



# Standard Terms and Conditions of Purchase

ENTERPRISE SECURITY ENTERPRISE SOLUTIONS

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## 1. PURPOSE

The Principal and the Contractor agree that the following terms and conditions will apply to the **Services** specified in the Schedule to be performed by the Contractor under this Agreement through an independent contracting arrangement.

## 2. SCOPE

- 2.1. This Agreement, together with the conditions set out in the Schedule, constitutes the entire agreement for the supply of Services by the Contractor to the Principal and/or the Client. This Agreement supersedes any representations, warranties, agreements or statements of any kind, whether written or oral, on the subject matter herein. The conditions in the Schedule shall take precedence over any terms or conditions in the body of this Agreement.
- 2.2. The terms of this Agreement may not be varied otherwise than in writing signed by the Contractor and the Principal.

## 3. DEFINITIONS

- 3.1. **“Agreement”** means this agreement.
- 3.2. **“Business Day”** means a day other than a Saturday, Sunday or public holiday in Western Australia.
- 3.3. **“GST”** means any form of goods and services, value added, consumption, purchase, retail or similar tax calculated by reference to the price or value of a supply.
- 3.4. **“Incident”** means any events which occur involving the Contractor or a Nominated Representative and conduct of any activity under this Agreement which is required by law to be reported to any of the police, coroner, WorkSafe or any Regulatory Authority.
- 3.5. **“Intellectual Property”** means:
  - (a) the various rights and property conferred under statute, common law and equity in and in relation to patents, inventions, designs, copyright, trademarks, trade names, business names, corporate



names, logos, get up, circuit layouts, know-how, trade secrets and Confidential Information and the right to have trade secrets and Confidential Information kept confidential and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967 including, to the fullest extent possible, moral rights;

- (b) all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in paragraph (a) of this definition; and
- (c) all rights of action in respect of the rights or property referred to in paragraph (a) of this definition.

3.6. **“Nominated Representative”** means the person specified in the Schedule (Nominated Representative) or such other person as approved from time to time by the Principal under clause 6.1 who is employed or engaged by the Contractor to provide the Services on behalf of the Contractor.

3.7. **“Proprietary Information”** means any information or materials which is proprietary to the Principal and/or the Client, whether or not owned or developed by the Principal and/or the Client that the Contractor may obtain through any direct or indirect contact with The Principal, and includes without limitation:

- (a) business records and plans;
- (b) financial statements;
- (c) customer lists and records;
- (d) trade secrets;
- (e) technical information;
- (f) products;
- (g) copyrights and other Intellectual Property;
- (h) legal documents;
- (i) strategies;
- (j) related communications.

3.8. **“Regulatory Authority”** means any governmental, semi-governmental, administrative or judicial body, department, commission, authority, tribunal, agency or entity, which regulates the Services delivered by the Contractor.

## 4. SERVICES

4.1. The Contractor must provide the **Services** to the Principal and/or the Client

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in accordance with the requirements and on the **Terms** specified in the Schedule, subject only to the **Special Conditions** specified in the Schedule, for the **Fees** specified in the Schedule.

- 4.2. The Contractor will comply with all reasonable requests of the Principal and/or the Client to provide any information required to comply with the Principal's and/or the Client's obligations.
- 4.3. The Contractor warrants that the representations it provides are accurate and that the Contractor and any Nominated Representatives have the qualifications, experience, skills, licences, permits, and insurances in order to provide the Services in a lawful, competent, proper and efficient manner.
- 4.4. The Contractor bears the legal risk for the work required to perform the Services. If the Principal is not satisfied that the Services comply in all respects with the requirements of this Agreement, the Principal may:
  - 4.4.1. require the Contractor to, within a reasonable time, take such steps as are necessary to ensure that the Services comply with this Agreement and the Contractor agrees that no fee, costs, damages or other claim will be payable to the Contractor by the Principal for any work done to rectify the non-compliance; or
  - 4.4.2. notify the Contractor that the Principal rejects the Services which do not comply with this Agreement and the Contractor agrees to refund to the Principal any payments made by the Principal in respect of the Services which do not comply with this Agreement.
- 4.5. If the Contractor fails to rectify any non-compliance in relation to the Services within five business days of being required to do so by the Principal, the Principal may terminate this Agreement without any further notice to the Contractor in accordance with clause 14.3 of this Agreement.
- 4.6. There is no obligation on the part of the Principal to require the Contractor to provide the Services.
- 4.7. The Contractor must seek the approval of the Principal in writing, which the Principal will not unreasonably withhold, if the Contractor seeks to vary the form, quality or quantity of the Services, or any part thereof.
- 4.8. In the provision of the Services, the Contractor must also:
  - 4.8.1. generally use best endeavours to promote the successful completion of the Services;

