

EDITH COWAN UNIVERSITY GENERAL CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

1.1 In the Contract, except where the context otherwise requires, or it is otherwise stated in the Contract:

"Agreement for Goods" means the agreement between the University and the Contractor to engage the Contractor to provide the Goods and any incidental Services related to the supply of the Goods, the terms of which include these General Conditions.

"Agreement for Services" means the agreement between the University and the Contractor to engage the Contractor to provide the Services (including any consultancy services), the terms of which include these General Conditions.

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

"Background IP" means any Intellectual Property in material created independently of the Contract.

"Business Day" means any day on which the trading banks in Western Australia are open for business.

"Confidential Information" means all information:

- (a) of a confidential nature or treated by the University as confidential; and
- (b) disclosed by the University to the Contractor or of which the Contractor becomes aware, whether before or after the date of the Contract,

but does not include information the Contractor creates independently of the University or that is public knowledge (otherwise than as a result of a breach of confidentiality by the Contractor or any of the Contractor's permitted disclosures under clause [7.3](#)).

"Contract" means:

- (a) where the University is procuring Goods from the Contractor, the terms and conditions set out in the Agreement for Goods and these General Conditions; or
- (b) where the University is procuring Services, the terms and conditions set out in the Agreement for Services and these General Conditions; or
- (c) where the University is procuring Goods or Services and not utilising the Agreement for Goods or the Agreement for Services, the terms and conditions set out in the Purchase Order and these General Conditions; or
- (d) where there is a written agreement between the University and the Contractor which incorporates these General Conditions.

"Contract Material" means all materials and deliverables including documents, software, goods, information and data in material developed, created or produced by the Contractor for the purpose of, or resulting from, the performance or intended performance of the Contract.

"Contract Price" means the total price payable by the University for the Goods and Services, as set out in the Contract.

"Contractor" means the supplier of the Goods or the Services specified in the Contract.

"Defective" means a defect, error or omission in the Goods or Services.

"General Conditions" means the terms and conditions contained in this document.

"Goods" means any articles, goods, or other materials the Contractor is to supply to the University, and any articles, goods or materials the supply of which is incidental to the provision of any Services, as described in the Contract.

"Harmful Code" means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.

"Intellectual Property" means any and all present and future rights resulting from intellectual activity (other than Moral Rights) capable of protection by statute, common law or in equity, including circuit layouts, copyright, designs, discoveries, inventions, improvements, methods and techniques, patents (including in connection with patent applications and disclosures), plant varieties, trademarks, and all rights and interests of a like nature, whether or not registered or registrable, and including any right to apply for, renew or extend the registration of such rights.

"KPIs" means the key performance indicators detailed in the Contract.

"Moral Rights" means:

- (a) the right of integrity of authorship;
- (b) the right of attribution of authorship; and
- (c) the right not to have authorship falsely attributed, as conferred by the Copyright Act 1968 (Cth).

"Party" means the Contractor or the University and **"Parties"** means both the University and the Contractor.

"Premises" means University owned or controlled premises and facilities, including its campuses.

"Purchase Order" means the written order or request for the Goods or the Services issued by the University, incorporating where specified in the purchase order any written quotation from the Contractor and any other documents agreed by the parties.

"Review Process" means the process for review of the performance of the Services against Service Levels and KPIs as detailed in the Contract.

"Service Levels" means the service levels detailed in the Contract.

"Services" means the Services described in the Contract, including services the provision of which is incidental to the supply of any Goods.

"Term" means the term specified in the Contract, including any extension(s) of the term specified in the Contract or as agreed by the parties.

"University" means Edith Cowan University ABN 54 361 485 361.

"Warranty Period" means:

- (a) for Goods, the period of 24 months commencing on the date of delivery of the Goods; and
- (b) for Services, means the period of 12 months from the date on which the Services are completed.

1.2 Interpretation

In the Contract, except where the context otherwise requires, or it is otherwise stated in the Contract:

- (a) A reference to any statute or policy, or any particular provision or provisions of a statute or policy, includes any amendment, replacement or re-enactment thereof for the time being in force and any by-laws, statutory instruments, rules, regulations, guidelines, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto.
- (b) The singular includes the plural and vice versa.
- (c) A reference to any gender includes all genders.
- (d) A reference to a person includes a reference to the person's executors, administrators, substitutes, successors and permitted assigns.
- (e) A reference to a person includes a reference to a natural person, body corporate, joint venture or partnership.
- (f) A covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (g) A covenant, representation or warranty on the part of two or more persons binds them jointly and severally.
- (h) A reference to a "clause" or "subclause" in these General Conditions, is a reference to the relevant clause or subclause contained within these General Conditions.
- (i) Headings in these General Conditions are for convenience only and do not affect the construction or interpretation of the Contract.
- (j) The Contract and these General Conditions are not to be interpreted against the interests of one Party because that Party proposed the Contract or General Conditions (or any provision contained within either of them), or because that Party relies on a provision of the Contract or General Conditions.
- (k) A monetary amount will be in Australian Dollars (\$AUD).

2. PERFORMANCE AND DELIVERY

GOODS

- 2.1 The Contractor must supply and deliver the Goods at the time and place and in the manner specified in the Contract. If no time is specified, the Contractor must deliver the Goods as soon as practicable and in any event within a reasonable time and must give the University reasonable prior notice of the delivery time. If no place is specified in the Contract, the Contractor must deliver the Goods to the place notified by the University.

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SERVICES

2.2 The Contractor must perform all of the Services, including providing any Contract Material and deliverables specified in the Contract, at the time and place and in the manner specified in the Contract. If no time or place is specified, the Services must be performed at the time and place reasonably specified by the University.

