specification.

18.5 Unloading of Goods

- (a) The Supplier is responsible for unloading the Goods.
- (b) The Principal is not required to provide assistance to the Supplier in connection with the unloading of the Goods (except to the extent set out in the Specification).

18.6 No delivery of Goods by instalments

The Principal is not required to accept delivery of the Goods by instalments (except to the extent that the Contract provides for the Goods to be delivered by separate deliveries).

18.7 Failure to deliver

If the Supplier does not deliver the Goods in accordance with the Contract, the Principal may by notice, in writing, to the Supplier elect to terminate the delivery of any Goods that have not been delivered. If the Principal so elects:

- (a) any Loss suffered by the Principal (including any difference between the cost of acquiring goods in substitution for the Goods not delivered by the Supplier and the original Contract Sum for the Goods not delivered) will be a debt due by the Supplier to the Principal;
- (b) the Principal will not be liable for any Loss suffered by the Supplier, or liable to make any payment for those Goods, the delivery of which has been terminated; and
- (c) the Supplier must immediately refund to the Principal any payment previously made for Goods which have not been delivered.

18.8 Completion of delivery

Delivery is not complete until it is acknowledged, in writing, by the Principal to the Supplier.

18.9 Separate deliveries

If, in accordance with the Contract, the Goods are to be delivered by separate deliveries, this clause 18 applies separately in relation to each such delivery of Goods.

19 Testing, acceptance and rejection of Goods

19.1 Principal's right to test Goods

The Principal may test the Goods to determine whether they conform to the Specification and, if applicable, conform to the sample provided by the Supplier.

19.2 Rejection of Goods

- (a) The Principal may, by notice in writing to the Supplier, reject the Goods during the Acceptance Period if:
 - (i) the Goods do not conform to the Specification or, if applicable, any sample provided by the Supplier;
 - (ii) if applicable, the Goods are not correctly installed in accordance with the Specification; or
 - (iii) the Supplier is otherwise in breach of any warranty in clause 17.2.
- (b) If the Principal does not reject the Goods during the Acceptance Period, the Principal is taken to have accepted the Goods at the expiration of that period.
- (c) If the Principal rejects the Goods, the Supplier must also refund to the Principal, on demand by the Principal, in writing, any money paid by the Principal to the Supplier for those Goods.
- (d) If the Principal rejects the Goods, the Supplier must, at its cost, collect and remove the rejected Goods from the Principal as soon as practicable. If the Supplier fails to collect the rejected Goods within five Business Days of the Goods being rejected, the Principal may, at the Supplier's expense, either store the Goods until collected by the Supplier or return the rejected Goods to the Supplier.
- (e) Nothing in this clause 19.2 affects or limits the Principal's Rights in relation to any breach of clause 17 by the Supplier.

19.3 Supply of replacement Goods

If the Supplier supplies incorrect or defective Goods then, without limiting the Principal's Rights, the Supplier must at its own cost and within a reasonable time, supply the correct Goods.

19.4 Separate deliveries

If, in accordance with the Contract, the Goods are to be delivered by separate deliveries or instalments, this clause 19 applies separately in relation to each such delivery of Goods.

20 Ownership and risk

- (a) Ownership and property in the Goods passes to the Principal upon acceptance of the Goods by the Principal.
- (b) The risk in the Goods passes to the Principal when the delivery of the Goods to the Principal has been completed in accordance with the Contract.

21 Warranty Period and Latent Defects

- (a) The Supplier, at its cost, must promptly make good, in a proper or workmanlike manner:
 - (i) any Defect that appears in the Goods during the Warranty Period, and which is notified, in writing, by the Principal to the Supplier not later than 15 Business Days after the expiry of the Warranty Period; and
 - (ii) any Latent Defect in the Goods which is notified, in writing, by the Principal to the Supplier.
- (b) If the Defect or Latent Defect in the Goods cannot be reasonably repaired, the Supplier must, at its cost, as directed, in writing, by the Principal (and without limitation to any other Rights):
 - (i) collect the Goods from the Principal, and replace the Goods with new goods that conform to the requirements of the Contract; or
 - (ii) collect the Goods from the Principal, and refund to the Principal all moneys paid by the Principal for the Goods.
- (c) If the Supplier fails to collect the Goods within five Business Days of the date specified in a direction for the purposes of clause 21(b), the Principal may, at the Supplier's expense, either store the Goods until collected by the Supplier or return the Goods to the Supplier.
- (d) If, in accordance with the Contract, the Goods are to be delivered by separate deliveries, the Warranty Period applies separately in relation to each such delivery of Goods.
- (e) For the purpose of this clause 21, **Warranty Period** means the warranty period applicable to the Goods stated in the Contract Information Table, and, if no period is stated, then the warranty period is the period of 12 months from the date of acceptance of the Goods by the Principal.