- 4.8.2. ensure the Services are performed competently in a proper, efficient and professional manner and by suitably skilled, trained and competent Nominated Representatives and in accordance with the terms of this Agreement;
  - 4.8.3. comply with any applicable award, order, determination, industrial instrument or agreement of a court or tribunal in respect of each Nominated Representative and comply with all obligations imposed on an employer to keep records for each Nominated Representative;
  - 4.8.4. subject to clause 24.3, pay or remit PAYG tax instalment deductions, deductions from prescribed payments, fringe benefits tax, superannuation payments (as required by law) and other taxes or levies required by law which arise in respect of the Contractor engagement of each Nominated Representative or any amounts paid to the Contractor under this Agreement;
  - 4.8.5. ensure that each Nominated Representative attends and satisfactorily completes all training (including ongoing professional education) as provided by the Contractor (or as required by the Principal); and
  - 4.8.6. unless otherwise stated in this Agreement, assume sole responsibility for controlling the manner in which the Contractor and each Nominated Representative provides the Services.
- 4.9. The Contractor also warrants that:
- 4.9.1. the Fees are paid to the Contractor for the result of the Services, not for the Services themselves;
  - 4.9.2. the Contractor provides the materials and equipment necessary to undertake the Services;
  - 4.9.3. subject to clause 6, if a Nominated Representative is unable to perform the work necessary to provide the Services, the Contractor has an unfettered discretion to delegate the work to another Nominated Representative;
  - 4.9.4. in the event the Contractor delegates the work in accordance with clause 4.9.3, the Contractor does so on the basis of providing a replacement Nominated Representative in accordance with clause 6.5, and further warrants that the Contractor is fully responsible for all work carried out by the replacement Nominated Representative and the Principal is not liable to pay any other amount to the Contractor in respect of that work;
  - 4.9.5. the Contractor bears the commercial risk of making a profit or loss

- in running its own business in the course of providing the Services;
- 4.9.6. the Contractor bears the liability and responsibility for any poor workmanship or injury, in accordance with clauses 4.4 and 23 of this Agreement; and
- 4.9.7. in addition to performing the Services for the Principal, the Contractor is able to provide services to other parties and the public at large.

## 5. PERIOD

- 5.1. This Agreement shall take effect on the **Commencement Date** specified in the Schedule and, unless otherwise extended or terminated in accordance with any other provision of this Agreement, shall continue until the **Completion Date** specified in the Schedule.
- 5.2. This Agreement will conclude, with the provision of all outcomes and deliverables, on the Completion Date specified in the Schedule. At any time during the term of this Agreement, the Principal may offer to the Contractor an extension to the Completion Date specified in the Schedule. If the Contractor accepts the extension, the terms and conditions of this Agreement shall apply.

## 6. CONTRACTOR WORKFORCE

- 6.1. The Contractor is required to provide the Services through the Nominated Representatives approved by the Principal.
- 6.2. Prior to a particular person commencing work for the Contractor as a Nominated Representative, the Contractor must ensure that it has obtained the Principal's prior written approval (which will not be unreasonably withheld) for that person to commence work.
- 6.3. The Contractor must ensure all Nominated Representatives agree also to be bound by the provisions of this Agreement.
- 6.4. The Contractor must ensure that if required to be registered by a Regulatory Authority, that the Nominated Representatives are at all times during the term of this Agreement registered as required, and provide proof of registration to the Principal upon demand, failing which the Principal may terminate this Agreement under clause 14.3.
- 6.5. The Contractor must immediately notify the Principal if a Nominated Representative is unable to perform the Services and, if requested by the Principal, provide a replacement suitable to the Principal, failing which the Principal may terminate this Agreement under clause 14.3.