3. QUALITY AND COMPLIANCE

3.1 The Contractor must supply the Goods and perform the Services in accordance with all applicable:

- (a) laws and requirements of relevant authorities;
- (b) Australian standards, best practice and guidelines (and where none apply, relevant international industry standards, best practice and guidelines) including any of those specified in the Contract; and
- (c) University policies notified to the Contractor from time to time.

3.2 All Goods and Services must be of the same nature and quality as any sample or demonstration given by the Contractor to the University.

3.3 The Contractor must:

- (a) ensure the Goods and Services are fit for the purpose for which Goods and Services of the same kind are commonly supplied or bought and for any other purpose the University expressly or impliedly discloses to the Contractor;
- (b) ensure the Goods are new, free from any security, charge or encumbrance, free from defects in materials and workmanship and are of acceptable quality;
- (c) ensure the Goods and Services comply with any specifications, standards or requirements set out in the Contract or as agreed by the parties;
- (d) perform the Services with all due skill, care and diligence and to a high standard of skill and professionalism; and
- (e) ensure that all Goods match the description (including make and model) referred to in the Contract.

3.4 Where the Contractor is required to provide equipment in connection with the performance of the Services:

- (a) such equipment will be suitable for the Services and will be maintained by the Contractor in good and proper working condition; and
- (b) the Contractor must ensure that all certifications and registrations required relating to such equipment (other than equipment provided by the University) are valid at the time of use of the equipment.

3.5 The Contractor must use all reasonable efforts to inform itself of the University's requirements for the Goods and Services, and for that purpose must consult with the University and its staff and third parties nominated by the University prior to the supply of the Goods and Services and throughout the performance of the Services. The Contractor must, as soon as practicable, consult with the University relating to any matter which arises that may materially affect the Contractor's ability to comply with its obligations under the Contract.

3.6 If, during the Warranty Period, the University at its sole discretion determines that any of the Goods or Services are Defective, the University may direct the Contractor to promptly rectify any Defects in the Goods or Services at the Contractor's cost. All remedial work will be subject to a separate warranty period, being the longer of the remaining Warranty Period or the period of 12 months commencing from the date of completion of the remedial work, to the University's satisfaction. Nothing in this subclause prejudices any other right that the University may have against the Contractor. If a manufacturer offers a warranty that extends beyond the Warranty Period, the Contractor will take all reasonable steps to ensure the University will have the benefit of all such manufacturer warranties.

3.7 The Contractor represents and warrants that the Goods and performance of the Services will not introduce any Harmful Code into the University's systems, and that it will not, nor will it suffer or permit any third party under its direction or control to, introduce into the University's systems or any Goods any Harmful code. If any Harmful Code is introduced, the Contractor must promptly notify the University, take all necessary action to eliminate the Harmful Code and, at Contractor's own cost, repair any harm or destruction caused by that Harmful Code.

3.8 The Contractor represents, warrants, and undertakes to the University that it:

- (a) has and will continue to comply with all applicable laws and regulations during the term of the Contract, in particular those relating to bribery, corruption discrimination, harassment, equal opportunity, human rights, workplace health and safety, privacy, and data retention;
- (b) has effective business practices, policies and procedures in place to ensure compliance with applicable laws and regulations, including those laws and regulations listed in subclause (a); and
- (c) will provide information to the University, as the University may reasonably require, for the University to comply with its obligations

relating to applicable laws and regulations including those laws and regulations listed in subclause (a).

4. RECEIPT AND ACCEPTANCE GOODS

4.1 Upon delivery of any Goods, the University may inspect and test the Goods. If the Goods conform with the requirements of the Contract, the University will promptly accept the Goods by giving notice to the Contractor. If any of the Goods do not conform with the requirements of the Contract, the University will give the Contractor written notice of its rejection of the Goods. If the University does not reject any goods within 30 days of delivery, the Goods will be deemed to have been accepted.

4.2 Acceptance of Goods by the University in no way constitutes a waiver or limitation of any rights or remedies that are conferred by the Australian Consumer Law or are otherwise provided under the Contract.

4.3 The University is not liable to pay for any rejected Goods, or for any damage or costs to the Contractor arising from inspection, testing or rejection of Goods.

4.4 Without limiting any other rights or remedies available to the University, if the University rejects any Goods, the Contractor must reimburse the University for all costs associated with inspecting, testing or rejecting those Goods, and must comply with a requirement of the University to, within 7 days after the rejection (or such timeframe as is reasonable) and at the option of the University:

- (a) replace, without cost to the University, the rejected Goods with goods that are in all respects in accordance with the Contract; or
- (b) refund that portion of the Contract Price otherwise payable in respect of the rejected Goods; or
- (c) repair the Goods so that they comply with the Contract, to the University's satisfaction.

4.5 If the Contractor fails to take any required steps within 14 days after notification by the University under clause 4.4, the University may perform or have performed the necessary work and recover the cost from the Contractor without prejudice to any other rights or remedies the University may have.

SERVICES

4.6 The Contractor agrees to comply with any Service Levels and KPIs set out in the Contract.

4.7 The University may monitor the performance and outcomes of the Services generally, or where a Review Process is specified in the Contract in accordance with the Review Process, and the Contractor must provide the University with information and assistance reasonably required by the University to carry out such a review.

