



Shire of
Collie

Request for Tender

Request for Tender:	<i>The Collaborative Declared Weed Management Scheme – SW Blackberry Spraying Contractor Panel</i>
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Deadline:	<i>5pm (AWST) Thursday 16th September 2021</i>
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Address for Delivery:	<i>Shire of Collie Locked Bag 6225 Collie WA 6225 Electronic mail Tenders will be accepted Facsimile Tenders <u>will not</u> be accepted</i>
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RFT Number:	<i>02/2021</i>
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Table of Contents

Contents

1	Conditions of Tendering	4
1.1	Definitions	4
1.2	Tender Documents	5
1.3	How to Prepare Your Tender	5
1.4	Contact Persons	5
1.5	Lodgement of Tenders and Delivery Method	6
1.6	Rejection of Tenders	7
1.7	Late Tenders	7
1.8	Acceptance of Tenders	7
1.9	Disclosure of Contract Information	7
1.10	Tender Validity Period	7
1.11	Precedence of Documents	7
1.12	Alternative Tenders	8
1.13	Tenderers to Inform Themselves	8
1.14	Alterations	8
1.15	Risk Assessment	8
1.16	Evaluation Process	9
1.17	Selection Criteria	10
1.18	Compliance Criteria	10
1.19	Qualitative Criteria	10
1.20	Value Considerations	10
1.21	Regional Price Preference	11
1.22	Price Basis	11
1.23	Ownership of Tenders	11
1.24	Canvassing of Officials	11
1.25	Identity of the Tenderer	12
1.26	Costs of Tendering	12
1.27	Tender Opening	12
1.28	In House Tenders	12
2	Statement of Requirements	13
2.1	Introduction	13
2.2	Background Information	13
2.3	Definitions	14
2.4	Scope of Work	14
2.5	Implementation Timetable	15

Table of Contents

2.6	Reporting Requirements	15
2.7	Engagement of a Contractor from the Panel	15
2.7.1	Work to be awarded on a ranked basis:	16
2.8	Contractor Personnel Performance	16
3	General Conditions of Contract	18
3.1	Insurances	18
4	Tenderer's Offer	19
4.1	Form of Tender	19
4.2	Selection Criteria	20
4.2.1	Compliance Criteria.....	20
4.2.2	Qualitative Criteria.....	21
4.3	Price Information	23
4.3.1	Price Basis.....	23
4.3.2	Price Schedule.....	23

1 Conditions of Tendering

1.1 Definitions

Below is a summary of some of the important defined terms used in this Request:

Attachments:	The documents you attach as part of your Tender.
Contractor:	Means the person or persons, corporation or corporations who's Tender is accepted by the Principal, including the executors or administrators, successors and assignments of such person or persons, corporation or corporations.
Deadline:	The deadline for lodgement of your Tender as detailed on the front cover of this Request.
General Conditions of Contract:	Means the General Conditions of Contract for the provision of services provided in Appendix 2
Offer:	Your offer to supply the Requirements.
Principal:	<i>Shire of Collie</i>
Request OR RTF OR Request for Tender	This document.
Requirement:	The services requested by the Principal.
Selection Criteria:	The Criteria used by the Principal in evaluating your Tender.
Special Conditions:	The additional contractual terms.
Specification:	The Statement of Requirements that the Principal requests you to provide if selected.
Tender:	Completed Offer form, Response to the Selection Criteria and Attachments.
Tenderer:	Someone who has or intends to submit an Offer to the Principal.
Tender Open Period:	The time between advertising the Request and the Deadline.

1.2 Tender Documents

This Request for Tender is comprised of the following parts:

Part 1 – Conditions of Tendering (*read and keep this part*).

Part 2 – Statement of Requirement includes Specification and any plans/drawings (*read and keep this part*).

Part 3 – General Conditions of Contract (*read and keep this part*).

Part 4 – Tenderer's Offer (*complete and return this part*).

Separate Documents

- a) Addenda and any other special correspondence issued to Tenderers by the Principal.
- b) Any other policy or document referred to but not attached to the Request.

1.3 How to Prepare Your Tender

- a) Carefully read all parts of this document;
- b) Ensure you understand the Requirements;
- c) Complete and return the Offer (Part 4) in all respects and include all Attachments;
- d) Make sure you have signed the Offer form and responded to all of the Selection Criteria; and
- e) Lodge your Tender before the Deadline.

1.4 Contact Persons

Tenderers should not rely on any information provided by any person other than the person listed below:

Technical queries

Name:	<i>Chris Howe</i>
Telephone:	<i>08 9791 4773</i>
Email:	<u><i>Chris.Howe@leschenaultcc.org.au</i></u>

Tender Process queries

Name:	<i>Katya Tripp</i>
Telephone:	<i>08 9734 9000</i>

Email:	<i>Katya.Tripp@collie.wa.gov.au</i>
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1.5 Lodgement of Tenders and Delivery Method

The tender must be lodged by the Deadline. The Deadline for this request is **5pm Thursday, 16th September 2021**.

The Tender is to be:

- a) Placed in a sealed envelope clearly endorsed with the tender number and title as shown on the front cover of this Request; and
- b) Delivered by hand and placed in the Tender Box at *Shire of Collie* by the Tenderer or the Tenderer's private agent or sent through the mail to the Chief Executive Officer, Shire of Collie, Locked Bag 6225, Collie, WA, 6225.

Tenders submitted by Facsimile will not be accepted.

Tenderers must ensure that they have provided 1 signed copies of their Tender; one to be marked "ORIGINAL" and unbound and clipped (not stapled). Any other copies to be marked "COPY" and bound. All pages must be numbered consecutively and the Tender must include an index. Any brochures or pamphlets must be attached to both the original and the copies.

Alternatively, Tenders will be accepted by email. If choosing this method of submission, the response is to be sent to email: colshire@collie.wa.gov.au

The response is to be:

- (a) sent as one pdf attachment;
- (b) no greater than 10MB;
- (c) signed; and
- (d) clearly marked with the RFT number and project description in the email subject line.

To ensure the integrity of the Tender process, electronic mail Tenders should only be submitted to the designated Tender submission email address. Do not send Tenders to staff or alternative email addresses, including the Principal's contact

1.6 Rejection of Tenders

A Tender will be rejected without consideration of its merits in the event that:

- a) It is not submitted before the Deadline; or
- b) It is not submitted at the place specified in the Request; or
- c) It may be rejected if it fails to comply with any other requirements of the Request.

No web links or hyperlinks will be considered as part of any submission.

1.7 Late Tenders

Tenders received:

- a) After the Deadline; or
- b) In a place other than that stipulated in this Request;

will not be accepted for evaluation.

1.8 Acceptance of Tenders

Unless otherwise stated in this Request, Tenders may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted.

1.9 Disclosure of Contract Information

Documents and other information relevant to the contract may be disclosed when required by law under the Freedom of Information Act 1992 or under a Court order.

All Tenderers will be given particulars of the successful Tenderer(s) or be advised that no Tender was accepted.

1.10 Tender Validity Period

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the Deadline or forty-five (45) days from the Principal's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

1.11 Precedence of Documents

In the event of there being any conflict or inconsistency between the terms and conditions in this Request and those in the General Conditions of Contract, the terms and conditions appearing in this Request will have precedence.

1.12 Alternative Tenders

All Alternative Tenders may be accompanied by a conforming Tender.

Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases be clearly marked “**Alternative Tender**”.

The Principal may in its absolute discretion reject any Alternative Tender.

Any printed “General Conditions of Contract” contained within a Tender will not be binding on the Principal in the event of a Contract being awarded unless the Tender is marked as an Alternative Tender.

1.13 Tenderers to Inform Themselves

Tenderers will be deemed to have:

- a) examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
- b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;
- d) acknowledged that the Principal may enter into negotiations with a chosen Tenderer and that negotiations are to be carried out in good faith; and
- e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

1.14 Alterations

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

The Principal will issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.

1.15 Risk Assessment

The Principal may have access to and give consideration to:

- a) any risk assessment undertaken by any credit rating agency;

- b) any financial analytical assessment undertaken by any agency; and
- c) any information produced by the Bank, financial institution, or accountant of a Tenderer;

so as to assess that Tender and may consider such materials as tools in the Tender assessment process.

Tenderers may be required to undertake to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Services for which they are submitting and meet their obligations under any proposed Contract. The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact you concerning the financial information that you are required to provide.

The financial assessment is specifically for use by the Principal for the purpose of assessing Tenderers and will be treated as strictly confidential.

1.16 Evaluation Process

This is a Request for Tender.

Your Tender will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request:

- a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (e.g. completed Offer form and Attachments) may be excluded from evaluation;
- b) Tenders are assessed against the Selection Criteria. Contract costs are evaluated (e.g. tendered prices) and other relevant whole of life costs are considered;
- c) The most suitable Tenderers may be short listed and may also be required to clarify their Tender, demonstrate the product/solution offered and/or open premises for inspection. Referees may also be contacted prior to the selection of the successful Tenderer.

The evaluation panel will consist of an officer from the Leschenault Catchment Council, the Shire of Donnybrook – Balingup and the Shire of Dardanup. It will be this panel that check the tender for completeness and scores each tender against the selection criteria.

1.17 Selection Criteria

The Contract will be awarded to a panel of Tenderer(s) who best demonstrate the ability to provide quality products and/or services at a competitive price.

A scoring system will be used as part of the assessment of the qualitative criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the qualitative criteria and in the overall assessment of value for money.

1.18 Compliance Criteria

These criteria are detailed within Part 4 of this document and will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of “No” against any criterion may eliminate the Tender from consideration.

1.19 Qualitative Criteria

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within Part 4 of this document.

Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

It is essential that Tenderers address each qualitative criterion. Information that you provide addressing each qualitative criterion will be point scored by the Evaluation Panel. Failure to provide the specified information may result in elimination from the tender evaluation process or a low score.

1.20 Value Considerations

Clause A: Weighted Price Criteria

The Weighted Price method is used where price is considered to be crucial to the outcome of the contract. The price is then assessed with quality. Include any items that may affect any pricing outcomes (eg Regional Price Preference Policy).

Criteria	Weighting
Experience	30%
Personnel	30%

Part 1	READ AND KEEP THIS PART
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Resources	20%
Price	20%

1.21 Regional Price Preference

Tenderers for the contract may be afforded a preference in accordance with Regulation 24(A-G) of the Local Government (Functions and General) Regulations and the *Shire of Collie Purchasing Policy*.

The Policy stipulates that: *10% price preference applied, up to a maximum of \$50,000 for suppliers located within the Shire of Collie.*

As this project spans three local government areas this local price preference could be extended to tenderers within the Shires of Dardanup or Donnybrook-Balingup subject to a decision of the Collie Shire Council when awarding the panel of tenderers.

1.22 Price Basis

All prices for goods/services offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated, prices tendered must include travel to and from the site, duties, taxes and charges. The prices tendered shall take into account that the principal offers no guarantee to the quantity of goods/services to be ordered. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

1.23 Ownership of Tenders

All documents, materials, articles and information submitted by the Tenderer as part of or in support of the Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

1.24 Canvassing of Officials

If the Tenderer, whether personally or by an agent, canvasses any of the Principal's Commissioners or Councillors Officers (as the case may be) with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tenderer from consideration.

1.25 Identity of the Tenderer

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 4 and whose execution appears on the Offer Form in Part 4 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

1.26 Costs of Tendering

The Principal will not be liable for payment to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing their Offer.

1.27 Tender Opening

Tenders will be opened in the Principal's offices, following the advertised Deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.

The names of the persons who submitted the Tender by the due Deadline will be read out at the Tender Opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender Opening will be held on Tuesday 14th August or as soon as practicable after the Deadline at *87 Throssell Street, Collie, WA 6225*.