- 6.6. At any time, the Principal may direct the Contractor not to use a particular Representative to provide the Services (such direction will not be unreasonably made).
- 6.7. If the Principal gives a direction in accordance with this clause, the Contractor must immediately cease using that Nominated Representative and use all reasonable endeavours to provide a replacement Nominated Representative who is approved by the Principal under clause 6.1 to provide the Services, failing which the Principal may terminate this Agreement under clause 14.3.

## **7. BUSINESS OPERATIONS**

- 7.1. To ensure the smooth running of the Principal's business, the Contractor must provide such notice as is reasonable in the circumstances of the inability of a Nominated Representative to attend to deliver the Services. For the avoidance of doubt, the Principal considers reasonable notice in the case of a Nominated Representative not attending on the grounds of ill-health or personal emergency to be as soon as practicable and no later than two (2) hours before any scheduled attendance, and in all other circumstances, at least four (4) weeks' before the planned absence.
- 7.2. The Contractor must notify the Principal immediately of any complaint or Incident that may occur, and will make available to the Principal all relevant records and documents as the Principal may request to allow the Principal to carry out a full investigation of the complaint or Incident.

## **8. CONFLICTS OF INTEREST**

- 8.1. Except with the prior written consent of the Principal (which will not be unreasonably withheld), the Contractor must not, and must ensure that each Nominated Representative does not, perform work, provide services or be engaged in any activity, which is, (or in the reasonable opinion of the Principal is, or may reasonably be seen to be):
  - 8.1.1. in conflict with the provision of the Services to the Principal; or
  - 8.1.2. in conflict with or adverse to the activities, affairs or reputation of the Principal.
- 8.2. If a conflict of interest arises or appears to arise, the Contractor must notify the Principal immediately, making full disclosure of all information relating to the conflict of interest and take such steps as the Principal may reasonably require to resolve, avoid or otherwise deal with the conflict of interest.
- 8.3. Where a conflict of interest arises and cannot be avoided or managed to the satisfaction of the Principal, the Principal may in its absolute discretion either:

- 8.3.1. engage a third party to deliver any part of the Services affected by the conflict of interest, with the cost of the third person providing that part of the Services to be deducted from the Fees payable to the Contractor; or
- 8.3.2. terminate this Agreement without penalty to the Principal and with immediate effect by written notice to the Contractor in accordance with clause 14.3.

## 9. NO EXCLUSIVE RIGHT TO SERVICES

- 9.1. Subject to clause 8, the Parties agree that the Principal has no exclusive rights to the services of the Contractor. The Contractor shall be at liberty to perform services of a similar nature or otherwise for persons or companies other than the Principal as the Contractor in its absolute discretion thinks fit.

## 10. PAYMENT

- 10.1. In consideration for the Contractor providing the Services to the Principal and/or the Client, the Principal will make the payment to the Contractor in accordance with the **Fees** specified in the Schedule. The Contractor shall not be entitled to any other payment (including any payment a Contractor may pay a Nominated Representative for overtime, or out of hours work, or any other payment).
- 10.2. Payments will be paid to the Contractor subject to:
  - 10.2.1. the Principal's receipt of a GST compliant invoice, inclusive of breakdown of effort, from the Contractor;
- 10.3. Payment terms are 30 days from delivery of invoice.
- 10.4. All payments made under this Agreement are subject to any withholding required by law.
- 10.5. The Contractor agrees that payment for the amounts provided for in this clause constitutes full payment for the provision of the Services, and the Principal is not liable to pay any other amount to the Contractor or any Nominated Representative.
- 10.6. The Contractor also agrees that the payments provided for in this clause are determined taking into account the amount of payroll tax that the Principal may be deemed liable to pay with respect to any Nominated Representative.