5. TITLE AND RISK - GOODS ONLY

5.1 Title and risk in the Goods will pass to the University upon acceptance of those Goods.

6. INTELLECTUAL PROPERTY RIGHTS and MORAL RIGHTS

6.1 The Contractor:

- (a) acknowledges and agrees that all Intellectual Property in Contract Material immediately vests in the University upon creation and the Contractor assigns to the University all such Intellectual Property (including by way of assignment of future Intellectual Property) with effect from the date of creation. The Contractor must not use, disclose, copy or reproduce such Intellectual Property except for the purposes of the Contract;
- (b) warrants that any of the Contractor's employees, agents and subcontractors who own Intellectual Property in any Contract Material will assign to the University all intellectual property rights referred to in subclause (a);
- (c) to the extent that the University needs to use any material in which Background IP subsists to exercise its rights to the Contract Material or otherwise receive the full benefit of the Goods or the Services, the Contractor grants to the University a perpetual, worldwide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that material; and
- (d) warrants that it has the necessary rights to assign the Intellectual Property and to grant the licences as provided in this clause 6.1.

6.2 The Contractor warrants that the University's use of the Goods or the Contract Material or the material licensed under clause 6.1(b) will not infringe the Intellectual Property of any third party. If the University's use of the Goods or the Contract Material infringes a third party's intellectual Property, the Contractor must; in addition to indemnifying the University under clause 6.3 and any other rights and remedies that the University may have, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the University to continue to use the affected Goods or Contract Material or licensed material free of any claim or liability for infringement; or

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- (b) replace or modify the affected Goods or Contract Material or licensed material so that the Goods or Contract Material or licensed material, or the use of them, does not infringe the Intellectual Property of any third party, without any degradation of the performance or quality of the Goods or Contract Material or licensed material.

6.3 The Contractor will indemnify and at all times keep the University indemnified from and against any costs, expenses, loss, claims or damage arising out of, or as a consequence of, the infringement or alleged infringement of any Intellectual Property by reason of the purchase, sale, transfer, possession or use of the Goods or Contract Material or licensed material by the University or any of its subcontractors, assignees or licensees.

MORAL RIGHTS

6.4 To the extent permitted by applicable laws and for the University's benefit, the Contractor must:

- (a) give, where the Contractor is an individual; and
- (b) use its best endeavours to ensure that each of the Contractor's employees, agents and subcontractors involved in the production or creation of the Contract Material gives,

genuine consent in writing, in a form acceptable to the University, to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

6.5 In this clause, "Specified Acts" means:

- (a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth);
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (d) adding any additional content or information to the Contract Material.

7. CONFIDENTIAL INFORMATION AND PRIVACY

7.1 The Contractor must ensure that any material and University property (including security related devices and clearances) provided by the University for the purposes of the Contract are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

7.2 The Contractor may use Confidential Information only for the purpose of performing its obligations under the Contract and must keep confidential all Confidential Information except to the extent that it is required by law to disclose that Confidential Information or for disclosures permitted under clause [7.3](#).

7.3 The Contractor may disclose Confidential Information to persons who have a need to know for the purposes of the Contract (and only to the extent that each has a need to know) and who, before disclosure:

- (a) in the case of the Contractor's employees, agents and subcontractors, have been directed by the Contractor to keep confidential all Confidential Information; and
- (b) in the case of other persons, have agreed in writing with the Contractor to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Contractor under the Contract.

7.4 The Contractor must ensure that each person to whom it discloses Confidential Information under clause [7.3](#) complies with the direction or agreement (as the case may be) referred to in clause [7.3](#).

7.5 The Contractor must:

- (a) in respect of any information that the Contractor receives or has access to in the course of performing under the Contract, comply with the University's prevailing [Privacy Policy](#), the *Privacy Act 1988* (Cth) and all other prevailing privacy legislation that applies to any of the activities carried out in the course of performing the Contract, and any direction of the University regarding how to comply with such policy and legislation, as if that policy and legislation applies to the Contractor; and
- (b) immediately notify the University if it becomes aware of a breach or possible breach of any of its obligations under clause [7.5\(a\)](#).

7.6 Upon the University's request at the end of the Term, or upon termination of the Contract (howsoever caused), the Contractor must, if requested by the University, either return or procure the return to the University of all Confidential Information or data belonging to the University or its employees, agents and subcontractors. Alternatively, the University may request the Contractor to destroy or procure the destruction of such Confidential Information or data in its possession or in the possession of its employees, agents or contractors (subject to any legislative record keeping requirements).

8. EXCLUSIVITY

The Goods and Services are purchased on a non-exclusive basis. The University may at any time obtain the same or similar kind of Goods and the Services or any part of them from any other source provider or supplier without restriction.

9. PERSONNEL

9.1 If the Contract specifies that particular personnel be involved in the Contractor's performance of the Contract, the Contractor must perform the Contract using those personnel. If any of the specified personnel are unable to perform, the Contractor must notify the University immediately and replace those personnel with suitably qualified and experienced personnel to the University's reasonable satisfaction.

9.2 The University may at any time and acting reasonably, request that the Contractor cease using any of its personnel to perform the work carried out under the Contract. The Contractor must promptly arrange for the removal and replacement of such personnel.

10. PAYMENT

10.1 The Contractor must, within 7 days of the end of each calendar month, deliver an invoice to the University as at the last day of each calendar month during the Term, or at such other intervals as are specified in the Contract, setting out that portion of the Contract Price due and payable by the University at that date ("Invoice").

10.2 Subject to the terms of the Contract, the University will pay each Invoice in full within 30 days of its receipt, or such other time as may be required by law. All monies must be paid to an Australian bank account.

10.3 If any amount is payable by the Contractor to the University under the Contract, the University is entitled to set off that amount against any amount payable by the University to the Contractor under the Contract.