22 Manufacturer's warranty

- (a) The Supplier must obtain for the Principal's benefit any manufacturer's warranty in relation to the Goods that is required by the Specification.
- (b) A manufacturer's warranty does not limit the Supplier's obligations under the Contract (including for Defects in the Goods that are covered by the manufacturer's warranty).
- (c) If directed, in writing, by the Principal, the Supplier, at its own cost, must act as the agent of the Principal for the purpose of enforcing any manufacturer's warranty. The Supplier must carry out its agency responsibilities in accordance with directions issued, in writing, by the Principal.

23 'Standing offer' arrangements – Goods

23.1 Application

This clause 23 applies if, in relation to any Goods, the Contract Information Table states that the Contract (or a part of the Contract) is a 'Standing Offer Arrangement'.

23.2 Ordering and delivery of Goods

During the Standing Offer Period (stated in the Contract Information Table), the Supplier must only supply the Goods (to which the Standing Offer Arrangement relates) requested and described in an order (**Official Order**) issued by the Principal to the Supplier. To avoid doubt, subject to this clause 23, the Contract applies to the supply of Goods requested and described in an Official Order.

23.3 Official Orders generally

- (a) Unless otherwise agreed, in writing, by the Principal and the Supplier, every written order placed by the Principal with the Supplier for Goods is an Official Order.
- (b) If the Contract is a Standing Offer Arrangement for the supply of Goods and Services, an Official Order may relate to both Goods and Services.
- (c) An Official Order may contain only details, terms and conditions which the parties have already agreed, in writing.
- (d) Unless otherwise agreed, in writing, by the Principal and the Supplier, an Official Order comes into force on the date the Principal gives it to the Supplier.

23.4 No obligation to purchase Goods etc.

In relation to the Standing Offer Arrangement, the Principal:

- (a) is not obliged to give any Official Order to purchase Goods;
- (b) is not obliged to purchase any Goods, or any volume of Goods, from the Supplier (except as specified in an Official Order); and
- (c) may at any time purchase or acquire goods (of the same kind as, or a similar kind to, the Goods) from any person.

Module C: Supply of Services

24 Supply of Services

24.1 Engagement

Subject to clause 28, the Principal engages the Supplier to supply the Services to the Principal in accordance with the Contract (including for the avoidance of doubt, and without limitation, in accordance with any terms and conditions included in the Contract Information Table or the Specification). The Supplier accepts that engagement.

24.2 Supplier's obligation to supply Services

- (a) If a Service Period is specified in the Contract Information Table, the Supplier must supply the Services to the Principal for the duration of the Service Period.
- (b) If a Service Completion Date is specified in the Contract Information Table, the Supplier must complete the supply of the Services to the Principal on or before the Service Completion Date. If the supply of the Services has not been completed by the Service Completion Date, the Principal may extend that date by notice, in writing, to the Supplier.
- (c) If no Service Period or Service Completion Date is specified in the Contract Information Table, the Supplier must complete the supply of the Services to the Principal as directed, in writing, by the Principal.

24.3 Standard of service performance etc.

The Supplier must:

- (a) provide the Services:
 - (i) subject to clause 24.4, exercising the standards of care, skill and diligence expected of a person competent and experienced in providing services of a kind similar to the Services;
 - (ii) in a courteous, safe and reliable manner;
 - (iii) in accordance with all applicable Laws;
 - (iv) in accordance with the Specification (including any performance standards included in the Specification);
 - (v) in accordance with all applicable Relevant Standards; and
 - (vi) in accordance with any instructions or directions, in writing, given by the Principal (but any such instructions or directions must not materially change the scope of the Services to be provided by the Supplier);
- (b) hold, and do all things necessary to maintain, all necessary certificates, licences, permissions, registrations and/or authorities to lawfully provide the Services; and
- (c) comply with any security requirements issued by the Principal, in writing, to the Supplier relating to the supply of the Services.