## 11. SUPERANNUATION

- 11.1. The parties agree that during the term of this Agreement and for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**Superannuation Act**) all personnel used by the Contractor in the performance of the Services are employees of the Contractor and the Contractor shall pay all statutory superannuation contributions or charges in respect of such employees.
- 11.2. The Contractor shall indemnify the Principal in respect of any charges, fees or penalties which may be imposed under the Superannuation Act as a result of any non-compliance with this clause.
- 11.3. Where prevailing superannuation legislation (including rulings, determinations statements and views of the Australian Taxation Office) requires that no payments be made by the Principal, but later retrospective legislation requires such payments to be made, the Principal shall not be liable for such retrospective payment, but rather the Contractor shall be responsible for making this payment, either directly on behalf of the Principal, or as a reimbursement to the Principal where the retrospective legislation requires the Principal to pay in the first instance

## 12. CONTRACTOR RECORDS

- 12.1. The Contractor and its subcontractors, if any, shall maintain true and correct records in connection with the Services.
- 12.2. All records kept in accordance with this clause shall be retained for a period of not less than seven (7) years after the Completion Date.
- 12.3. If requested by the Principal, the Contractor must immediately provide to the Principal copies of the records referred to in this clause and all other correspondence and material relating to the provision of the Services.
- 12.4. The Contractor obligations under this clause continue after the Contractor ceases to provide the Services.

## 13. GOODS AND SERVICES TAX

- 13.1. Fees payable by the Principal to the Contractor under this Agreement that are:
  - 13.1.1. stated as a figure, is stated exclusive of GST; or
  - 13.1.2. described (by a formula or otherwise), is described and must be calculated without regard to GST.
- 13.2. In addition to paying the Fees under clause 10, the Principal will:



- 13.2.1. pay to the Contractor an amount equal to any GST payable on any taxable supply made by the Contractor in connection with this Agreement; and
  - 13.2.2. make that payment as and when the Principal pays or provides the Fees.
- 13.3. If the Contractor is not registered for GST, the Principal will have no obligation under this clause to pay an amount in respect of GST to the Contractor.

## 14. TERMINATION

- 14.1. The Contractor may terminate this Agreement at any time by giving the written notice specified in the Schedule (**Notice by the Contractor**).
- 14.2. The Principal may terminate this Agreement at any time by giving the written notice specified in the Schedule (**Notice by the Principal**).
- 14.3. This Agreement may be terminated immediately on the occurrence of any one of the following events:
  - 14.3.1. the Contractor (or any Nominated Representative) fails, in the opinion of the Principal, to provide the Services in a safe, appropriate or professional manner;
  - 14.3.2. the Contractor (or any Nominated Representative) in the opinion of the Principal, engages in any misconduct (including but not limited to theft, fraud, dishonest behaviour or sexual misconduct) or in any activity in conflict with or adverse to the activities, affairs or reputation of the Principal, or which in the opinion of the Principal renders the continued provision of the Services by the Contractor adverse to the best interests, activities, affairs or reputation of the Principal or its related entities;
  - 14.3.3. the Contractor (or any Nominated Representative) ceases to be registered in accordance with clause 6.4;
  - 14.3.4. the Contractor becomes bankrupt or insolvent;
  - 14.3.5. the Contractor breaches a term of this Agreement and that breach is not, in the opinion of the Principal, capable of being cured;
  - 14.3.6. the Contractor breaches a term of this Agreement and that breach is, in the opinion of the Principal, capable of being cured and the Contractor fails to cure the breach within five (5) Business Days of being notified in writing of the breach by the Principal; or
  - 14.3.7. the Principal exercises its right to terminate this Agreement under clauses 4.5, 6.4, 6.5, 6.7 or 8.3.2.