11. INCLUSIVE PRICE

11.1 Unless otherwise specified in the Contract, the Contract Price includes:

- (a) subject to clause [29](#), all taxes, duties and other imposts in connection with the performance of the Contract;
- (b) all amounts payable for the use (whether in the course of manufacture or use of the Goods or the performance or enjoyment of the Services or the use of the outcomes of the Services) of any Intellectual Property; and
- (c) all charges for supply of the Goods or the performance of the Services,

and no extra charges will be payable for travel, testing, inspection, packing, cartage, delivery, insurance, overheads, equipment, personnel and materials used to supply the Goods or perform the Services or otherwise.

12. RECORD KEEPING

12.1 The Contractor will make and keep complete, full and accurate records to document business activities relating to the Contract and will make those records available to the University upon reasonable request, including for a period of up to 6 months after the termination of the Contract. The Contractor will abide by the University's reasonable requests relating to the control, storage, disposal and access any State records produced in the course of the Contract to facilitate the University's obligations under the *State Records Act 2000* (WA).

13. CONFLICT OF INTEREST

13.1 The Contractor warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, the Contractor's duties and interests under the Contract.

13.2 The Contractor must inform the University of any matter which may give rise to an actual or potential or perceived conflict of interest at any time during the performance of the Contract.

14. USE OF UNIVERSITY PREMISES

14.1 The Contractor must, when using the Premises, comply with all applicable laws and all reasonable directions, policies and requirements of the University, including those relating to health, safety and security, as notified by the University or as might reasonably be inferred from the circumstances. The Contractor acknowledges that the Premises are smoke-free and vape-free locations.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 The Contractor will not, without the University's prior written consent, assign or subcontract any of its rights and obligations under the Contract. The University's consent may be granted or withheld or made subject to conditions in the University's absolute discretion. If the Contractor does subcontract any of its obligations under the Contract, the Contractor remains responsible for performing its obligations under the Contract and will be liable to the University for the acts and omissions of any subcontractor as if they were the Contractor's acts and omissions. The Contractor must ensure that its subcontractors will have the benefit of or effect and maintain

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insurances equivalent to those required to be effected by the Contractor under the terms of this Contract.	20. TIME OF THE ESSENCE
15.2 Without limiting clause 15.1 , the Contractor must ensure that: (a) any subcontract with its subcontractors is consistent, and does not conflict with the provisions of this Contract; and (b) its subcontractors comply with the relevant provisions of this Contract as if the subcontractors were a party to this Contract in place of the Contractor.	20.1 Time is of the essence in the Contract. Where a time for performance is specified in the Contract, and the Goods or Services are not delivered within time, the Contractor is liable to pay the University liquidated damages in the amount set out in the Contract.
15.3 The University may novate, assign or subcontract any or all of its rights and obligations under the Contract, or the benefit of the performance of the Contract, to any of its related entities, upon written notice to the Contractor. Furthermore, the University may novate, assign or subcontract any of its rights and obligations under the Contract, or the benefit of the Contract, to an unrelated third party with the Contractor's prior written consent.	21. UNFORESEEN EVENTS
16. TERMINATION FOR INSOLVENCY OR INABILITY TO PERFORM	21.1 A party ("Affected Party") is excused from performing its obligations under the Contract to the extent it is prevented by unforeseeable circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including acts of God, natural disasters, acts of war, pandemic, riots and strikes outside that party's organisation.
16.1 Subject to any express prohibition, limitation or stay imposed by the <i>Corporations Act 2001</i> (Cth), the parties agree that a party (terminating party) may terminate the Contract immediately by giving written notice to the other party (party at fault) if the other party (party at fault): (a) ceases to carry on its business; (b) ceases to be able to pay its debts as they become due; (c) ceases to be able to deliver the Goods or the Services on time; (d) enters into liquidation; (e) has a controller, managing controller, liquidator or administrator appointed; (f) is declared bankrupt or assigns its estate for the benefit of creditors; (g) notifies the University it is unable or unwilling to perform; (h) any analogous event to those described in subclauses (a) – (g) occurs.	21.2 When the circumstances described in clause 21.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible and identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of the Contract.