24.4 Professional services

If the Services include services that are commonly provided by a professional person, the Supplier:

- (a) must provide the Services to a high professional standard (being the standard expected of a professional adviser both competent and experienced in providing services similar to the Services); and
- (b) unconditionally acknowledges and agrees that the Principal is relying, and will at all material times be entitled to rely, on:
 - (i) the performance by the Supplier of its obligations under the Contract; and
 - (ii) the exercise by the Supplier, and by the Supplier's Personnel, of proper standards of independent professional skill, care and judgement in relation to the Services.

24.5 Specified Persons to supply Services etc.

- (a) For the purposes of this clause 24.5, a **Specified Person** is:
 - (i) a person named as a 'Specified Person' in the Contract Information Table; and
 - (ii) a person who becomes a Specified Person pursuant to clause 24.5(e).
- (b) The Supplier must ensure that a Specified Person supplies the Services, a part of the Services or otherwise undertakes the role or function in relation to the supply of the Services, allocated to that Specified Person:
 - (i) in the Contract Information Table; and
 - (ii) if the Specified Person became a Specified Person pursuant to clause 24.5(e), in the Principal's approval for the purposes of that clause.

- (c) If a Specified Person is not available to provide the Services, a part of the Services or to otherwise undertake the role or function in relation to the supply of the Services allocated to that person, the Supplier must immediately notify the Principal in writing.
- (d) The Supplier must, as directed, in writing, by the Principal, acting reasonably, remove a Specified Person from work in relation to the Services.
- (e) The Supplier must provide a person to replace a Specified Person referred to in clauses 24.5(c) or 24.5(d). The replacement person:
 - (i) must be approved, in writing, by the Principal;
 - (ii) must be engaged by the Supplier:
 - (A) at no additional cost to the Principal; and
 - (B) as soon as practicable so as to avoid any delay to the supply of the Services; and
 - (iii) becomes a Specified Person (in substitution for the Specified Person that they replace) when approved of, in writing, by the Principal.

An approval for the purposes of this clause 24.5(e) may allocate to the Specified Person the Services, a part of the Services or a role or function in relation to the supply of the Services.

25 Contract Material created as part of Services

25.1 Title to, and property in, Contract Material

- (a) The title to, and property (including Intellectual Property) in, all Contract Material created by the Supplier vests, or will vest, in the Principal upon its creation.
- (b) The Supplier warrants that all Contract Material created by the Supplier vests, or will vest, in the Principal upon its creation free from any Security Interest (except for a Security Interest created by the Principal).
- (c) The Supplier must not include a copyright notice in Contract Material that is inconsistent with clause 25.1(a). To avoid doubt, clause 25.1(a) has effect despite any copyright notice included in any Contract Material that is inconsistent with that clause.
- (d) Clause 25.1(a) does not affect the ownership of any Intellectual Property in:
 - (i) any Principal Material incorporated in the Contract Material; or
 - (ii) any Existing Material incorporated in any thing that includes Contract Material.
- (e) The Supplier irrevocably and unconditionally grants to each Crown Entity a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, re-use, reproduce, adapt and/or exploit (without attribution) any Existing Material which is incorporated in any thing that includes Contract Material created by the Supplier.
- (f) Subject to clause 25.1(g), a Crown Entity, at its risk, may in the exercise of the rights under the licence granted by clause 25.1(e):

- (i) re-use the material under any logo or in any context it chooses; and
 - (ii) adapt or modify the material for use in any other matter not related to the Services.
- (g) The Principal must not represent that Contract Material, or Existing Material, used for purposes other than the purposes for which the Principal instructed the Supplier to create the Contract Material, or modified without the Supplier's prior consent, has been endorsed by the Supplier. The Principal must not attribute any such re-use or modification of Contract Material, or Existing Material, to the Supplier.
- (h) The Principal grants to the Supplier a non-exclusive licence to use, reproduce and/or adapt any Contract Material for the purposes of providing the Services.
- (i) In this clause **Crown Entity** means:
- (i) the Principal;
 - (ii) the Crown in Right of Tasmania (if it is not the Principal); and
 - (iii) each agency and instrumentality of the Crown in Right of Tasmania.

25.2 No Harmful Code

The Supplier warrants that any Contract Material supplied electronically by the Supplier to the Principal does not include any Harmful Code.