1.28 In House Tenders

The Principal does not intend to submit an In House Tender.

2 Statement of Requirements

2.1 Introduction

The combined Shires of Collie, Dardanup and Donnybrook Balingup are seeking suitably qualified, licenced and experienced contractors to implement chemical or mechanical control of Blackberry (*Rubus spp.*) within the three Shires.

Following mapping of Blackberry across the three Shires, areas of priority for control will be identified and contractors assigned to undertake control of Blackberry, with permission from the respective landholder.

The contractors will work closely with the Leschenault Catchment Council (LCC) who is the appointed project manager.

The panel of provider approach is intended to maximise the flexibility and availability of pest control operators and ensure that the Principal is able to source sufficient resources to meet its blackberry control demands, given that it is likely that multiple sites across the three Shires shall be in progress simultaneously during the optimum spray season.

The Shire expects to have at least six (6) contractors on the panel but is not limited to this number. The final number of contractors on the panel will be dependent upon the number of suitable tenders received.

It is expected that a successful contractor will be available to work across the three Shires however if you can only work in a particular Shire please clearly nominate this in your tender.

2.2 Background Information

The three Shires have been successful in receiving funding under the Communities Combating Pests and Weed Impacts During Drought program. The project titled “The South West WA Collaborative Declared Weed Management Scheme” aims to identify, map and control blackberry on both private and public lands. The goal is to improve economic activity by employing local contractors and better equip landholders to undertake weed control and thereby maximise their long-term agricultural outputs.

An MoU governs the relationship between the three Shires with project guidance via an established Steering Group, consisting of representatives from each Shire and the Leschenault Catchment Council (LCC), which provides the overall project management and coordination.

The Steering Group aims to oversee control of as much of the mapped Blackberry as possible, utilising a prioritisation process to determine where resources are allocated. A

panel of contractors will be established so that control areas can be allocated to appropriate contractors to implement works and maximise the on-ground outcomes i.e. the amount of blackberry controlled. Control works will be implemented on public and private lands and generally along the main rivers and watercourses across the three shires.

The price provided by each contractor (tenderer) is to include travel to and from the sites requiring blackberry control regardless of which Shire they are located in.

Invoices and payment of these are to be made to the Shire of Collie who is responsible for managing the financials regarding this project.

2.3 Definitions

Below is a summary of some of the important defined terms used in this Part:

Contractor's Representative:	Means any Officer or person duly authorised by the Contractor, in writing, to act on their behalf for the purpose of the Contract;
Principal's Representative	Means any Officer of person duly authorised by the Principal, in writing, to act on their behalf for the purpose of the Contract; LCC (Leschenault Catchment Council) – Appointed Project Manager
Steering Group	Means a group with a representative from each Shire;
Works or Services:	Means the Services, which the Contractor is required to provide to the Principal and the Contractor under the Contract;

2.4 Scope of Work

The Scope of Work includes the following:

- a) Undertake blackberry control works on allocated properties and government land as directed by LCC Project Manager within the Shires of Collie, Dardanup and Donnybrook-Balingup. Total potential properties are across approximately 600km of lineal waterway;
- b) Liaise with the respective landholders to ensure that access permission is granted, biosecurity protocols are followed and any other (reasonable) concerns are addressed;
- c) Provide spray notes to the project manager with details of chemicals used and daily outcomes/area covered and;

- d) Use GPS or similar device to track the areas sprayed. GPS information will be provided to the project manager in the form of GPX data from the device, or converted to shapefiles and provided electronically;

The successful contractor(s) shall:

- a) Be licenced pest control operators under the Department of Health requirements and ;
- b) Be able to provide GPS information described above in a timely manner following control works.

2.5 Implementation Timetable

September 2021 blackberry mapping and site prioritisation process completed;

Mid to late October blackberry spray program to commence;

December 2021 finish spraying (could potentially extend into early 2022).

Therefore engagement of a contractor from the panel (period of contract) is expected to be between the months of October 2021 to February 2022 but will not exceed 6 months.

2.6 Reporting Requirements

Weekly update provided to project manager via phone call/email. GIS data to be sent to project manager fortnightly.

2.7 Engagement of a Contractor from the Panel

Once a tender from a contractor has been accepted and the contractor is included in the panel the Principal will follow the process below to rank and then engage a supplier from the Panel of Preferred Suppliers:

- Step 1 Determine the most suitable plant and equipment required for the works. For example location and size of the area to be treated and the most appropriate personnel and equipment for the work to be completed in the minimum amount of time. Preference will be given to suitable contractors local to the Shire that the works are to be undertaken in.
- Step 2 Determine the preferred supplier considering the evaluation process and previous performance.
- Step 3 Determine the availability of the plant, equipment and/or operator through contact with the preferred supplier.

- Step 4 If the first choice is unavailable, repeat the process for the next most suitable supplier.

The above steps will provide a ranking for each contractor against each job. In choosing which Contractor(s) to use from those forming the panel of providers, the Principal shall take into account the Contractor's current commitments and therefore availability and the amount of work currently being/having been undertaken by the individual Contractors.

It is expected that a successful contractor will be available to work across the three Shires however if you can only work in a particular Shire please clearly nominate this in your tender.

2.7.1 Work to be awarded on a ranked basis:

The Shire will invite the highest ranked Panel member, who is to notify the Shire as to whether to accept the offer for the work to be undertaken.

ii. Should the offer be declined, an invitation to the next ranked Panel member is to be made and so forth until a Panel member accepts a Contract.

iii. Should the list of Panel members invited be exhausted with no Panel member accepting the offer to provide goods/services under the Panel, the Shire may then invite suppliers that are not pre-qualified under the Panel, in accordance with the Purchasing Thresholds of the Local Purchasing Policy.

As much as possible, the Principal shall seek to be equitable in the opportunity it offers to the Contractors forming the panel of providers; however the Principal reserves the right to include a Contractor's current commitments, price as well as its recent performance in any considerations as to which Contractor to offer subsequent work.

It is anticipated that the Contractors will provide the nominated personnel (or equivalent personnel as may be negotiated by the Principal's Representative) on request, at all times, once the engagement for a job has been given.

Although it is intended that the Contractors forming the panel of providers will be the primary source of weed control services for the project, the Principal reserves the right to source weed control Services via other methods, should all options under this Contract be exhausted.

2.8 Contractor Personnel Performance

The Principal reserves the right to dismiss any person supplied by the Contractor that is suspected of breaching OSH requirements, poor work performance or being insufficiently skilled. Should this occur then the Contractor must provide suitable alternative personnel as soon as possible.

2.9 Special Conditions

The contractor must be able to map the locations they have treated using a GIS/GPS system.

It is expected that in applying for this tender that the contractor will be considering setting aside time to undertake the work once appointed to the panel. Time is critical to this project due to the short window for treatment.

3 General Conditions of Contract

Responses to this request shall be deemed to have been made on the basis of and to incorporate the General Conditions of Contract for the Supply of Goods and/or Services.

The General Conditions of Contract for this Request have been provided and attached.

The Contractor **must read and understand** the above General Conditions of Contract as this will form the basis of how the contract is managed. Signing of the General Conditions of Contract will be undertaken with the successful tenderer(s).

3.1 Insurances

Without limiting its obligations and responsibilities, the contractor shall take out insurance for the entire contract period under the following headings:

(a) Public Liability:

A Public Liability policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Public Liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of Death, Property Damage and Bodily Injury.

(b) Workers Compensation:

The Contractor shall effect and keep in effect during the currency of the Contract such Insurance as may be necessary to adequately protect the Contractor and the Principal in respect of liability for payment of compensation to any Employee of the Contractor or of a Subcontractor of the Contractor under the Workers' Compensation and Injury Act 1981 or at Common Law.

(c) Motor Vehicle / Plant:

The Contractor should have a minimum 3rd party property damage for all road registered vehicles and plant. Sub-Contractors must also have 3rd party property damage for all road registered vehicles and plant. Motor Vehicles shall also be insured for replacement at current market values.

The Respondent is to provide the Principal with certificates of currency and/or a copy of the policy with this Request for Tender for compliance purposes. The Respondent shall maintain above insurance policies for the entire Contract.

The Contractor at the discretion of the Principal may be required to detail the Principal as a joint named insured under some or all of the insurances.

4 Tenderer's Offer

4.1 Form of Tender

The Chief Executive Officer
Shire of Collie
87 Throssell Street, Collie WA 6225

I/We (Registered Entity Name): _____
(BLOCK LETTERS)

of: _____
(REGISTERED STREET ADDRESS)

ABN _____ ACN (if any) _____

Telephone No: _____ Facsimile No: _____

E-mail: _____

In response to RFT 02/2021 - SW Blackberry Spraying Contractor Panel:

I/We agree that I am/We are bound by, and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

The tendered price is valid up to ninety (90) calendar days from the date of the Tender closing or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered consideration is as provided under the schedule of rates of prices in the prescribed format and submitted with this Tender.

Dated this _____ day of _____ 20____

Signature of authorised signatory of Tenderer: _____

Name of authorised signatory (BLOCK LETTERS): _____

Position: _____

Telephone Number: _____

Authorised signatory Postal address: _____

Email Address: _____

4.2 Selection Criteria

4.2.1 Compliance Criteria

Please select with a “Yes” or “No” whether you have complied with the following compliance criteria:

Description of Compliance Criteria	
a) Completion of the Offer Form and provision of your pricing submitted in the format required by the Principal.	Yes / No
b) Tenderers are to provide their <i>Health Department Pest Control Operator Licence</i>	Yes / No
c) Compliance with the Specification contained in the Request.	Yes / No
d) Shall be available when requested by the Project Manager to undertake works / service during late September 2021 finishing in December 2021 possibly extending into January 2022.	Yes / No
e) Risk Assessment: Tenderers must address the following information as relevant to their organisation and preferably label it “Risk Assessment”:	Yes / No
i) <i>An outline of your organisational structure inclusive of any branches and number of personnel.</i>	
ii) <i>If companies are involved, attach their current ASC company extracts search including latest annual return.</i>	
iii) <i>Provide the organisations directors/company owners and any other positions held with other organisations.</i>	
iv) <i>Provide a summary of the number of years your organisation has been in business.</i>	
v) <i>Attach details of your referees. You should give examples of work provided for your referees where possible.</i>	
vi) <i>Are you acting as an agent for another party? If Yes, attach details (including name and address) of your Principal.</i>	
vii) <i>Are you acting as a trustee of a trust? If Yes, give the name of the</i>	

Part 4 COMPLETE AND RETURN THIS PART
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trust and include a copy of the trust deed (and any related documents); and if there is no trust deed, provide the names and addresses of beneficiaries.

- viii) Do you intend to subcontract any of the Requirements? If Yes provide details of the subcontractor(s) including; the name, address and the number of people employed; and the Requirements that will be subcontracted.*
- ix) Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract? If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with.*
- x) Are you presently able to pay all your debts in full as and when they fall due?*
- xi) Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more? If Yes please provide details.*
- xii) Provide details of disputes and claims history for your organisation and its Related Bodies Corporate (if applicable) over the last 5 years.*

The insurance requirements for this Request are stipulated in Part 3 of this Request. Tenderers are to supply evidence of their insurance coverage including, insurer, expiry date, value and type of insurance. If the Tenderer holds “umbrella Insurance” please ensure a breakdown of the required insurances are provided. A copy of the Certificate of Currency may be required to be provided to the Principal within fourteen (14) days of acceptance.