16.2 The University may immediately terminate the Contract where the Contract (in whole or in part) is unlawful or otherwise has been deemed to be invalid or unenforceable by the relevant Government Minister (or delegate) following a review in accordance with the Australia's <i>Foreign Relations (State and Territory Arrangements) Act 2020</i> (Cth). In the event of termination under this subclause, the University will not be liable to pay any amount to the Contractor, and will be entitled to recover all monies paid to the Contractor prior to the termination occurring.	21.3 If non-performance or diminished performance by the Affected Party due to the circumstances under clause 21.1 continues for a period of more than 14 consecutive days, the other party may terminate the Contract immediately by giving the Affected Party written notice.
17. TERMINATION FOR DEFAULT	21.4 If this Contract is terminated under clause 21.3 :
17.1 Without limiting any other rights or remedies a party (terminating party) may have against the other party (party at fault) arising out of or in connection with the Contract, a party (terminating party) may terminate the Contract immediately by giving notice to the other party (party at fault) if the other party (party at fault): (a) breaches a material provision of the Contract where that breach is not capable of remedy; or (b) breaches any provision of the Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so.	(a) each party will bear its own costs and neither party will incur further liability to the other; and (b) where the Contractor is the Affected Party, it will be entitled to payment for Goods accepted or Services performed prior to the date of termination.
18. TERMINATION FOR CONVENIENCE	22. NOTICE
18.1 The University may, at any time, by notice, terminate the Contract and the Contractor will on receipt of such notice immediately cease all work and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the provision of the Goods or Services.	22.1 A notice, demand, consent or other communication under the Contract must be in writing and signed by a person duly authorised by the sender and hand delivered or sent by prepaid post or email to the recipient's address for notices as specified in the Contract, as varied by any written notice given by the recipient to the sender.
18.2 If the Contract is terminated under clause 18.1 , the University is liable only for: (a) payments under clause 10 for Goods and Services provided in accordance with the Contract before the effective date of termination; and (b) reasonable verifiable costs actually incurred by the Contractor and directly attributable to the termination, excluding employee salaries.	22.2 A notice given in accordance with clause 22.1 will be treated as given and received: (a) if sent by email, at the time it was sent, providing the sender does not receive an automated response within three hours of being sent indicating that the email was delayed or not delivered; (b) if sent by post, on the 4 th Business Day after the date of posting (extended to the 7 th Business Day where the recipient is overseas); or (c) if hand delivered, upon delivery, but if the delivery, receipt or transmission of the notice, pursuant to subclause (b) or (c) is not on a Business Day or is after 4pm on a Business Day, the notice is taken to be received at 9am on the next Business Day.
18.3 The University is not liable to pay compensation under clause 18.2 for an amount which would, in addition to any other amounts paid or payable to the Contractor under the relevant Contract, exceed the Contract Price.	23. WORK HEALTH AND SAFETY
18.4 The Contractor is not entitled to compensation for loss of prospective profits or opportunities.	23.1 The Contractor must ensure its employees, agents and subcontractors, comply with applicable provisions of the Work Health and Safety Act 2020 (WA), the Work Health and Safety Act 2011 (Cth), and other applicable legislation, regulations, codes of practice, guidelines, directions, industry standards and other instruments ("WHS Law") and the University's work health and safety policies, guidelines and procedures, that are in any way applicable to the Contract or the performance of the Services under this Contract.
18.5 Termination of the Contract under clauses 16, 17, 18, 23, 25, 26 or 32.7 does not affect any accrued rights or remedies of a party.	23.2 Unless otherwise agreed with the University, before commencing any work at a Premises, the Contractor, and its employees, agents and subcontractors, must undertake the University's induction. Where the induction has not been undertaken, entry on the Premises will be unauthorised.
19. DISPUTES	23.3 The Contractor will ensure that the Contractor and its employees, agents and subcontractors hold and maintain qualifications, training, permits and licences appropriate for the Services to be performed under the Contract, and provide evidence of this to the University upon reasonable request or where required by law.
19.1 If any dispute relating to the Contract arises between the parties, either party may give notice of the dispute to the other party and the parties' representatives will meet to resolve the dispute within five Business Days of such a notice and will use their reasonable endeavours to negotiate in good faith a resolution of the dispute.	23.4 The Contractor must immediately disclose to the University: (a) upon reasonable request, details of any provisional improvement notices, improvement notices or prohibition notices, it has received in the past 3 years under any WHS Law; (b) copies of any provisional improvement notices, improvement notices, or prohibition notices it receives during the Term; (c) details of any notifiable incidents under any WHS Law that occur during the Term; (d) details of any convictions or spent convictions relating to any fatalities, injuries or diseases, where these convictions have occurred during the Term; and