- 14.4. If the Contractor gives or receives a notice of termination under this clause:
  - 14.4.1. the Principal will only be liable to the Contractor for payment for the Services rendered to the date of termination, subject to any deduction in respect of losses incurred by the Principal as a consequence of the termination; and
  - 14.4.2. the Contractor must cease all work.
- 14.5. When this Agreement ends, the Contractor must:
  - 14.5.1. take all available steps to minimise loss resulting from early termination; and
  - 14.5.2. deliver to the Principal all Proprietary Information, Intellectual Property and other material necessary to enable the Principal to gain the benefit of the Services rendered as at the expiry or termination.
- 14.6. Upon termination of this Agreement, the Contractor shall not be entitled to claim any compensation or damage from the Principal and/or the Client in relation to that termination howsoever caused.
- 14.7. The Contractor agrees that during the term of this Agreement and for a period of 6 months after the termination of this Agreement, it shall not, either directly or indirectly through another organisation, do any of the following:
  - 14.7.1. work for or be engaged by the Client, unless otherwise agreed to by the Principal in writing;
  - 14.7.2. employ or otherwise engage or solicit or offer employment or other engagement to any employee or subcontractor of the Principal and/or the Client.

## 15. CONFIDENTIALITY

- 15.1. The Contractor understands and acknowledges that the Proprietary Information has been developed or obtained by the Principal and/or the Client by the investment of significant time, effort and expense, and that the Proprietary Information is a valuable, special and unique asset of the Principal and/or the Client which provides the Principal and/or the Client with a significant competitive advantage, and needs to be protected from improper disclosure.
- 15.2. In consideration for the disclosure of the Proprietary Information, the Contractor agrees to hold in confidence and to not disclose the Proprietary Information to any person or entity without the prior written consent of the Principal. In addition, the Contractor agrees that:
  - 15.2.1. the Contractor will not copy or modify any Proprietary Information

without the prior written consent of the Principal;

- 15.2.2. the Contractor will not disclose any Proprietary Information to any Nominated Representative, associates, members, employees, or subcontractor, except those employees or subcontractors who are required to have the Proprietary Information in order to perform their duties in connection with the limited purposes of this Agreement;
- 15.2.3. the Contractor will require each permitted employee, subcontractor, member or associate to whom Proprietary Information is disclosed to sign a non-disclosure agreement substantially the same as this Agreement at the request of the Principal; and
- 15.2.4. if it appears that the Contractor or a Nominated Representative, employee, subcontractor, member or associate has disclosed (or has threatened to disclose) Proprietary Information in violation of this Agreement, the Principal shall be entitled to an injunction to restrain the Contractor from disclosing, in whole or in part, the Proprietary Information, and the Principal shall not be prohibited by this provision from pursuing other remedies, including claims for losses and damages, legal fees and court costs.

15.3. Upon the written request of the Principal, the Contractor shall return to the Principal all written materials containing the Proprietary Information, together with a written statement signed by the Contractor certifying that all materials have been returned within five (5) days of receipt of the request.

## **16. POLICIES AND PROCEDURE**

16.1. The Contractor shall make itself aware of and comply with all the ES2 and the Client's policies including Occupational Health and Safety, Anti-Discrimination, Sexual Harassment and Privacy. If the Client does not have in place a policy or related procedure, the Principal's policy and procedures will apply. Should an injury or Incident occur, it should be promptly reported to both the Principal and the Client.

16.2. The Client may require mandatory conditions to be passed onto the Contractor. Where applicable, these will be detailed in the Schedule.

## **17. OCCUPATIONAL HEALTH AND SAFETY OBLIGATIONS**

17.1. The Contractor must comply, and must ensure that each Nominated Representative complies, with:

- 17.1.1. all applicable occupational health and safety legislation;
- 17.1.2. all applicable standards, codes and other guides relating to occupational health and safety; and

17.1.3. the Principal's and Client's occupational health and safety policies and procedures as introduced or amended from time to time.

17.2. To the maximum extent permitted by law, the Contractor indemnifies the Principal, its employees, officers, subcontractors and agents from any damage, expense, loss, claim or liability arising from the Contractor or any Nominated Representative's non-observance of any occupational health and safety legislation.