25.3 No infringement of Intellectual Property

The Supplier warrants that the Principal's use of the Contract Material, or any Existing Material incorporated in any thing that includes Contract Material, will not infringe the Intellectual Property rights of any person.

25.4 Moral Rights consent

The Supplier unconditionally consents to any infringement of its Moral Rights resulting from any use, by or on behalf of the Principal, of the Contract Material.

25.5 Moral Rights consent from third person authors

To the extent that any third person has Moral Rights in any Contract Material created by the Supplier, the Supplier must obtain, before or immediately on creation, the third person's unconditional consent to any use of that Contract Material by or on behalf of the Principal. If the Principal requests, the Supplier must promptly provide to the Principal all Moral Rights consents required by this clause.

25.6 No duty of care

The Principal does not owe any duty of care to the Supplier, or any Supplier's Personnel, to review any Contract Material, or any other document submitted to the Principal in connection with the Contract, for errors, omissions or compliance with applicable Laws.

25.7 No diminution of Supplier's obligations etc.

The liabilities, obligations and responsibilities of the Supplier under the Contract are not diminished by:

- (a) any permission to use, or any comment, review, acceptance, approval, consent to proceed, consent, request to vary, or refusal to give permission to use, given by, or on behalf of the Principal, in relation to any Contract Material; or
- (b) any approval or monitoring by the Principal.

25.8 Supplier must give Contract Material to Principal

- (a) The Supplier, at its cost, must immediately give all Contract Material (held by the Supplier) to the Principal on:
 - (i) the termination of the Contract;
 - (ii) the completion of the delivery of the Services for which it has been provided; or
 - (iii) the end of any Service Period.
- (b) The Supplier may retain one copy of the Contract Material to the extent that it is required to do so by an applicable Law.
- (c) Unless otherwise directed, in writing, by the Principal, the Supplier may retain one copy of the Contract Material to comply with its usual internal record keeping policies.

26 Principal Material supplied in connection with Services**26.1 Principal Material remains property of Principal**

All Principal Material remains the property of the Principal.

26.2 Supplier must keep Principal Material safe

The Supplier must at its cost comply with any reasonable security requirements of the Principal related to confidentiality, storage and safe keeping of Principal Material.

26.3 Supplier must return Principal Material

- (a) The Supplier, at its cost, must immediately return all Principal Material (supplied to, or held by, the Supplier) to the Principal on:
 - (i) the termination of the Contract;
 - (ii) the completion of the delivery of the Services for which was provided; or
 - (iii) the end of any Service Period.
- (b) The Supplier may retain one copy of the Principal Material to the extent that it is required to do so by an applicable Law.
- (c) Unless otherwise directed, in writing, by the Principal, the Supplier may retain one copy of the Principal Material to comply with its usual internal record keeping policies.

27 Confidentiality and protection of Contract Material and Principal Material**27.1 Duty to preserve confidentiality of Contract Material and Principal Material**

- (a) The Supplier must not, and must ensure that the Supplier's Personnel do not, publicly disclose, or use for a purpose other than for the purposes of the Contract, any Contract Material or Principal Material.
- (b) Nothing in this clause prevents the Supplier from disclosing Contract Material or Principal Material:

- (i) that is available to the public generally otherwise than as a result of a breach of this clause 27.1 by the Supplier;
- (ii) if the disclosure is required by Law; or
- (iii) if the disclosure is to the Supplier's professional advisers who, in relation to that disclosure, agree with the Principal to keep the information confidential.

27.2 Protection of Contract Material and Principal Material

- (a) The Supplier must ensure that Contract Material and Principal Material is protected against loss, damage, corruption, misuse and unauthorised access by taking security measures that are no less stringent than good industry practice.
- (b) If the Supplier stores any Contract Material or Principal Material electronically, the Supplier must only store the material securely within Australia (except to the extent that the Principal has agreed, in writing, for the material to be stored outside Australia).

27.3 Supplier to notify Principal

The Supplier must immediately notify the Principal, in writing, of any of the following:

- (a) any breach by the Supplier of any of its obligations under this clause 27;
- (b) any loss, damage, corruption, misuse of, or unauthorised access to, any Contract Material or Principal Material (including in respect of material that is stored electronically).