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- (e) if it or its officers have been or are being prosecuted, or there are any pending prosecutions, in respect of any fatalities, injuries or diseases.
- 23.5 Without limiting any other obligations of the Contractor under the Contract or WHS Law, if any work health and safety matter arises out of or in connection with this Contract or the Goods or Services, including any breach or potential breach of WHS Law, or any accidents or injuries, near-misses, hazards or property or environmental damage, the Contractor must:
- (a) immediately notify the University of that matter; and
 - (b) as soon as practicable after the matter occurs, investigate the matter and provide the University with evidence that the matter has been resolved or dealt with, including by supplying a copy of the incident investigation report.
- 23.6 The Contractor is also required to make the same disclosures required under clause 23.4 and 23.5 in respect of any its employees, agents and subcontractors.
- 23.7 The University may terminate the Contract immediately by giving notice to the Contractor, if the Contractor or its employees, agents or subcontractors:
- (a) receive a prohibition notice, temporarily or permanently preventing the Goods or Services being provided; or
 - (b) disclose a provisional improvement notice, improvement notice or prohibition notice, or other information under clause 23.4 or 23.6 which is inconsistent with or additional to any self-assessment or details provided by the Contractor before entering the Contract.
- 23.8 Without limiting any other obligations of the Contractor under the Contract or WHS Law, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:
- (a) immediately notify the University;
 - (b) cease works in the relevant area and prevent ingress until appropriate health and safety measures can be taken; and
 - (c) comply with all applicable obligations and restrictions imposed by WHS Law.
- 23.9 ECU may, but is not required to, investigate a WHS incident or participate in the Contractor's investigation of a WHS incident. The parties must cooperate and act in good faith in this regard, including the Contractor providing access to the site and relevant records where required.
- 23.10 The Contractor, its employees, agents and subcontractors, will consult, cooperate and coordinate activities with the University and any other persons who have a duty under WHS Law relating to the same matters.
- 23.11 Upon reasonable request by the University, the Contractor will provide the University with access to such records necessary to establish the Contractor's compliance with clause 23.
- 24. EQUITY AND INCLUSION**
- 24.1 The Contractor, if requested in writing to do so by the University, will:
- (a) to the extent practicable, implement the University's "Equity and Inclusion Plan" prepared in accordance with the Disability Services Act 1993 (WA); and
 - (b) provide a report to the University by 30 June in each year during the Term reporting on the extent to which the Contractor has implemented the University's Equity and Inclusion Plan.
- 25. EQUAL OPPORTUNITY**
- 25.1 Under the *Equal Opportunity Act 1984* (WA) ("**EO Act**"), it is unlawful to sexually harass another person or to discriminate against another person on the grounds specified in the EO Act.
- 25.2 Without limiting in any way the generality of clause 25.1, the Contractor acknowledges its obligations under the EO Act and agrees to comply with and ensure that its employees, agents and subcontractors comply with the EO Act. The Contractor and its employees, agents and subcontractors, must also comply with the University's [Sexual Assault and Sexual Harassment Policy](#) and its [Prevention of Harassment, Bullying, Discrimination and Violence Policy](#) in performing the Contract and providing the Goods and Services.
- 25.3 The Contractor warrants that, both at the time the Contract commences and throughout its Term, that it is not named as an organisation which is not compliant with the *Workplace Gender Equality Act 2012* (Cth), and that should this occur, the University may terminate the Contract immediately by giving notice to the Contractor.
- 26. MODERN SLAVERY**
- 26.1 In this clause 26, "**Modern Slavery**" means the eight offences contained in the Divisions 270 and 271 of the *Commonwealth Criminal Code Act 1995* (Cth), namely, trafficking in persons, slavery, servitude, forced labour, debt bondage, the worst forms of child labour, and deceptive recruiting for labour or services.
- 26.2 In performing its obligations under this Agreement, the Contractor will ensure that all of its employees, agents, and subcontractors use their best endeavours to ensure that Modern Slavery is not taking place in any part of its operations and supply chains and those of any entities that it controls.
- 26.3 The Contractor represents and warrants that it:
- (a) conducts its business in a manner that is consistent with the obligations in clause 26.2 and investigates the risk of Modern Slavery within its business operations and supply chains;
 - (b) assesses and addresses risks regarding Modern Slavery including implementing appropriate due diligence and remediation programs, and will notify the University as soon as possible of any actual, potential or suspected instances of Modern Slavery in those business operations or supply chains and the actions undertaken by the Contractor to address and remedy such instances;
 - (c) has all the necessary processes, procedures, and investigation and compliance systems in place to undertake the actions in (a) and (b);
 - (d) will provide all reasonable assistance to the University, including providing access to and copies of documents, to allow the University to comply with its obligations under the *Modern Slavery Act 2018* (Cth);
 - (e) will use reasonable endeavours to include a clause similar to this clause in all contracts it enters into with its suppliers, agents, and subcontractors; and
 - (f) will notify the University as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain which has a connection to this Agreement.
- 26.4 If the Contractor does not remedy or provide an acceptable plan to remedy any identified instances of Modern Slavery within a reasonable timeframe specified by the University, the University may terminate the Contract immediately by giving notice to the Contractor.
- 27. INDEMNITY**
- 27.1 The Contractor indemnifies and will keep indemnified the University and the University's employees, agents and subcontractors (each, an "**Indemnitee**") against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made against any Indemnitee arising from or in connection with the Contract and:
- (a) any breach of the Contract by the Contractor;
 - (b) any willful, tortious or unlawful act or omission of the Contractor or any of its employees, agents and subcontractors; or
 - (c) any breach of a State or Commonwealth law by the Contractor or any of its employees, agents and subcontractors.
- 27.2 The Contractor's liability under the indemnity in clause 27.1 will be reduced proportionately to the extent that any costs, losses, expenses, claims, damages or other liabilities result from any willful, tortious or unlawful act or omission of any Indemnitee.
- 27.3 The indemnity is a continuing obligation and remains in force and effect notwithstanding the expiry of the Term or early termination of the Contract irrespective of how it is terminated or who terminated it.
- 28. INSURANCES**
- 28.1 The Contractor must hold the following insurances for the following amounts (unless different amounts are agreed in the Contract) with its self-insurance fund, an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia, or with an Australian Financial Services licensee with authorisation to issue miscellaneous mutual risk products:
- (a) General and Products Liability (Public Liability)
- General and Products Liability insurance for an amount of not less than AUD\$20,000,000 for any one occurrence, with a provision of one automatic reinstatement of the full sum insured in any one policy period of insurance. The policy must include:
- (i) cover relating to the performance of the Contract, including cover for the Contractor and their personnel for liability for:
 - loss of damage to or loss of use of, tangible property; and
 - bodily injury, disease, illness or death of any person (other than a Contractor's employee);
 - (ii) principal's indemnity extension in favour of the University, with respect to any liability incurred as a result of the acts or omissions of the Contractor; and
 - (iii) pollution liability, but only if caused by a sudden, accidental, unexpected and unintended occurrence.