## **18. COMPLIANCE**

18.1. The Contractor must at its own cost, conform with the provisions of all laws and regulations in any way affecting or applicable to the Services from time to time and the performance including, without limitation, privacy, the safety of the Services and of persons on or in the vicinity of the place where the Services are being performed, security, the environment, industrial relations and delivery of the Services.

18.2. The Contractor must obtain, and must ensure each Nominated Representative obtains, all applicable permits, licences and registrations and give all notices required to be given and shall pay all fees, deposits and taxes in connection with the Services.

18.3. The Contractor must comply with all lawful requirements and regulations of the Principal, which requirements and regulations the Principal considers necessary for the proper and effective delivery of the Services.

## **19. PRIVACY**

19.1. The Contractor must comply, and must ensure that each Nominated Representative complies, with all obligations regarding the collection, use and disclosure of personal and health information in accordance with applicable privacy and health laws, and relevant policies of the Principal.

19.2. The Contractor must immediately notify the Principal if it, or any Nominated Representative, becomes aware of any breach or alleged breach of the Contractor obligations under clause 19.1 and comply with any reasonable direction from the Principal with respect to remedying the breach.

19.3. The Contractor consents, and must ensure that each Nominated Representative consents, to the Principal collecting, using, storing and disclosing the personal and health information of each Nominated Representative for any lawful purpose relating to the provision of the Services or the conduct of the Principal's business.

## **20. PROPERTY**

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- 20.1. All property, including but not limited to documents and copies thereof created by the Contractor under this Agreement, or which came into the possession of the Contractor pursuant to the performance of the Services, are the property of the Principal and/or the Client.
- 20.2. All such property must be returned to the Principal immediately upon termination of this Agreement. As required by this Agreement between the Principal and the Client, this property vests in the Principal.

## **21. NATURE OF THE RELATIONSHIP**

- 21.1. Nothing in this Agreement or any circumstances associated with it or its performance shall constitute the Contractor (or any Nominated Representative) as an employee, officer, partner, agent or joint venture partner of the Principal and the relationship of the Contractor to the Principal shall be that of an independent contractor only.
- 21.2. The Contractor will:
  - 21.2.1. not hold itself out in any way as being in a relationship of employment, partnership, agency or joint venture with the Principal and will not do any act or thing whereby any employment, partnership, agency or joint venture will be presumed or implied;
  - 21.2.2. ensure that each Nominated Representative and any subcs do not represent themselves as able to bind or represent the Principal; and
  - 21.2.3. ensure that each Nominated Representative and any subcs are not engaged by the Principal, and at all times, remain the employee, officer, agent or subcontractor of the Contractor.
- 21.3. The Contractor indemnifies the Principal from any claim, complaint, action, suit, cause of action, demand, liability, damage, loss, charge, expense, outgoing or payment brought by it or any third party, arising from the Contractor or any Nominated Representative:
  - 21.3.1. constituting an employee, partner, agent or joint venture partner under this Agreement;
  - 21.3.2. holding themselves out to be an employee, partner, agent or joint venture partner; or
  - 21.3.3. doing any act or thing where any employment, partnership, agency or joint venture relationship will be presumed or implied.
- 21.4. Where the Principal is required by law to pay out any monies to a third party for any claim, complaint, action, suit, cause of action, demand, liability,

damage, loss, charge, expense or outgoing arising from the Contractor or any Nominated Representative constituting an employee under this Agreement or acting in breach of any provision under clause 21.2, then such payment will not discharge the Contractor from its obligation to indemnify the Principal for the amount under clause 21.3.