4.2.2 Qualitative Criteria

Before responding to the following qualitative criteria, Tenderers must note the following:

- a) All information relevant to your answers to each criterion are to be contained within your Tender;
- b) Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience;

Part 4 COMPLETE AND RETURN THIS PART

- c) Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria; and
- d) Tenderers are to address each issue outlined within a qualitative criterion.

A. Relevant Experience Tenderers must provide <i>details of similar work – what, where and who for.</i> :	Tick if attached <input type="checkbox"/>	Weighting <_30_%>
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Key Personnel Tenderers must provide details of who (employees/personnel) will be undertaking the work and any relevant skills and qualifications they have.	Tick if attached <input type="checkbox"/>	Weighting <_30_%>
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B. Tenderer's Resources Tenderers must list and provide details of the plant, equipment and materials ie vehicles and chemicals they will be using to undertake the contract. Tenderers need to be provide information on their proposed GIS/GPS recording equipment/systems to be used; Tenderers should note if they are proposing to use any mechanical means of treatment. Tenderers should also highlight is they are only available for jobs in particular Shires, otherwise it will be assumed they are available across the three Shires.	Tick if attached <input type="checkbox"/>	Weighting <_20_%>
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C. Price As a minimum, tenderers must provide information on price as detailed below in the price schedule.	Tick if attached <input type="checkbox"/>	Weighting <_20_%>
---	---	---------------------------------

4.3 Price Information

Tenderers must complete the following “Price Schedule”. Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.

4.3.1 Price Basis

Are you prepared to offer a fixed unit price for the contract period?	Yes / No
---	-----------------

4.3.2 Price Schedule

To ensure equal comparison across different contractors, the price schedule below needs to be completed.

The price schedule assumes one person per unit.

The price schedule hourly unit rates shall include all costs required to fulfill the specification, including all travel costs, purchase and disposal of chemicals, use of equipment, personnel, environmental and work health and safety requirements or other described within the contract. Provided rates are to incorporate all travel costs within the 3 Shires, therefore the same hourly rate will apply irrelevant of the location of the job.

If a rate discount is to be provided for multiple days, a whole week or a month please note this through a reduction in your hourly rates in the schedule below.

Please note this is to be a fixed rate and will not be able to be varied once appointed to the panel.

No	Service Description	Tender Unit (per hour)	Price Tendered (ex GST)	GST	Price Tendered (inc GST)
1	Blackberry spraying – per unit, per hour , one person	Per hour			
2	Blackberry spraying – per unit, per day , one person (8 hours day).	Per hour			
3	Blackberry spraying – per unit, per week , one person (40 hr week).	Per hour			

Part 4 COMPLETE AND RETURN THIS PART

	Blackberry spraying – per unit, per month , one person (180 hr week).				
4	Extra person/employee ie two people per spray unit; the cost for the extra person on top of rate given above for one person per unit.	Per hour			
5	Mechanical control ie bobcat, mulching head etc. Own equipment or subcontract. Specify a rate per hour.	Per hour			
6	Special equipment – please specify what equipment and a rate.	Per hour			

3.23 CS3.23 Purchasing Policy

Purpose

1. To provide probity and accountability for the purchasing of goods and services by ensuring compliance with the *Local Government Act 1995* and Part 4 of the *Local Government (Functions & General) Regulations 1996 (as amended)*.
2. To deliver value for money using a best practice approach to purchasing whereby the Council's overarching strategic objectives are considered during the purchasing of goods and services.
3. To promote the Shire of Collie's strategic objectives;
Community
Natural environment
Built environment
Economy
Business
4. To ensure consistency for all purchasing activities across all operation areas.

Policy

The policy is divided into six sections:

- 1) Purchasing
- 2) Local Economic Benefit
- 3) Panels of pre-qualified suppliers
- 4) Sustainable Purchasing- Managing social and environmental impacts
- 5) Record Keeping
- 6) Purchasing Policy Non Compliance

1. Purchasing

Council is committed to applying the objectives, principles and practices outlined in this Policy, to all purchasing activity and to ensuring alignment with the Council's strategic and operational objectives.

1.1 Objectives

Council's purchasing activities will:

- (a) Achieve best value for money that considers sustainable benefits, such as; environmental, social and local economic factors;
- (b) Foster economic development by maximising participation of local businesses in the delivery of goods and services and staff to reference the suppliers category list in its procurement system;
- (c) Use consistent, efficient and accountable purchasing processes and decision-making, including; competitive quotation processes, assessment of best value for money and sustainable procurement outcomes for all purchasing activity, including tender exempt arrangements;

Shire of Collie Policy Manual – Corporate Services Policies

- (d) Apply fair and equitable competitive purchasing processes that engage potential suppliers impartially, honestly and consistently;
- (e) Commit to probity and integrity, including the avoidance of bias and of perceived and actual conflicts of interest;
- (f) Comply with the *Local Government Act 1995*, *Local Government (Functions and General) Regulations 1996*, other relevant legislation, Codes of Practice, Standards and Council's Policies and procedures;
- (g) Ensure purchasing outcomes contribute to efficiencies (time and resources)
 - (h) Identify and manage risks arising from purchasing processes and purchasing outcomes in accordance with Council's Risk Management framework;
 - (i) Ensure records evidence purchasing activities in accordance with the *State Records Act 2000* and the Council's Record Keeping Plan;
 - (j) Ensure confidentiality that protects commercial-in-confidence information and only releases information where appropriately approved.

1.2 Ethics and Integrity

Council's Code of Conduct applies when undertaking purchasing activities and decision making, requiring Council Members and employees to observe the highest standards of ethics and integrity and act in an honest and professional manner at all times.

1.3 Value for Money

Council will apply value for money principles in critically assessing purchasing decisions and acknowledges that the lowest price may not always be the most advantageous.

1.3.1 Assessing Value for Money

Value for money assessment will consider:

- (a) All relevant Total Costs of Ownership (TCO) and benefits including; transaction costs associated with acquisition, delivery, distribution, and other costs such as, but not limited to; holding costs, consumables, deployment, training, maintenance and disposal;
- (b) The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality. This includes but is not limited to an assessment of compliances, the supplier's resource availability, capacity and capability, value-adds offered, warranties, guarantees, repair and replacement policies and response times, ease of inspection and maintenance, ease of after sales service, ease of communications, etc.
- (c) The supplier's financial viability and capacity to supply without the risk of default, including the competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history;
- (d) A strong element of competition by obtaining a sufficient number of competitive quotations consistent with this Policy, where practicable;

- (e) The safety requirements and standards associated with both the product design and the specification offered by suppliers and the evaluation of risk arising from the supply, operation and maintenance;
- (f) The environmental, economic and social benefits arising from the goods, services or works required, including consideration of these benefits in regard to the supplier's operations, in accordance with this Policy and any other relevant Council Policy including Local Economic Benefit; and
- (g) Analysis and management of risks and opportunities that may be associated with the purchasing activity, potential supplier/s and the goods or services required.

1.4 Purchasing thresholds and practices

1.4.1. *Defining the Purchasing Value*

Council will apply reasonable and consistent methodologies to assess and determine Purchasing Values, which ensure:

- (a) The appropriate purchasing threshold and practice is applied in all purchasing activities; and
- (b) Wherever possible, purchasing activity for the same category of supply is aggregated into single contract arrangements to achieve best value and efficiency in future purchasing activities where the requirements are able to be provided by a single supplier.

A ***category of supply*** can be defined as groupings of similar goods or services with common: supply and demand drivers; market characteristics; or suppliers.

1. Strategic Purchasing Value Assessments

Council will periodically review recent past purchasing activity across its operations to identify categories of supply for which the Council will have continuing need and which can be aggregated into single contract arrangements in order to achieve best value for money and efficiency in future purchasing activity.

The assessment of aggregated expenditure for the same category of supply capable of being supplied by a single supplier will determine the Purchasing Value threshold applicable to future purchasing activity.

2. Individual Purchasing Value Assessments

In any case, where there is no relevant current contract, each purchasing activity is to assess the Purchasing Value based upon the following considerations:

- (a) Exclusive of Goods and Services Tax (GST); and
- (b) The estimated total expenditure for the proposed supply including the value of all contract extension options and where applicable, the total cost of ownership considerations.
- (c) The appropriate length of a contract is to be determined based on market volatility, ongoing nature of supply, historical purchasing evidence and estimated future purchasing requirements.
- (d) Requirements must not be split to avoid purchasing or tendering thresholds [F&G Reg. 12].

Shire of Collie Policy Manual – Corporate Services Policies

The calculated estimated Purchasing Value will determine the applicable threshold and purchasing practice to be undertaken.

1.4.2. *Table of Purchasing Thresholds and Practices*

(1) Supplier Order of Priority

Council will consider and apply, where applicable, the following Supplier Order of Priority:

Priority 1:	Existing Prequalified Supplier Panel or other Contract Current contracts, including a Panel of Prequalified Suppliers or contracted supplier, must be used where the Council's supply requirements can be met through the existing contract.
Priority 2:	Local Suppliers (within the Shire boundaries) Where the Purchasing Value does not exceed the tender threshold and a relevant local supplier is capable of providing the required supply, Council will ensure that wherever possible quotations are obtained from local suppliers permanently located within the Local Government boundaries.
Priority 3:	Local Suppliers (within the South West Region) Where the Purchasing Value does not exceed the tender threshold and a relevant local supplier within the South West region of providing the required supply, Council will ensure that wherever possible quotations are obtained.
Priority 4:	Suppliers (within Australia) Where the Purchasing Value does not exceed the tender threshold and a relevant supplier within Australia of providing the required supply, Council will ensure that wherever possible quotations are obtained.

(2) Purchasing Practice Purchasing Value Thresholds

The Purchasing Value, assessed in accordance with clause 1.4.1, determines the Purchasing Practice to be applied to the Council's purchasing activities.

Purchase Value Threshold (ex GST)	Purchasing Practice
Up to \$500 (ex GST)	Obtain at least one (1) verbal or written quotation from a suitable supplier in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).
From \$501 up to \$5,000 (ex GST)	Obtain at least two (2) written quotation from a suitable supplier in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).
From \$5,001 and up to \$20,000 (ex GST)	<p>Seek at least three (3) written quotations from suitable suppliers in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</p> <p>The purchasing decision is to be based upon assessment of the suppliers response to:</p> <ul style="list-style-type: none"> • a brief outline of the specified requirement for the goods; services or works required; and • Value for Money criteria, not necessarily the lowest price. <p>The purchasing decision is to be evidenced.</p>
From \$20,001 and up to \$50,000 (ex GST)	<p>Seek at least three (3) written quotations from suitable suppliers through an advertisement of Council's website.</p> <p>The purchasing decision is to be based upon assessment of the suppliers' responses to and accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</p> <ul style="list-style-type: none"> • a brief outline of the specified requirement for the goods; services or works required; and • Value for Money criteria, not necessarily the lowest quote. <p>The purchasing decision is to be evidenced.</p>
From \$50,001 and up to \$100,000 (ex GST)	<p>Seek at least three (3) written responses from suppliers by invitation under a formal Request for Quotation (RFQ) in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</p> <p>The purchasing decision is to be based upon assessment of the suppliers response to:</p> <ul style="list-style-type: none"> • a detailed written specification for the goods, services or works required; and • pre-determined selection criteria that assesses all best and sustainable value considerations. <p>The procurement decision is to be evidenced.</p>