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<p>(b) Professional Indemnity</p> <p>Professional Indemnity insurance for an amount of not less than AUD\$10,000,000 for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one policy period of insurance. The policy must cover liability resulting from an error or omission in performing the Contract including for breach of professional duty, whether owed in contract or otherwise. The policy must be extended to include:</p> <ul style="list-style-type: none"> (i) claims made with a run-off period of at least 6 years from the end of the Term; (ii) fraud and dishonesty cover; (iii) cyber and privacy infringement liability; (iv) loss of or damage to documents and data; (v) intellectual property cover, to include but not limited to infringement of patent, copyright, design, trade mark or circuit layouts and unintentional breach of confidentiality; and (vi) breaches of the Australian Consumer Law. 	<p>29.3 If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.</p> <p>29.4 Such amount must be paid in addition to and at the same time as payment for the taxable supply is required to be made under the Contract.</p> <p>29.5 If GST is charged or varied under the Contract, the supplier must provide the recipient of the supply with a valid tax invoice or adjustment note at or before the time of payment or variation.</p> <p>29.6 If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.</p>
<p>(c) Workers' Compensation</p> <p>Workers' compensation insurance in accordance with the statutory requirements of the relevant jurisdiction(s) for performing the Contract, including WA. To the extent permitted by law the policy must:</p> <ul style="list-style-type: none"> (i) be extended to include a principal's indemnity extension in favour of the University in respect of employee claims; and (ii) provide a waiver of subrogation for statutory benefits and common law damages in favour of the University. 	<p>30. VARIATIONS</p> <p>30.1 The University may at any time, give the Contractor a written direction to vary the Goods or Services. Any such variation must not fundamentally change the nature and extent of the Goods to be supplied or Services to be performed unless agreed by the Contractor.</p> <p>30.2 The Contractor must not vary the Goods or Services unless directed by the University in writing to perform a variation pursuant to this subclause.</p> <p>30.3 If the Contractor considers that any instruction or direction it receives is a variation, then it must notify and seek instructions from the University, in writing, prior to complying with the instruction or direction. It is a condition precedent to the Contractor's entitlement to any compensation for a variation to provide such notice.</p> <p>30.4 The Contractor will price the variation (positively or negatively) using the following order of precedence:</p>
<p>(d) Motor Vehicle Third Party</p> <p>If motor vehicles are to be used in performing the Contract are brought onto the Premises location, motor vehicle third party insurance covering legal liability for property loss and damage, and bodily injury to or death of persons (in addition to compulsory third party motor vehicle insurance), including bodily injury gap protection, for an amount of not less than AUD\$30,000,000 for any one occurrence and unlimited in the aggregate.</p>	<p>(a) as agreed by the parties;</p> <p>(b) applicable rates and prices set out in this Contract (if any); or</p> <p>(c) by submitting a proposed variation using reasonable rates and prices, for consideration and approval by the University.</p> <p>The University may request evidence to substantiate the cost buildup of any variation including profit, overheads and attendance.</p>
<p>(e) Compulsory Third Party</p> <p>Compulsory third party insurance as required under any statute relating to motor vehicles used in performing the Contract.</p>	<p>31. MISCELLANEOUS</p>
<p>28.2 The insurances in 28.1(a), (c), (d) and (e) must be maintained during the Term and continuance of the Contract. The professional indemnity insurance required under clause 28.1(b) must be maintained during the Term and for at least six (6) years after the end of the Term..</p>	<p>31.1 Nothing in the Contract creates a relationship of partnership, employment, joint venture or agency between the Parties.</p> <p>31.2 If any clause in the Contract is unenforceable, illegal or void then it is severed, and the rest of the Contract remains in force.</p>
<p>28.3 The Contractor must not do or omit to do, or allow to be done or omitted to be done, anything that may render the insurance void, voidable or otherwise liable to cancellation.</p>	<p>31.3 An amendment or variation to the Contract is only effective if it is in writing and signed by the Parties.</p>
<p>28.4 The Contractor must provide to the University copies of the insurance policies, certificates of currency or alternative evidence of insurance before the Contract commences and upon reasonable request by the University thereafter.</p>	<p>31.4 Waiver of any provision of or right under the Contract must be in writing signed by the party entitled to the benefit of that provision or right, and is effective only to the extent set out in the written waiver.</p>
<p>28.5 If the Contractor fails to obtain the required insurance, the University may do so, and the Contractor must pay the cost incurred by the University.</p>	<p>31.5 The Contract constitutes the entire agreement between the parties in connection with the supply of the Goods or the provision of the Services contemplated by the Contract, provided that this subclause does not prevent the University from relying on any representations made by Contractor relating to the Goods or the Services.</p>
<p>28.6 The Contractor must:</p> <ul style="list-style-type: none"> (a) promptly notify the University in writing of any occurrence arising out of or in connection with the Contract that may give rise to a claim under any of the insurance policies required to be effected and maintained by the Contractor or a subcontractor under this Contract; (b) keep the University informed of subsequent developments concerning any claim; and (c) ensure that any subcontractors are required to inform both the Contractor and the University in respect of occurrences which may give rise to a claim. 	<p>31.6 The Contract is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.</p> <p>31.7 The Contractor must pay all duties (e.g. transfer duties) imposed in respect of any or all the documents constituting the Contract.</p> <p>31.8 The Parties agree to execute all documents and do all acts as may be reasonably necessary to give full force and effect to the Contract.</p> <p>31.9 The Contract may be signed in counterparts, which counterparts will together constitute one agreement.</p>
<p>28.7 All claims' proceeds received under an insurance policy required under this Contract must be applied as follows:</p> <ul style="list-style-type: none"> (a) towards replacement or repair of the Goods and or reperformance Services; and (b) to discharge the relevant liability or make good the relevant loss, as applicable. 	<p>31.10 Each party consents to executing the Contract by electronic means and agrees that any electronic signature (including typing a name, inserting a signature image, using an electronic signature platform, or digital signature with public key encryption technology) will be deemed an original signature for the purposes of the Contract. If an electronic signature is used, the relevant party warrants that its electronic signature:</p> <ul style="list-style-type: none"> (a) where the party is an individual, indicates that that party intended to be bound by the terms of the Contract; and (b) where the party is a company or institution, indicates that the person(s) signing for and on behalf of that party had the authority and intended to bind that party to the terms of the Contract.
<p>29. GOODS AND SERVICES TAX (GST)</p> <p>29.1 In this clause 29, the expressions adjustable note, consideration, GST, supply, tax invoice, recipient and taxable supply have the meanings given to those expressions in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> ("GST Act").</p> <p>29.2 Unless expressly agreed otherwise by the parties, all sums payable or consideration to be provided under the Contract are exclusive of GST.</p>	<p>31.11 The rights and obligations of each party under the following clauses will survive termination or expiration of the Contract: clauses 1, 3, 6, 7, 10, 12, 15, 21.4, 22, 23.11, 27, 28, 29, 31, and 32.5 and 32.8.</p>