28 'Standing offer' arrangements – Services

28.1 Application

This clause 28 applies if, in relation to any Services, the Contract Information Table states that the Contract (or a part of the Contract) is a 'Standing Offer Arrangement'.

28.2 Ordering and supply of Services

During the Standing Offer Period (stated in the Contract Information Table), the Supplier must only supply the Services (to which the Standing Offer Arrangement relates) requested and described in an order (**Official Order**) issued by the Principal to the Supplier. To avoid doubt, subject to this clause 28, the Contract applies to the supply of Services requested and described in an Official Order.

28.3 Official Orders generally

- (a) Unless otherwise agreed, in writing, by the Principal and the Supplier, every written order placed by the Principal with the Supplier for Services is an Official Order.
- (b) If the Contract is a Standing Offer Arrangement for the supply of Goods and Services, an Official Order may relate to both Goods and Services.
- (c) An Official Order may contain only details, terms and conditions which the parties have already agreed in writing.
- (d) Unless otherwise agreed, in writing, by the Principal and the Supplier, and subject to clause 28.4, an Official Order comes into force on the date the Principal gives it to the Supplier.

28.4 Rejection of Official Order

- (a) If the Services to be provided by the Supplier are professional services, the Supplier may reject an Official Order by notice in writing to the Principal:
 - (i) if the Supplier has a professional conflict which would impair the ability of the Supplier to deliver the Services described in the Official Order;
 - (ii) where the Supplier cannot meet the timeframes set out in the Official Order; or
 - (iii) for any other reason accepted, in writing, by the Principal.
- (b) A notice by the Supplier rejecting an Official Order in accordance with clause 28.4(a) must be given not later than three Business Days after the Principal issued the Official Order to the Supplier.
- (c) An Official Order rejected by the Supplier in accordance with clauses 28.4(a) and 28.4(b) ceases to be an Official Order.

28.5 No obligation to purchase Services etc.

In relation to the Standing Offer Arrangement, the Principal:

- (a) is not obliged to give any Official Order to purchase Services;
- (b) is not obliged to purchase any Services, or any volume of Services, from the Supplier (except as specified in an Official Order); and
- (c) may at any time purchase or acquire services (of the same kind as, or a similar kind to, the Services) from any person.

29 Reduction in scope of Services

- (a) The Principal may, at any time, by notice, in writing, to the Supplier, reduce the scope of the Services for convenience.
- (b) If the scope of the Services is reduced in accordance with clause 29(a):
 - (i) the Supplier must:
 - (A) take all reasonable action to minimise any Loss resulting from the reduction of scope; and
 - (B) continue to undertake each part of the Services that is not affected by the notice;
 - (ii) subject to clauses 29(d) and 29(e), the Principal must pay to the Supplier, as compensation, any reasonable costs actually incurred by the Supplier that are directly attributable to the reduction in the scope of the Services; and
 - (iii) the Contract Sum is to be reduced:
 - (A) if the Contract Sum includes a separate lump sum for the Services to which the reduction in scope solely relates, by the amount of that lump sum; and
 - (B) in any other case, in proportion to the reduction in the scope of the Services.

- (c) No compensation is payable by the Principal to the Supplier in connection with a reduction in the scope of the Services in accordance with clause 29(a) except as provided for in clause 29(b)(ii).
- (d) The Principal is not liable to pay compensation under clause 29(b)(ii) for an amount which would, in addition to any other amounts paid or due, or becoming due, by the Principal to the Supplier under the Contract, exceed the original total of the Contract Sum.
- (e) The Supplier is not entitled to compensation for loss of prospective profits for any reduction in the scope of the Services.

30 Suspension of Services

- (a) The Principal may, at any time by notice, in writing, direct the Supplier to suspend the supply of the Services by the Supplier. The Supplier must comply with any such direction.
- (b) The Supplier must recommence the supply of the Services in accordance with any further notice, in writing, given by the Principal to the Supplier.
- (c) Any period of suspension must not exceed three months.
- (d) Subject to clause 30(e), if a suspension of the Services is longer than one month, the Principal must pay to the Supplier, as compensation, any reasonable costs actually incurred by the Supplier that are directly attributable to the suspension, and being costs which otherwise could not reasonably be avoided by the Supplier.
- (e) No compensation is payable by the Principal to the Supplier if a substantial reason for the suspension of the Services is any breach of the Contract by the Supplier or the occurrence of any event referred to in clause 9.1.