Shire of Collie Policy Manual – Corporate Services Policies

Purchase Value Threshold (ex GST)	Purchasing Practice
Over \$100,001 (ex GST)	<p>Public Tender undertaken in accordance with the <i>Local Government Act 1995</i> and relevant Council Policy and procedures.</p> <p>The Public Tender purchasing decision is to be based on the suppliers response to:</p> <ul style="list-style-type: none"> • A detailed specification; and • Pre-determined selection criteria that assess all best and sustainable value considerations. <p>The purchasing decision is to be evidenced.</p>
Emergency Purchases (Within Budget) Refer to Clause 1.4.3	<p>Where goods or services are required for an emergency response and are within scope of an established Panel of Pre-qualified Supplier or existing contract, the emergency supply must be obtained from the Panel or existing contract using relevant unallocated budgeted funds.</p> <p>If there is no existing Panel or contract, then clause 1.4.2(1) Supplier Order of Priority will apply wherever practicable.</p> <p>However, where due to the urgency of the situation; a contracted or tender exempt supplier is unable to provide the emergency supply <u>OR</u> compliance with this Purchasing Policy would cause unreasonable delay, the supply may be obtained from any supplier capable of providing the emergency supply. However, an emergency supply is only to be obtained to the extent necessary to facilitate the urgent emergency response and must be subject to due consideration of best value and sustainable practice.</p> <p>The rationale for policy non-compliance and the purchasing decision must be evidenced.</p>
Emergency Purchases (No budget allocation available) Refer for Clause 1.4.3	<p>Where no relevant budget allocation is available for an emergency purchasing activity then, in accordance with s.6.8 of the <i>Local Government Act 1995</i>, the Shire President must authorise, in writing, the necessary budget adjustment prior to the expense being incurred.</p> <p>The CEO is responsible for ensuring that an authorised emergency expenditure under s.6.8 is reported to the next ordinary Council Meeting.</p> <p>The Purchasing Practices prescribed for Emergency Purchases (within budget) above, then apply.</p>
LGIS Services Section 9.58(6)(b) Local Government Act	<p>The suite of LGIS insurances are established in accordance with s.9.58(6)(b) of the <i>Local Government Act 1995</i> and are provided as part of a mutual, where WALGA Member Local Governments are the owners of LGIS. Therefore, obtaining LGIS insurance services is available as a member-base service and is not defined as a purchasing activity subject to this Policy.</p> <p>Should Council resolve to seek quotations from alternative insurance suppliers, compliance with this Policy is required.</p>

1.4.3. *Emergency Purchases*

Emergency purchases are defined as the supply of goods or services associated with:

- (a) A local emergency and the expenditure is required (within existing budget allocations) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets; OR
- (b) A local emergency and the expenditure is required (with no relevant available budget allocation) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets in accordance with s.6.8 of the Local Government Act 1995 and Functions and General Regulation 11(2)(a); OR
- (c) A State of Emergency declared under the Emergency Management Act 2005 and therefore, Functions and General Regulations 11(2)(aa), (ja) and (3) apply to vary the application of this policy.

Time constraints, administrative omissions and errors do not qualify for definition as an emergency purchase. Instead, every effort must be made to research and anticipate purchasing requirements in advance and to allow sufficient time for planning and scoping proposed purchases and to then obtain quotes or tenders, as applicable.

1.4.4. *Expressions of Interest*

Expressions of Interest (EOI) will be considered as a prerequisite to a tender process [F&G Reg.21] where the required supply evidences one or more of the following criteria:

- (a) Unable to sufficiently scope or specify the requirement;
- (b) There is significant variability for how the requirement may be met;
- (c) There is potential for suppliers to offer unique solutions and / or multiple options for how the purchasing requirement may be obtained, specified, created or delivered;
- (d) Subject to a creative element; or
- (e) Provides a procurement methodology that allows for the assessment of a significant number of potential tenderers leading to a shortlisting process based on non-price assessment.

All EOI processes will be based upon qualitative and other non-price information only.

1.4.5. *Unique Nature of Supply (Sole Supplier)*

An arrangement with a supplier based on the unique nature of the goods or services required or for any other reason, where it is unlikely that there is more than one potential supplier may only be approved where the:

- (a) purchasing value is estimated to be over \$5,000; and
- (b) purchasing requirement has been documented in a detailed specification; and
- (c) specification has been extensively market tested and only one potential supplier has been identified as being capable of meeting the specified purchase requirement; and
- (d) market testing process and outcomes of supplier assessments have been evidenced in records, inclusive of a rationale for why the supply is determined as unique and why quotations / tenders cannot be sourced through more than one potential supplier.

An arrangement of this nature will only be approved for a period not exceeding one (1) year. For any continuing purchasing requirement, the approval must be re-assessed before expiry, to evidence that only one potential supplier still genuinely exists.

1.4.6. Anti-Avoidance

Council will not conduct multiple purchasing activities with the intent (inadvertent or otherwise) of "splitting" the purchase value or the contract value, so that the effect is to avoid a particular purchasing threshold or the need to call a Public Tender. This includes the creation of two or more contracts or creating multiple purchase order transactions of a similar nature.

1.4.7. Contract Renewals, Extensions and Variations

Where a contract has been entered into as the result of a publicly invited tender process, then *Functions and General Regulation 21A* applies.

For any other contract, the contract must not be varied unless

- (a) The variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or
- (b) The variation is a renewal or extension of the term of the contract where the extension or renewal options were included in the original contract.

Upon expiry of the original contract, and after any options for renewal or extension included in the original contract have been exercised, the Council is required to review the purchasing requirements and commence a new competitive purchasing process in accordance with this Policy.

2. Local Economic Benefit

Council promotes economic development through the encouragement of competitive participation in the delivery of goods and services by local suppliers permanently located within the Shire boundaries. As much as practicable, Council will:

- (a) consider buying practices, procedures and specifications that encourage the inclusion of local businesses and the employment of local residents;
- (b) consider indirect benefits that have flow on benefits for local suppliers (i.e. servicing and support);
- (c) ensure that procurement plans, and analysis is undertaken prior to develop Requests to understand local business capability and local content availability where components of goods or services may be sourced from within the Shire boundaries for inclusion in selection criteria;
- (d) explore the capability of local businesses to meet requirements and ensure that Requests for Quotation and Tenders are designed to accommodate the capabilities of local businesses;
- (e) avoid bias in the design and specifications for Requests for Quotation and Tenders – all Requests must be structured to encourage local businesses to bid;
- (f) consider the adoption of Key Performance Indicators (KPIs) within contractual documentation that require successful Contractors to increase the number of employees from the District first; and

(g) provide adequate and consistent information to local suppliers.

To this extent, a weighted qualitative criterion will be included in the selection criteria for Requests for Quotation and Tenders where suppliers are located within the boundaries of the Shire, or substantially demonstrate a benefit or contribution to the local economy.

(h) A local price preference shall be given to suppliers located within the Shire boundaries

Where the total 'net cost' of the lowest submitted quotation is less than \$100,000 10% - shall be applied to the 'net cost'

In the case of tenders 10% - shall be applied to the 'net cost', up to a maximum of \$50,000.
--

3. Panels of Pre-qualified Suppliers

3.1. Objectives

Council will consider creating a Panel of Pre-qualified Suppliers ("Panel") when a range of similar goods and services are required to be purchased on a continuing and regular basis.

Part of the consideration of establishing a panel includes:

- (a) there are numerous potential suppliers in the local and regional procurement related market sector(s) that satisfy the test of 'value for money';
- (b) the Panel will streamline and will improve procurement processes; and
- (c) Council has the capability to establish a Panel, and manage the risks and achieve the benefits expected of the proposed Panel through a Contract Management Plan.

3.2. Establishing and managing a panel

If the Shire decides that a Panel is to be created, it will establish the panel in accordance with the Regulations.

Panels will be established for one supply requirement, or a number of similar supply requirements under defined categories. This will be undertaken through an invitation procurement process advertised via a state-wide notice.

Panels may be established for a maximum of three (3) years. The length of time of a Local Panel is decided with the approval of the CEO/ Executive Director.

Evaluation criteria will be determined and communicated in the application process by which applications will be assessed and accepted.

In each invitation to apply to become a pre-qualified supplier, the Shire will state the expected number of suppliers it intends to put on the panel.

If a Panel member leaves the Panel, the Shire will consider replacing that organisation with the next ranked supplier that meets/exceeds the requirements in the value for money assessment – subject to that supplier agreeing. Council will disclose this approach in the detailed information when establishing the Panel.

A Panel contract arrangement needs to be managed to ensure that the performance of the Panel Contract and the Panel members under the contract are monitored and managed.

This will ensure that risks are managed and expected benefits are achieved. A Contract Management Plan should be established that outlines the requirements for the Panel Contract and how it will be managed.

3.3. Distributing work amongst panel members

To satisfy Regulation 24AD(5) of the Regulations, when establishing a Panel of pre-qualified suppliers, the detailed information associated with each invitation to apply to join the Panel will prescribe one of the following as to whether Council intends to:

- (a) obtain quotations from each pre-qualified supplier on the Panel with respect to all discreet purchases; or
- (b) purchase goods and services exclusively from any pre-qualified supplier appointed to that Panel, and under what circumstances; or
- (c) develop a ranking system for selection to the Panel, with work awarded in accordance with the Regulations.

In considering the distribution of work among Panel members, the detailed information will also prescribe whether:

- (a) each Panel member will have the opportunity to bid for each item of work under the Panel, with pre-determined evaluation criteria forming part of the invitation to quote to assess the suitability of the supplier for particular items of work. Contracts under the pre-qualified panel will be awarded on the basis of value for money in every instance; or
- (b) work will be awarded on a ranked basis, which is to be stipulated in the detailed information set out under *Functions and General Regulation 24AD(5)(f)* when establishing the Panel.
 - i. Council will invite the highest ranked Panel member, who is to give written notice as to whether to accept the offer for the work to be undertaken.
 - ii. Should the offer be declined, an invitation to the next ranked Panel member is to be made and so forth until a Panel member accepts a Contract.
 - iii. Should the list of Panel members invited be exhausted with no Panel member accepting the offer to provide goods/services under the Panel, Council may then invite suppliers that are not pre-qualified under the Panel, in accordance with the Purchasing Thresholds stated in clause 1.4.2(2) of this Policy.
 - iv. When a ranking system is established, the Panel will not operate for a period exceeding 12 months.

In every instance, a contract must not be formed with a pre-qualified supplier for an item of work beyond 12 months, which includes options to extend the contract.

3.4. Purchasing from the panel

The invitation to apply to be considered to join a panel of pre-qualified suppliers must state whether quotations are either to be invited to every Panel member (within each category, if applicable) of the Panel for each purchasing requirement, whether a ranking system is to be established, or otherwise.

3.5. Communications with panel members

Council will ensure clear, consistent and regular communication with Panel Members.

Each quotation process, including the invitation to quote, communications with Panel members, quotations received, evaluation of quotes and notification of award communications must all be made through Council electronic Procurement system.

4. Sustainable Purchasing – Managing Social and Environmental Impacts

Council recognises that the procurement of goods and services that have less environmental and social impacts than competing products and services is aligned to its sustainability objectives. Council will endeavour to lead by example and set a high benchmark for both socially and environmentally sustainable procurement practices. Considering the environmental and social impacts in goods and services procurement will contribute towards:

- managing risk to the broader environment and local community from the purchase of goods and services;
- fostering both the development of, and a viable market for, products and processes that have positive environmental and social impact;
- undertaking procurement in a manner that is consistent with the principles of sustainability; and
- providing an example to business, industry and the community in promoting the use of low environmental and social impact goods and services.

Where appropriate, Council will endeavour to design quotations and tenders to provide an advantage to goods, services and/or processes that minimise negative environmental and social impact. This advantage will be commensurate with the nature of the purchasing and balanced against the Council's value for money outcomes in accordance with its sustainability objectives.

5. Record Keeping

All Local Government purchasing activity, communications and transactions must be evidenced and retained as local government records in accordance with the *State Records Act 2000* and Council's Record Keeping Plan.