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- 31.12 If a person (Trustee) enters this Contract as trustee of a trust (Trust), whether or not the University has notice of the existence of the Trust, that person warrants that they:
- (a) are liable for the performance of all covenants contained in the agreement in their own right and in their capacity as trustee;
 - (b) have duly executed this Contract in accordance with the terms of the Trust;
 - (c) have the right to be indemnified from the Trust and the assets of the Trust, and the provisions of the Trust deed do not purport to exclude or limit the right of indemnity of the Trustee against the Trust or the assets of the Trust.
- 31.13 Unless otherwise specified in the Agreement for Goods, Agreement for Services, or other written agreement between the University and the Contractor, to the extent of any inconsistency, the following order of precedence will apply:
- (a) Agreement for Goods, Agreement for Services, or other written agreement between the University and the Contractor;
 - (b) Purchase Order; and
 - (c) these General Conditions.
- 32. ADDITIONAL TERMS FOR CONSTRUCTION WORKS**
- 32.1 This clause will apply where the Services comprise or include "Construction Works". Construction Works mean as defined in section 6 of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) and include:
- (a) construction of buildings, structures or civil works;
 - (b) the installation of fittings that form, or are to form, part of the building, structure or civil work. Including for:
 - (i) the supply of electricity, gas or water; and
 - (ii) air-conditioning, heating, ventilation, lighting, fire protection, irrigation, sanitation, cleaning, security or communication systems; and
 - (iii) lifts or escalators;
 - (c) the alteration, repair, restoration, maintenance, extension, demolition, dismantling or removal of any building, structure or civil work referred to in paragraph (a) or fitting referred to in paragraph (b);
 - (d) the reclamation, dredging or prevention of subsidence or erosion of land;
 - (e) any work that is preparatory to, necessary for or an integral part of anything referred to in paragraphs (a) to (d), including —
 - (i) site clearing, excavating, earth-moving, tunnelling or boring; and
 - (ii) laying foundations; and
 - (iii) erecting, maintaining or dismantling cranes, scaffolding or other temporary buildings or structures; and
 - (iv) cleaning, painting, decorating or treating; and
 - (v) site restoration and landscaping.
- 32.2 The Contractor must provide to ECU, at least five (5) Business Days before commencement of the Construction Works (or such shorter period as may be approved by the University):
- (a) a work health safety (WHS) management plan; and
 - (b) notice of their proposed commencement onsite.
- 32.3 The University authorises the Contractor engaged for the relevant Construction Works to have management, control and responsibility of the area for which the relevant Construction Works are being undertaken, however this would not prevent University access to the area where required.
- 32.4 The Contractor will take upon the whole risk of executing the Construction Works and will be solely liable for loss or damage to the Construction Works from any clause whatsoever (except loss or damage caused by the negligence, omission or default of the University, or of any employees or agents of the University) until the University has certified in writing that the whole of the Construction Works have been satisfactorily completed by the Contractor.
- 32.5 The Contractor must hold contract works insurance with its self-insurance fund, an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia, or with an Australian Financial Services licensee with authorisation to issue miscellaneous mutual risk products. Contract works insurance must be for an amount not less than the full cost of reinstatement of the relevant works. The policy must include cover against physical loss or damage to the works and unfixed goods and materials whether on or off the site. The policy must be maintained for the duration of the Term and any defects liability period, and must be extended to include:
- (i) inland transit, off-site storage anywhere in Australia;
 - (ii) furniture, fixtures, and equipment commissioning and testing; and
 - (iii) loss of or damage to, and the cost to rectify, replace or repair property, which is free of a defective condition but is damaged in consequence of other property which is in a defective condition.
- 32.6 The Contractor will make good at the Contractor's own expense, all fencing, roads, footpaths and surfaces generally, which may be disturbed by cartage or other operations of the Contractor. The Contractor must leave the site of the Construction Works, and adjacent areas, in as good a state or repair as they were in when the Construction Works commenced, and, as directed by the University, from time to time during the Term, remove from the site all rubbish, debris and waste resulting from the Construction Works;
- 32.7 If the Contractor:
- (a) fails to commence the Construction Works within the time specified in the Contract, or if no such period is specified then within fourteen (14) days of the date of the Contract; or
 - (b) fails to carry on the Construction Works at a rate or progress satisfactory to the University;
 - (c) neglects or omits to carry out any reasonable instruction of the University in respect of the Construction Works;
 - (d) fails to complete the whole of the Construction Works within any specified time for completion (being the time for completion of any Construction Works as specified in the Contract) or such extended time as the University may approve; or
 - (e) intimates that they are unwilling or unable to complete the Construction Works within the time for completion or such extended time as the University may approve, or at all;
- then the University may, by notice in writing either:
- (f) immediately terminate the Contract, whereupon all sums of money which may remain in the hands of the University together with all materials on or about the site which are the property of the Contractor and have been provided by the Contractor for the purpose of carrying out the Construction Works, will vest in the University; or
 - (g) take the Construction Works wholly or partly out of the control of the Contractor, or any person in whose control or possession the Construction Works or part of them may be, and complete the same by any other means the University so decides;
- 32.8 If the University takes action under clause 32.7(g), then all losses, costs, charges and expenses incurred or sustained by the University in issuing notices and completing the Construction Works will be deemed to be a debt due to the University by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies then or thereafter becoming due to the Contractor be less than the amount so deductible, the amount of the deficiency will be a debt due by the Contractor to the University.