In addition, Council must consider and will include in each contract for the provision of works or services, the contractor's obligations for creating, maintaining and where necessary the transferral of records to Council relevant to the performance of the contract.

6. Purchasing Policy Non-Compliance

The Purchasing Policy is mandated under the *Local Government Act 1995* and Regulation 11A of the *Local Government (Functions and General) Regulations 1996* and therefore the policy forms part of the legislative framework in which the Local Government is required to conduct business.

Where legislative or policy compliance is not reasonably able to be achieved, records must evidence the rationale and decision making processes that substantiate the non-compliance.

Shire of Collie Policy Manual – Corporate Services Policies

Purchasing activities are subject to internal and external financial and performance audits, which examine compliance with legislative requirements and Council's policies and procedures.

If non-compliance with; legislation, this Purchasing Policy or the Code of Conduct, is identified it must be reported to the Chief Executive officer or the Finance Manager.

A failure to comply with legislation or policy requirements, including compliance with the Code of Conduct when undertaking purchasing activities, may be subject to investigation, with findings to be considered in context of the responsible person's training, experience, seniority and reasonable expectations for performance of their role.

Where a breach is substantiated it may be treated as:

- (a) an opportunity for additional training to be provided;
- (b) a disciplinary matter, which may or may not be subject to reporting requirements under the *Public Sector Management Act 1994*; or
- (c) where the breach is also identified as potentially serious misconduct, the matter will be reported in accordance with the *Corruption, Crime and Misconduct Act 2003*.

Policy adoption and review

Council meeting held:	14 July 2020
Adopted by Minute No:	8495
Date to be reviewed:	July 2023

GOODS AND/OR SERVICES CONTRACT CONDITIONS

**Shire of Collie of 87 Throssell Street, Collie, WA [ABN 80 581 297 683]
(Principal)**

and

Insert business name [insert ABN] (Contractor)

(together, the Parties)

Date of Contract: insert date

TABLE OF CONTENTS

PART A – DEFINITIONS AND INTERPRETATION	4
1 Definitions	4
2 Interpretation	8
PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY	8
3 Quality of Goods, sources of supply and substitution	8
4 Quantities of Goods	9
5 Delivery obligations and Delivery Point	9
6 Property and risk in the Goods	9
7 Sale of Goods Act	9
PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY	10
8 Quality of Services	10
9 Quantity and value of Services	10
PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES	10
10 Supply of Goods and/or Services	10
11 Plant and Equipment	11
12 Orders under a Long-Term Award	11
13 Time for performance and extensions of time	11
14 Receipt and Acceptance of Goods and/or Services	12
15 Rejection and removal of Defective Goods and/or Defective Services	12
16 Failure to provide Goods and/or Services	13
17 Information	13
18 Price basis	13
19 Formation of contract and Term	14
20 Contractor to have informed itself	14
21 Conflict of interest	14
22 Legal Requirements, industrial awards and Standards and Procedures	15
23 Safety obligations	15
24 Contractor's Personnel	16
25 Representatives	16
26 Invoicing and payment	17
27 Goods and services tax	17
28 Access to Principal's Premises and Principal's Documents	17
29 Confidentiality	18
30 Data security	19
31 Intellectual Property Rights	19
32 Liability and indemnity	20
33 Insurance and risk management	21
34 Force Majeure Event	24

35	Settlement of Disputes	24
36	Default, suspension and termination for breach	25
37	Termination	26
38	Assignment and subcontracting	26
39	Restructure of the Principal	27
40	Notices	27
41	General	27
EXECUTION		29
Schedule 1		30

BACKGROUND

- (a) The Principal has engaged the Contractor to provide the Goods and/or Services.
- (b) This Document sets out the terms and conditions upon which the Contractor shall provide the Goods and/or Services to the Principal.

OPERATIVE PART

PART A – DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

In this Document, except where the context indicates otherwise:

Acceptance means acceptance of the Goods and/or Services which occurs on the earlier of:

- (a) the Principal notifying the Contractor in writing that the Goods and/or Services are accepted; or
- (b) the expiry of the day 14 days after delivery of the Goods to the Delivery Point or completion of the Services where the Principal has not, during that 14 day period, notified the Contractor in writing that the Goods and/or Services, as the case may be, are rejected.

Affected Obligation has the meaning given in clause 34.1(a).

Approval means any certificate, licence, consent, permit, approval, authority or requirement necessary for the provision of the Goods and/or Services.

Assessment Notice means an assessment notice under section 12 of the Working With Children Act.

Authority means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

Background Intellectual Property Rights means any Intellectual Property Rights owned by a Party prior to the commencement of the Contract or which did not come into existence by reason of the Contract, and which a Party is entitled to exercise and sub-license, which are embodied in, attached to or otherwise relate to the Contract.

Business Days means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

Child-Related Work has the meaning given in section 6 of the Working With Children Act.

Child-Related Site means a location at which Goods are to be delivered and/or Services are to be performed where children are likely to be present.

Completion Date means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in an Order or agreed by the Parties in writing. To avoid doubt, there may be multiple Completion Dates where the Contract applies to multiple Orders of Goods and/or Services.

Confidential Information means:

- (a) the Contract;
- (b) information relating to the Principal's past, existing or future business, strategic plans or operations, finances, or customers;
- (c) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential;

- (d) any report, opinion or advice prepared by the Contractor which the Principal advises is to be prepared on a confidential basis; and
- (e) any copies, extracts or summaries of the information described in paragraphs (a) to (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by any other person.

Conflict of Interest means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively.

Consequential Loss means any:

- (a) loss of production, revenue, profit, business reputation, opportunities or anticipated savings; and
- (b) loss arising from wasted overheads or business interruptions.

Contract means the agreement between the Parties regarding the supply of the Goods and/or Services containing the terms and conditions set out in this Document.

Contract Price means the prices or rates specified in an Order as the amount to be paid by the Principal for the provision of the Goods and/or Services the subject of that Order or otherwise set out in the Contract. To avoid doubt, there may be multiple Contract Prices where the Contract applies to multiple Orders of Goods and/or Services.

Contractor means the party who is engaged by the other party to provide the Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

Contractor's Vehicles and Equipment has the meaning given in clause 33.4.

Cyber Incident means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Principal Data residing on that system.

Defective means defective, of an inferior quality or inconsistent with the requirements of the Contract.

Defects Liability Period means the period of 12 months beginning on the Completion Date.

Delivery Point means the place for the delivery of Goods specified in the Order or agreed in writing by the Parties or directed by the Principal to the Contractor in writing.

Disbursement means reasonable out-of-pocket costs and expenses incurred by a Contractor in providing the Services which are:

- (a) charged to the Principal at cost; and
- (b) incidental to the provision of the Services.

Dispute means any dispute or difference between the Parties in connection with the Contract.

Dispute Notice has the meaning given in clause 35.1.

Document means this document called 'Goods and/or Services Contract Conditions'.

Extension Request has the meaning given in clause 13.4.

Force Majeure Event means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty;

- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or
- (d) a change in any Law or any authority exercised by an Authority or official by Law.

Force Majeure Event Termination Period means 120 consecutive days.

Goods means the goods specified in an Order, the request for quotation document, the request response or otherwise specified in the Contract.

GST means goods and services tax applicable to any taxable supplies as determined under the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax.

Insolvency Event means:

- (a) in relation to a corporation, where that corporation:
 - (i) goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
 - (ii) is otherwise dissolved;
 - (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
 - (iv) enters into any composition or scheme of arrangement with its creditors;
 - (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
 - (vi) is otherwise unable to pay all its debts as and when they fall due; and
- (b) in relation to a natural person, where that natural person:
 - (i) commits an act of bankruptcy;
 - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party;
 - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
 - (iv) is otherwise unable to pay all its debts as and when they fall due.

Insurances means the insurances which the Contractor is required to obtain under clause 33.

Intellectual Property Right means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, semi-conductor, circuit and other eligible layouts, copyright (including future copyright), database rights and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time including any application or right to apply for any of these rights.

Invoice means a valid tax invoice under the GST Law.

Law means statute, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or law of the Principal.

Legal Requirement means a requirement under any Law or Approval including a requirement to pay any fees and charges in connection with any Law or Approval.

Letter of Award means an Order or Long-Term Award issued by the Principal to the Contractor accepting the Request Response.

Long-Term Award means the acceptance of a Request Response relating to the provision of goods and/or services in the future where the nature of the goods and/or services to be provided are not stated or known at the time of formation of the Contract and will be the subject of future Orders.

Loss means any liability, loss, damage, cost (including litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, demand, expense or proceeding whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising.

Order means a purchase order or other written direction from the Principal to the Contractor which requires the supply of specified Goods and/or Services.

Original Product has the meaning given in clause 3.3.

OSH Laws means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under the Contract are being performed. This includes the *Occupational Health and Safety Act 1984* (WA), in addition to any other relevant legislation or regulations.

Parties means the Principal and the Contractor.

Personnel means the personnel engaged by the Principal, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, contractors and Sub-contractors and any director, officer, employee or agent of any contractor or Sub-contractor, but when used in the context of the Principal's Personnel, does not include the Contractor or the Contractor's Personnel.

Plant and Equipment means all materials, plant, equipment, tools, vehicles and machinery necessary for the performance of the Contractor's obligations under the Contract.

Principal means the party engaging the other Party to provide Goods and/or Services under the Contract and whose details may be set out on the front page of this Document.

Principal Data means information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Goods and/or Services or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract.

Principal Request means the written request provided by the Principal to the Contractor to submit an offer and price to provide the Goods and/or Services.

Principal's Documents means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, the Principal.

Principal's Premises means any property under the control, care and management of the Principal.

Request Response means the offer submitted by the Contractor to supply the Goods and/or Services made in response to a Principal Request.

Sale of Goods Act means the *Sale of Goods Act 1895* (WA).

Services means the services identified in the Order, the request for quotation document, the request response or otherwise specified in the Contract, and services that are ancillary to such services.

Specification means a specification or scope of works for the Goods and/or Services:

- (a) provided by the Principal to the Contractor before the Contractor provided its Request Response; or
- (b) developed after the Contractor provided its Request Response or after the Contract came into effect, and agreed to by the Parties.

Specified Personnel means Personnel of the Contractor proposed in a Request Response to perform functions in relation to the provision of the Goods and/or Services.

Standards and Procedures means any guidelines, rules, requirements or information regarding site-specific conditions or the Principal's operations made available to the Contractor by the Principal from time to time.

Start Date means the date specified as such in the Principal Request or, where no such date is specified in the Principal Request, means the date that the Parties agree in writing that the Contractor must commence the Services.

Sub-contractor means any person or entity engaged by the Contractor in connection with the provision of the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors, but does not include the Contractor's employees.

Substitute Product has the meaning given in clause 3.3.

Transition Plan means a written plan to facilitate the transition of the supply of the Goods and/or Services from the Contractor to another supplier or from another supplier to the Contractor.

Wilful Misconduct means any wrongful act or omission that was intentionally done or involved reckless disregard to the likely consequences, including an intentional breach of the Contract.

Working With Children Act means the *Working With Children (Criminal Record Checking) Act 2004* (WA).

2 INTERPRETATION

In this Document, unless the context suggests otherwise:

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

PART B – PROVISIONS APPLICABLE TO THE SUPPLY OF GOODS ONLY

3 QUALITY OF GOODS, SOURCES OF SUPPLY AND SUBSTITUTION

3.1 The Contractor must ensure that all Goods:

- (a) comply with the requirements of the relevant Order and conform to any samples provided;

- (b) are in accordance with relevant Australian Standards or, where no Australian Standard exists, any relevant ISO Standard;
- (c) are properly, safely and securely packaged and labelled for identification; and
- (d) are of merchantable quality and fit for their intended purpose.

3.2 **The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties applicable to the Goods.**

3.3 **With the Principal's consent and subject to any necessary variation to the Contract Price, the Contractor may permanently or temporarily substitute another product (Substitute Product) for any aspect of the Goods to be provided under the Contract (Original Product). To avoid doubt, the supply of the Substitute Product shall satisfy the Contractor's obligations to supply the Original Product.**

4 QUANTITIES OF GOODS

4.1 **The Contractor must supply to the Principal the Goods in the quantity specified in the relevant Order.**

4.2 **If the Contractor delivers more Goods than the quantity specified in the relevant Order, the Contractor must, upon the Principal's direction, collect the excess Goods from the Principal at the Contractor's risk and expense, unless the Principal elects, in its discretion, to return the excess Goods to the Contractor, which is done at the Contractor's sole risk and expense.**

5 DELIVERY OBLIGATIONS AND DELIVERY POINT

The Contractor must deliver the Goods to the Delivery Point and in doing so must:

- (a) not interfere with the Principal's activities;
- (b) leave the Delivery Point secure and fit for immediate use;
- (c) obtain the signature of a member of the Principal's Personnel who receives delivery of the Goods; and
- (d) where it is not possible to satisfy clause 5(c), leave the Goods where requested by the Principal.

6 PROPERTY AND RISK IN THE GOODS

6.1 **Subject to this Document, the Parties agree that:**

- (a) risk in the Goods shall pass from the Contractor to the Principal on Acceptance; and
- (b) upon payment for the Goods, property in the Goods shall pass to the Principal.

6.2 **The Contractor warrants that it has complete ownership of the Goods free of any liens, charges and encumbrances.**

7 SALE OF GOODS ACT

The Principal and Contractor acknowledge and agree that:

- (a) the Sale of Goods Act applies to the Contract; and
- (b) to the extent that there is any inconsistency between the Sale of Goods Act and the Contract, and to the extent permitted by Law, the Contract applies rather than the Sale of Goods Act.

PART C – PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES ONLY

8 QUALITY OF SERVICES

8.1 The Contractor must ensure that the Services provided by the Contractor:

- (a) match the description of the Services set out in the Order or otherwise in the Contract;
- (b) are fit for their intended purpose;
- (c) where they relate to design, the works or goods being designed are fit for their intended purpose;
- (d) are performed with the professional skill, care and diligence expected of a person with the skills, experience, expertise and resources necessary to competently provide the Services; and
- (e) are provided in accordance with any Specification.

8.2 The Contractor warrants, and agrees to ensure, that its Personnel engaged to perform the Services have the necessary skills, experience, expertise, licences, training, qualifications, approvals and resources available to it to competently and lawfully perform the Services.

8.3 The Contractor must regularly consult with the Principal about the progress of the Services and attend meetings where reasonably requested by the Principal.

9 QUANTITY AND VALUE OF SERVICES

The Principal shall only be required to take or accept, and pay for, the quantity of the Services set out in the relevant Order, any Specification, or otherwise in the Contract, unless otherwise agreed by the Parties.

PART D – PROVISIONS APPLICABLE TO THE PROVISION OF GOODS AND/OR SERVICES

10 SUPPLY OF GOODS AND/OR SERVICES

10.1 The Contractor must:

- (a) at its expense, obtain any Approvals necessary for the provision of the Goods and/or Services;
- (b) at its expense, comply with all reasonable directions of the Principal regarding the provision of the Goods and/or Services, including regarding the transition of the provision of the Goods and/or Services from an alternative supplier to the Contractor;
- (c) where the Principal provides the Contractor with written notice that an alternative supplier will, in the future, be supplying the Principal with the Goods and/or Services provided under the Contract, at its expense provide reasonably requested assistance to the Principal in transitioning the supply of the Goods and/or Services to the new supplier, including making arrangements for the novation or assignment of relevant contracts with third parties;
- (d) comply with any Transition Plan; and
- (e) co-operate with any third party service provider appointed by the Principal where necessary to ensure the integrated and efficient conduct of the Principal's operations and provide reasonable assistance to such other service providers as requested by the Principal from time to time, provided that the Contractor will be

entitled, by prior written agreement with the Principal, to charge for costs incurred as a direct result of providing such co-operation and assistance.

10.2 The Principal must provide the Contractor with any information reasonably necessary for the Contractor to provide the Goods and/or Services.

10.3 If a Transition Plan is not developed prior to the Contract coming into effect between the Parties, the Principal may:

- (a) make a written request to the Contractor to prepare a draft Transition Plan for the Principal's review within a reasonable period of time specified by the Principal and the Contractor must comply with that request; and
- (b) accept or propose reasonable amendments to the draft Transition Plan prepared by the Contractor in accordance with clause 10.3(a) and provide a final version of the Transition Plan to the Contractor.

11 PLANT AND EQUIPMENT

The Contractor must:

- (a) provide all Plant and Equipment and labour necessary for the performance of the Contractor's obligations; and
- (b) ensure that Plant and Equipment and other items which the Contractor uses or supplies in connection with the Contract comply with Legal Requirements and are fit for their usual and intended purpose.

12 ORDERS UNDER A LONG-TERM AWARD

12.1 This clause applies where the Letter of Award is a Long-Term Award.

12.2 From time to time the Principal may give the Contractor an Order containing the following information:

- (a) a description and/or specification of the Goods and/or Services required, including the required quantity;
- (b) the Completion Date; and
- (c) where the Order relates to Goods, the Delivery Point.

12.3 Within 5 Business Days of receipt of an Order the Contractor must give notice to the Principal of:

- (a) any aspect of the Order which it does not accept and supporting reasons; and/or
- (b) any recommended changes to the Order and supporting reasons,

following which the Parties shall seek to agree on the terms of the Order and a revised Order shall be issued by the Principal to the Contractor.

12.4 If the Contractor does not give notice under clause 12.3, the Contractor must fulfil the Order.

12.5 To avoid doubt, the Principal is not obliged to issue Orders to, or otherwise purchase Goods and/or Services from, the Contractor.

13 TIME FOR PERFORMANCE AND EXTENSIONS OF TIME

13.1 The Contractor must commence the provision of the Services on the Start Date.

- 13.2 **Subject to this clause 13, the Contractor shall deliver the Goods to the Delivery Point and/or perform the Services, as the case may be, by the Completion Date.**
- 13.3 **The Contractor is entitled to an extension to the Completion Date if a delay to the provision of the Goods and/or Services is due to:**
- (a) a breach by the Principal of the Contract;
 - (b) delay or disruption caused by the Principal, except where such delay or disruption is caused by the Principal acting in accordance with the Contract;
 - (c) a Force Majeure Event occurring before the Completion Date;
 - (d) suspension of the Contract under clause 36.3 where the suspension is the result of a breach by the Principal; or
 - (e) a variation being agreed to the nature of the Goods and/or Services provided.
- 13.4 **To obtain an extension, the Contractor must make a written request to the Principal within 10 Business Days after the cause of delay has arisen or within any other period agreed in writing by the Parties, which request must include the facts on which the request is based (Extension Request).**
- 13.5 **The Principal, acting reasonably, must notify the Contractor within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether an extension of time to the Completion Date is granted and any relevant period of extension, which must be reasonable in the circumstances giving rise to the Extension Request.**

14 RECEIPT AND ACCEPTANCE OF GOODS AND/OR SERVICES

- 14.1 **The Parties agree that:**
- (a) delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal; and
 - (b) Acceptance by the Principal is without prejudice to the Principal's rights in respect of the Defects Liability Period applicable to any Goods and/or Services.
- 14.2 **If, following any review, inspection, examination or witnessing of the Goods and/or Services, the Principal is not satisfied that the Goods and/or Services are being, or have been, provided in compliance with the Contract, the Contractor must, after receiving a written request from the Principal, promptly take all steps necessary to ensure compliance.**

15 REJECTION AND REMOVAL OF DEFECTIVE GOODS AND/OR DEFECTIVE SERVICES

- 15.1 **During the Defects Liability Period, the Principal may notify the Contractor in writing that any Goods and/or Services provided are Defective.**
- 15.2 **Where the Principal notifies the Contractor under clause 15.1, the Principal may direct the Contractor to replace, rectify or re-perform the Goods and/or Services, as the case may be, free of charge to the Principal and within a reasonable time specified by the Principal.**
- 15.3 **The Contractor must comply with a direction under clause 15.2 within the time period specified in the notice or otherwise agreed in writing by the Parties.**
- 15.4 **Where the Contractor does not, or advises the Principal that it cannot, comply with a direction in accordance with clause 15.3, the Principal may give the Contractor**

written notice of its intention to rectify, replace or have re-performed the Goods and/or Services by a third party, together with the estimated and itemised reasonable costs of the Principal in rectifying, replacing or having re-performed the Goods and/or Services.

- 15.5 Following receipt of a notice under clause 15.4 from the Principal, the Contractor has 5 Business Days to notify the Principal in writing as to whether the Contractor will replace, rectify or re-perform the Goods and/or Services and to reach agreement with the Principal regarding the timeframe for doing so, otherwise the Principal may rectify, replace or have re-performed the Goods and/or Services and recover its costs in doing so from the Contractor.
- 15.6 Where the Contractor has made good any Defective Goods and/or Services, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods and/or Services from the date the Contractor completes making good the Defective Goods and/or Services.
- 15.7 The Principal shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Contractor has been notified in writing by the Principal that they are Defective.
- 15.8 Without limiting clause 32, any cost or expense reasonably incurred by the Principal in connection with, or as a result of, the Defective Goods and/or Services shall be a debt due from the Contractor to the Principal.
- 15.9 To avoid doubt, nothing in this clause shall prejudice any other right of the Principal arising out of the failure by the Contractor to provide Goods and/or Services in accordance with the Contract.

16 FAILURE TO PROVIDE GOODS AND/OR SERVICES

- 16.1 The Contractor must provide written notice to the Principal as soon as possible if the Contractor is unable to provide the Goods and/or Services and the period of time for which the Contractor will be so unable.
- 16.2 Where the Contractor provides written notice to the Principal under clause 16.1, the Principal may, acting reasonably, and without being liable in any way to the Contractor, obtain or acquire such goods and/or services as it requires from a third party until the Principal receives a further written notice from the Contractor that the Contractor is able to recommence the provision of Goods and/or Services.

17 INFORMATION

The Contractor must keep the Principal fully informed about:

- (a) any matters that may adversely affect the Contractor's ability to provide the Goods and/or Services; and
- (b) delivery of the Goods and/or completion of the Services.

18 PRICE BASIS

- 18.1 The Contract Price shall be firm and not subject to rise and fall.
- 18.2 To avoid doubt, the Principal's liability to the Contractor for the Contractor's costs in providing the Goods and/or Services is capped at the Contract Price, unless otherwise agreed in writing by the Parties.

19 FORMATION OF CONTRACT AND TERM

- 19.1 **Where this Document is executed by the Parties, the Contract shall be formed, and shall commence, on the date that the last Party executes this Document.**
- 19.2 **Where this Document is not executed by the Parties:**
- (a) **the Contract shall be formed, and shall commence, on the date of the Letter of Award; and**
 - (b) **the Parties agree that the terms and conditions in this Document are incorporated within the Contract and the failure of either Party to execute this Document does not affect the incorporation of those terms and conditions within the Contract or the Contract's existence.**
- 19.3 **The Contract shall terminate 10 Business Days after Acceptance or upon expiry of the time period specified in the Letter of Award, whichever is the later, subject to clauses 19.4 and 19.5.**
- 19.4 **The Parties may agree in writing to extend the term for an agreed period of time.**
- 19.5 **The Contract may terminate before the expiry of the period of time in clause 19.3:**
- (a) **if the Parties agree in writing; or**
 - (b) **otherwise in accordance with this Document.**
- 19.6 **The termination of the Contract does not affect:**
- (a) **any rights of the Parties accrued before the date of termination; and**
 - (b) **the rights and obligations of the Parties which survive termination.**
- 19.7 **Clauses 1 (definitions), 2 (interpretation), 3.2 (manufacturer's warranties), 6.2 (warranty regarding property in goods), 8.2 (warranties regarding personnel), 10.1(c) and 10.1(d) (transition out), 14 (Acceptance and Defects Liability Period), 15 (Defective Goods and/or Services), 19.6 and 19.7 (term), 20 (Contractor to have informed itself), 29 (Confidentiality), 30 (Data security), 31 (Intellectual Property Rights), 32 (Liability and indemnity), 35 (Settlement of disputes), 37.2 to 37.4 (inclusive) (termination), 40 (Notices), 41.1 (relationship of Parties) and 41.7 (Governing law) shall survive termination of the Contract.**

20 CONTRACTOR TO HAVE INFORMED ITSELF

By providing the Request Response, the Contractor acknowledges that it has:

- (a) **examined carefully, and has acquired actual knowledge of the contents of, its Request Response, this Document and any other information made available in writing by the Principal to the Contractor for the purposes of the Request Response and the Contract; and**
- (b) **satisfied itself as to the correctness and sufficiency of the Request Response and that the Contract Price covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the proper performance and completion of the Contract.**

21 CONFLICT OF INTEREST

- 21.1 **The Contractor warrants that, to the best of its knowledge, as at the date of providing the Request Response:**

- (a) the Contractor has declared in its Request Response any Conflicts of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
 - (b) the information contained in the Contractor's Request Response as to the existence of any Conflicts of Interest is correct and comprehensive.
- 21.2 If a Conflict of Interest or risk of Conflict of Interest arises, including because of work undertaken by the Contractor for a person other than the Principal, the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Principal.

22 LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND STANDARDS AND PROCEDURES

- 22.1 The Contractor shall comply with all Legal Requirements, Standards and Procedures affecting or applicable to the Goods and/or Services and/or the performance of the Contract and ensure that its Personnel also comply with the same, at the Contractor's cost.
- 22.2 The Contractor shall:
 - (a) comply with all industrial awards or agreements affecting or applicable to the persons engaged by the Contractor for the purposes of providing the Goods and/or Services;
 - (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in industrial awards and agreements and any code of practice that may apply to a particular industry;
 - (c) to the extent practicable, use reasonable endeavours to ensure that its Sub-contractors satisfy the requirements of clauses 22.2(a) and 22.2(b) in relation to the Sub-contractors' own employees; and
 - (d) ensure that it pays each of its Sub-contractors in accordance with the Contractor's agreement with that Sub-contractor, subject to the Contractor's acceptance of the goods and/or services provided by the Sub-contractor.

23 SAFETY OBLIGATIONS

- 23.1 The Contractor must:
 - (a) do all things reasonably necessary to ensure that the Goods and/or Services are provided in a manner that is safe and not likely to cause injury or illness to any person; and
 - (b) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the role of the Contractor under the Contract including notification of incidents as may be required under OSH Laws.
- 23.2 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:
 - (a) as soon as practicable, but in any event within 24 hours, notify the Principal of that injury, property damage, accident or incident; and
 - (b) provide the Principal with any further information requested by the Principal.

- 23.3 **The Contractor acknowledges that if, in performing its obligations under the Contract, its Personnel enter premises under the control of the Principal or the Principal's Personnel they must comply with the Principal's occupational health and safety policies and procedures and do so at the Contractor's own risk.**
- 23.4 **Without limiting clauses 36.3 to 36.5 (inclusive), any breach by the Contractor of OSH Laws or this clause which gives rise to circumstances which:**
- (a) present actual or potential risk of life or serious injury; or
 - (b) are otherwise required to be notified under OSH Laws,
- entitles the Principal to suspend the whole or part of the performance of the Contractor's obligations.

24 CONTRACTOR'S PERSONNEL

- 24.1 **The Contractor must, and must ensure its Personnel, when providing the Goods and/or Services:**
- (a) comply with all reasonable directions given by the Principal or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to the Goods and/or Services;
 - (b) do not cause any damage, loss or injury to any property or person; and
 - (c) act, in all circumstances and at all times, in a fit and proper manner.
- 24.2 **If the Contractor proposes to replace, or have another of its Personnel perform any functions of, any Specified Personnel, it must obtain the prior written approval of the Principal.**
- 24.3 **The Contractor must provide the Principal with an Australia-wide police clearance in respect of any of its Personnel within 30 Business Days of such a request being made in writing by the Principal to the Contractor.**
- 24.4 **If any police clearance obtained under clause 24.3 evidences that any of the Contractor's Personnel has committed a criminal offence punishable by imprisonment or detention, the Principal may, without prejudice to its other rights under the Contract, request the Contractor to promptly remove that person from involvement in the provision of the Goods and/or Services, and the Contractor must comply with such a request as soon as possible.**
- 24.5 **If the Goods and/or Services to be provided by the Contractor involve Child-Related Work or involve the delivery of the Goods and/or Services at a Child-Related Site:**
- (a) the Contractor must provide to the Principal an Assessment Notice in respect of all Personnel involved in performing the Child-Related Work, or providing the Services or delivering Goods at the Child-Related Site, before they commence such work; and
 - (b) the Principal may require the Contractor to immediately remove any of the Contractor's Personnel who do not have a current Assessment Notice and the Contractor must comply with such a request as soon as possible.

25 REPRESENTATIVES

Each Party may appoint a Representative, and give them authority, to act on its behalf for the purpose of the Contract within delegation limits advised in writing to the other Party.

26 INVOICING AND PAYMENT (SEE SCHEDULE 2)

- 26.1 Subject to the Contractor satisfactorily providing the Goods and/or Services, the Principal must pay the Contractor the Contract Price in accordance with this clause 26 and the Contractor's preferred payment methodology (if any) as notified in writing by the Contractor to the Principal.
- 26.2 As soon as reasonably practicable following the end of each month, or at another time or frequency agreed in writing by the Parties, the Contractor must provide to the Principal an Invoice for the provision of the Goods and/or Services or any delivered or completed part of the Goods and/or Services.
- 26.3 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices issued in accordance with this clause within 20 Business Days of issue to the Principal or such other period as agreed in writing by the Parties, except where the Principal disputes the Invoice, in which case, to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute.
- 26.4 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Principal and the Principal approved the Disbursement in writing. To avoid doubt, the Principal must not unreasonably withhold its consent to any reasonable Disbursements.
- 26.5 A payment made pursuant to the Contract is taken to be payment on account and is not proof or admission of the value of the Goods and/or Services provided or that the Goods delivered and/or the Services performed, or any part thereof, were to the Principal's satisfaction.
- 26.6 The Parties agree that failure by the Principal to pay the amount payable at the due time will not be grounds for the Contractor to terminate, invalidate or avoid the Contract.

27 GOODS AND SERVICES TAX

- 27.1 Words capitalised in this clause 27 and not otherwise defined have the meaning given in the GST Law.
- 27.2 Where an amount of Consideration is payable for a Taxable Supply made under the Contract (whether that amount is specified or can be calculated in accordance with the Contract), it does not include GST and must be increased by the GST Rate.
- 27.3 The Party making a Taxable Supply under the Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
- 27.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under the Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

28 ACCESS TO PRINCIPAL'S PREMISES AND PRINCIPAL'S DOCUMENTS

- 28.1 The Principal agrees to provide the Contractor with access to the Principal's Premises and Principal's Documents as reasonably required to provide the Goods and/or Services.

- 28.2 **The Contractor must only use the Principal's Documents for the sole purpose of providing the Goods and/or Services and must take reasonable security measures to protect the Principal's Documents from unauthorised disclosure or use.**
- 28.3 **The Contractor acknowledges and agrees that:**
- (a) the Principal may need to obtain the consent of third parties to the disclosure of Principal's Documents to the Contractor;
 - (b) the Principal may, acting reasonably, suspend or deny the Contractor's access to the Principal's Premises or Principal's Documents at any time; and
 - (c) where the Principal has suspended or denied the Contractor's access to the Principal's Premises or the Principal's Documents, the Contractor shall only be able to gain or regain access upon written notice from the Principal.

29 CONFIDENTIALITY

29.1 **In this clause 29 the following terms have the following meanings:**

- (a) **'Disclosing Party'** means the Party which has disclosed Confidential Information that is confidential to that Party; and
- (b) **'Receiving Party'** means the Party to whom Confidential Information is disclosed by the Disclosing Party.

29.2 **Subject to clause 29.3, the Parties must not:**

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information except to the extent necessary to fulfil their obligations under the Contract.

29.3 **Subject to clause 29.4, a Party may disclose Confidential Information to a third party:**

- (a) with the prior consent of the Disclosing Party;
- (b) to the extent required by any Law or applicable securities regulation or rule;
- (c) in connection with any dispute or litigation concerning the Contract or its subject matter;
- (d) to the extent required by any Authority having jurisdiction over the Receiving Party; or
- (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under the Contract.

29.4 **Before making a disclosure to a person under clause 29.3, the Receiving Party must:**

- (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under the Contract, except where clause 29.3(b) applies;
- (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) where clause 29.3(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting

reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the Contract.

30 DATA SECURITY

30.1 The Contractor must:

- (a) do all things that a reasonable and prudent person or entity would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- (b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and
- (c) either return to the Principal or destroy any Principal Data immediately following the termination of the Contract.

30.2 If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 33 shall apply to this insurance with any necessary modifications.

31 INTELLECTUAL PROPERTY RIGHTS

31.1 The Contractor warrants that any supply by it of the Goods and/or Services and any designs, documents or methods of working provided by it to the Principal in doing so does not infringe any Intellectual Property Right.

31.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the supply of the Goods and/or Services or from any designs, documents or methods of working provided by it to the Principal.

31.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.

31.4 The Contractor grants to the Principal a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of the Contract.

31.5 The Principal grants the Contractor a revocable, royalty-free and non-transferable licence to use any Principal's Background Intellectual Property Rights to the extent necessary for the Contractor to supply the Goods and/or Services.

31.6 All Intellectual Property Rights (other than the Contractor's Background Intellectual Property Rights) in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract will vest in the Principal. The Contractor must do everything necessary to perfect such vesting at the Contractor's cost or as otherwise agreed by the Parties.

31.7 The Contractor must ensure that:

- (a) copyright and any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under the Contract do not vest in any Sub-contractor of the Contractor or any other third party; and

- (b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Goods and/or Services or the Contract contrary to the interests of the Principal.

31.8 A Party must not:

- (a) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or
- (b) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.

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

32 LIABILITY AND INDEMNITY

32.1 Subject to the other provisions of this clause 32, the Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss suffered by the Principal or its Personnel arising directly or indirectly from:

- (a) any breach of the Contract by the Contractor;
- (b) any Wilful Misconduct, or a negligent act or omission, by the Contractor or its Personnel;
- (c) any loss or damage to the Principal's premises or property caused by the acts or omissions of the Contractor or its Personnel;
- (d) any claim made by a third party against the Principal or its Personnel, to the extent that the claim arose out of any act or omission of the Contractor or its Personnel; and
- (e) any act or omission of the Contractor or its Personnel that causes the Contractor to breach any Legal Requirement,

except to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or its Personnel.

Consequential Loss

32.2 Notwithstanding any other clause of the Contract, neither Party will be liable to the other Party for any Consequential Loss unless:

- (a) the Law requires otherwise;
- (b) the Parties agree in writing that a Party will be liable for that Consequential Loss; or
- (c) the Consequential Loss is specified in or otherwise covered by an Insurance.

Civil Liability Act

32.3 Each Party agrees that Part 1F of the *Civil Liability Act 2002 (WA)*, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with the Contract and any of the Contractor's Sub-contractors or such Sub-contractors' personnel.

33 INSURANCE AND RISK MANAGEMENT

33.1 The Contractor must:

- (a) procure and maintain the Insurances with the minimum level of cover set out in this Document, or otherwise specified by the Principal in the Principal Request, from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Principal, which either:
 - (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or
 - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved, by the Principal;
- (b) ensure that its Sub-contractors have appropriate and reasonable insurance (including as to amounts of insurance and type of insurance) for the work or services they may conduct or provide under a sub-contract relating to the provision of the Goods and/or Services to the Principal;
- (c) upon the Principal's written request, provide to the Principal copies of current and updated certificates of insurance for all Insurances, including those of a Sub-contractor;
- (d) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor;
- (e) disclose to the Principal in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the provision of the Goods and/or Services by the Contractor or a claim in connection with the Contract;
- (f) pay all premiums and deductibles applicable to any of the Insurances when due;
- (g) promptly reinstate any Insurance required if it lapses or cover is exhausted;
- (h) give the Principal at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and
- (i) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

33.2 To the extent possible, at the times of placement or renewal of any Insurances, each Insurance must:

- (a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and
- (b) where the Principal is entitled to cover under the Insurance:
 - (i) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
 - (ii) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
 - (iii) except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering

each party insured (without increasing the deductibles or reducing the overall limit of indemnity);

- (iv) provide that, where the Principal is not a named insured, the insurer must waive rights of subrogation against the Principal; and
- (v) provide that any breach of the conditions of that Insurance by an insured other than a Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance.

33.3 The Contractor must procure and maintain public liability insurance which:

- (a) is for an amount of indemnity not less than \$10 million, or such other amount as specified in the Principal Request, in respect of any one claim, is unlimited in the amount of occurrences and not less than the amount set out in the Principal Request (if any is so specified) in the aggregate during any one 12 month period of insurance;
- (b) covers the liability of the Contractor, its Personnel and the Principal in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),

arising out of or in connection with the Contractor's performance of the Contract; and

- (c) covers the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the Contract and sudden and accidental pollution.

33.4 Where the Contractor shall be using its own vehicles, plant and equipment in providing the Goods and/or Services, the Contractor must procure and maintain reasonable vehicle and equipment insurance for such vehicles, plant and equipment (Contractor's Vehicles and Equipment) (in addition to any compulsory third party motor vehicle insurance), which must:

- (a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;
- (b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;
- (c) be unlimited in the number of occurrences; and
- (d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Principal.

33.5 Unless otherwise agreed in writing by the Principal, the Contractor must procure and maintain workers' compensation insurance as follows:

- (a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than \$50 million, or such amount as is specified in a Principal Request, in respect of any one event; or
- (b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.

- 33.6 **Where specified in a Principal Request or otherwise reasonably requested by the Principal, the Contractor must procure and maintain professional indemnity insurance, which must:**
- (a) be for not less than \$5 million, or such other amount as is specified in the Principal Request, or otherwise reasonably requested by the Principal in respect of any one claim;
 - (b) be for an amount not less than \$5 million for each and every claim and in the aggregate for all claims arising in any one 12 month period of insurance (if an amount is so specified);
 - (c) include one full automatic reinstatement of the limit of liability;
 - (d) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under the Contract; and
 - (e) cover claims under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.
- 33.7 **Notwithstanding any other provision of this clause 33, if agreed in writing by the Principal, the Contractor may self-insure in respect of any or all of the Insurances provided that:**
- (a) it is lawful for the Contractor to do so;
 - (b) the Contractor identifies in writing to the Principal which of the risks required to be insured are being self-insured; and
 - (c) if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Principal's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.
- 33.8 **The Parties acknowledge and agree that:**
- (a) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under the Contract;
 - (b) the Insurances are primary, and not secondary, to the indemnities referred to in this Document and the Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
 - (c) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
 - (d) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances;
 - (e) nothing in this clause 33 fixes the Principal with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Principal against the Contractor; and
 - (f) where relevant, the Contractor must provide reasonably requested assistance to the Principal in the preparation and negotiation of insurance claims.
- 33.9 **The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2009 Risk Management.**

34 FORCE MAJEURE EVENT

34.1 A Party must:

- (a) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under the Contract (**Affected Obligations**); and
- (b) if it gives such a notice, either:
 - (i) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
 - (ii) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.

34.2 The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.

34.3 The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.

34.4 If a Force Majeure Event continues to affect the provision of the Goods and/or Services for the duration of the Force Majeure Event Termination Period, the Principal may terminate the Contract by serving written notice on the Contractor.

35 SETTLEMENT OF DISPUTES

35.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (Dispute Notice).

35.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.

35.3 In the event that the Dispute remains unresolved after the time period referred to in clause 35.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with clause 35.4.

35.4 A mediation under this clause 35 shall:

- (a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of a notice of intention under clause 35.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
- (b) be conducted according to the rules proposed by the appointed mediator; and
- (c) be conducted during a period of 10 Business Days (or such longer period as the Parties may agree in writing) from the acceptance by the mediator of his or her appointment.

35.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.

- 35.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 35.4(c), either Party may take whatever other action is available to it under the Contract or the Law, including initiating proceedings in a court of competent jurisdiction.
- 35.7 Nothing in this clause 35 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

36 DEFAULT, SUSPENSION AND TERMINATION FOR BREACH

Default

- 36.1 If a Party breaches a provision of the Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
- (a) identifying the nature of the alleged breach;
 - (b) requiring the Party to comply with the relevant provision of the Contract; and
 - (c) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice.
- 36.2 If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages or exercise any other right under the Contract or under any applicable Legal Requirement.

Suspension

- 36.3 If a Party breaches a provision of the Contract and fails to comply with a written notice issued under clause 36.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that the breach is remedied to the non-defaulting Party's reasonable satisfaction or the non-defaulting Party otherwise directs that the performance of the Contract is no longer suspended at which point the Parties must promptly recommence the performance of their obligations.
- 36.4 The Contractor must bear any cost it incurs as a result of a suspension under clauses 23.4 or 36.3 and any costs incurred by the Principal as a result of the suspension and any amounts payable by the Contractor under this clause become a debt due to the Principal by the Contractor, where the Contractor is the defaulting Party.
- 36.5 To avoid doubt, if a Party suspends the Contract or any part of it in accordance with clause 36.3, the Completion Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

Termination for breach

- 36.6 Subject to clause 36.7, without limiting the other circumstances in which the Contract may be terminated, if a Party breaches a provision of the Contract and fails to comply with a notice issued under clause 36.1, then the other Party:
- (a) may give a further notice to the defaulting Party of its intention to terminate the Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and
 - (b) by a further and final notice in writing to the defaulting Party immediately terminate the Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 36.6(a).

- 36.7 **If a Party breaches a material provision of the Contract and that default is incapable of remedy or rectification, the non-defaulting Party may terminate the Contract by written notice to the defaulting Party.**

37 TERMINATION

- 37.1 **Without limiting the other circumstances in which the Contract may be terminated, if a Party:**

- (a) commits an Insolvency Event;
- (b) assigns or sub-contracts the Contract or any part thereof without any prior written consent of the other Party required by the Contract;
- (c) or any of its Personnel are found guilty of any criminal act relating to the Goods and/or Services; or
- (d) includes in its Request Response any statement, representation, description of fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Party or not,

then the other Party may by notice in writing to that Party immediately terminate the Contract.

- 37.2 **If the Contract is terminated, the Principal may engage or contract with any person other than the Contractor to provide similar or equivalent goods and/or services to the Goods and/or Services.**

- 37.3 **Where the Principal terminates the Contract under clauses 36.6, 36.7 or this clause 37, the Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Principal as a debt due by the Contractor to the Principal.**

- 37.4 **When the Contract is terminated, the Contractor must:**

- (a) promptly return to the Principal or destroy any of the Principal's property or Principal's Documents as directed in writing by the Principal; and
- (b) if requested by the Principal, co-operate with and assist the Principal to transition the provision of the Goods and/or Services to the Principal or to another contractor engaged by the Principal, including by complying with the terms of any agreed Transition Plan.

38 ASSIGNMENT AND SUBCONTRACTING

- 38.1 **The Contractor shall not:**

- (a) assign all or any part of its rights and obligations under the Contract; or
- (b) sub-contract the whole or any part of the Contract,
without:
 - (c) the Principal's prior written approval, which must not be unreasonably withheld; and
 - (d) in the case of an assignment under clause 38.1(a) where obligations are to be assigned, the proposed assignee executing a deed in favour of the Principal agreeing to comply with and be bound by the obligations of the Contractor under the Contract.

- 38.2 **To avoid doubt, the Principal's approval to sub-contract does not discharge or release the Contractor from any liability or obligation under the Contract.**

39 RESTRUCTURE OF THE PRINCIPAL

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure. To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

40 NOTICES

40.1 Any notice under the Contract shall be in English, in legible writing and signed whether by hand or by electronic signature, and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified address; or
- (b) email to the email address of the receiving Party specified in the Request Response, Letter of Award or in Schedule 1, as applicable, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party but in any event to the last notified email address.

40.2 Any notice or other communication is regarded as being given by the notifying Party and received by the receiving Party:

- (a) if by delivery in person, when delivered to the address of the receiving Party;
- (b) if by post, 5 Business Days from and including the date of postage; and
- (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA),

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

41 GENERAL

41.1 Relationship of the Parties

- (a) The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Principal and that it has no authority to bind the Principal by contract or otherwise.
- (b) Nothing in the Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated in this Document.

41.2 Severability

Should any part of the Contract be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; or
- (b) if it cannot be read down, severed from the Contract to the extent of the invalidity or unenforceability,

and the remainder of the Contract shall not be affected by such invalidity or unenforceability.

41.3 Variation to Contract terms

The terms of the Contract shall not be varied except by the written agreement of the Parties.

41.4 **Waiver**

- (a) A Party may only waive a right or power it has under the Contract by written notice to the other Party.
- (b) No forbearance, delay or indulgence by a Party in enforcing a provision of the Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

41.5 **Entire agreement**

The Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of the Contract.

41.6 **Rights are cumulative**

Subject to any express provision in the Contract to the contrary, the rights of a Party under the Contract are cumulative and are in addition to any other rights of that Party.

41.7 **Governing Law**

The Contract and any Dispute shall be governed by the Laws of the State of Western Australia and the Parties agree that the courts of that State will have exclusive jurisdiction to deal with any Dispute.

EXECUTION

Principal

Signed by an authorised person(s) on behalf of the **Shire of Collie**:

Chief Executive Officer (signature)

Full name (print)

Date

Contractor

EXECUTED by **insert name (insert ACN)** in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Director (signature)

Witness (signature)

Full name of Witness (print)

Date

SCHEDULE 1

Notice details

<u>ITEM</u>	<u>PARTY</u>	<u>DESCRIPTION</u>
1.	Principal (clause 40.1)	Postal address: PO Box 6225, Collie, WA, 6225 Email: colshire@collie.wa.gov.au Contact person: Katya Tripp
2.	Contractor (clause 40.1)	Postal address: Email: Contact person:

SCHEDULE 2 – SPECIFICATION FOR GOODS AND SERVICES

Goods and services to be provided as detailed in the request for quotation document & as per response received and accepted

PAYMENT SCHEDULE

\$