## **22. TOOLS AND EQUIPMENT**

22.1. The Contractor shall provide all necessary tools, software and hardware necessary to perform the Services.

## **23. INSURANCE**

23.1. The Contractor will effect and maintain for the term of this Agreement the Required Insurances specified in the Schedule, including but not limited to:

- 23.1.1. workers' compensation insurance as required by law in Australia in respect of its liability for the injury and death of its workers and ensure that the Principal is noted on the policy as co-insured with a cross liability clause (so the default by the Contractor will not invalidate the Principal's cover as co-insured);
- 23.1.2. public liability insurance with a limit of not less than the sum specified in the Schedule (Public Liability Insurance) for each and every occurrence, which insures the Contractor and its employees, officers and agents for their liability for loss of, damage to or loss of use of any property and bodily injury or death of any third person;
- 23.1.3. professional indemnity insurance (including run off cover) for liability for its own acts and omissions and those of any Nominated Representative(s) for a limit of not less than the sum specified in the Schedule (Professional Indemnity Insurance) for each claim and in the aggregate for all claims; and
- 23.1.4. any additional coverage to ensure that the Principal's interests and property are properly protected.

23.2. The Contractor must:

- 23.2.1. ensure that the insurance policies listed in clause 23.1 are taken out with reputable insurers acceptable to the Principal;
- 23.2.2. ensure that the Principal is named as an insured party on the insurance policies listed in clause 23.1; and
- 23.2.3. maintain the professional indemnity insurance for a period of not less than seven (7) years after the termination of this Agreement.

## **24. TAXES AND SUPERANNUATION**

- 24.1. The Contractor agrees to perform and observe all obligations and requirements of it by law in relation to the Contractor, including but not limited to, paying all necessary taxes, duties and imposts.
- 24.2. Subject to clause 24.3, the Contractor acknowledges that the obligation to deduct all taxes and other statutory payments (including but not limited to GST, PAYG withholding, and superannuation contributions payable by the Contractor in relation to a Nominated Representative), from the Fees and remit these taxes to the Australian Taxation Office rests upon the Contractor.
- 24.3. If the Principal and the Contractor are deemed to be in a 'chain of on-hire' arrangement and the Principal is required to pay payroll tax with respect to any Nominated Representative provided by the Contractor in accordance with this Agreement, if requested by the Contractor, the Principal will complete and provide the Contractor with the form "Employment Agency Contracts – Chain of On-hire Declaration" published by the Office of State Revenue of WA.
- 24.4. Subject to written approval by the Principal, gazetted changes by a State, Territory or Federal government of any applicable taxation will be reflected in the fees payable to the Contractor from the effective date of the change. It is hereby agreed that should State, Territory or Commonwealth legislation be introduced or modified such that it affects this Agreement, the Contractor agrees that the Principal may implement such legislative changes without the Contractor explicit permission or consultation.

## **25. INDEMNITY**

- 25.1. Notwithstanding any other rights the Principal may also have at law, the Contractor indemnifies the Principal and its officers, agents and employees against, and must pay each relevant party on demand the amount of, all losses, liabilities, demands and taxes incurred as a result of:
  - 25.1.1. any unlawful or negligent act or omission by the Contractor or any Nominated Representative;



- 25.1.2. any claim by any person (other than the Principal) arising out of or as a consequence of the provision of Services by the Contractor;
  - 25.1.3. any infringement or alleged infringement by the Contractor or any Nominated Representative of any Intellectual Property rights through the provision of the Services;
  - 25.1.4. subject to clause 24.3, the Principal becoming liable to pay any amounts in respect of any Nominated Representative (or for being held to be the employer of a Nominated Representative), or for any payment which the Principal is required to make (including superannuation contributions as required by law, and any penalties and legal costs on an indemnity basis);
  - 25.1.5. any liability in relation to GST (including all legal and other costs, penalties and interest) that may otherwise arise under this Agreement;
  - 25.1.6. a breach by the Contractor or any Nominated Representative of any obligation of confidence under this Agreement;
  - 25.1.7. injury to or death of any person or damage to or destruction of any property of the Principal and its officers, agents and employees caused directly or indirectly by the Contractor or any Nominated Representative in the performance of the Services; or
- 25.2. Notwithstanding any other clause in this Agreement, each indemnity in this Agreement is a continuing obligation, independent from the parties' other obligations under this Agreement and continues after this Agreement ends.
- 25.3. It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- 25.4. The rights, powers and remedies provided in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity.

## 26. GOVERNING LAW

- 26.1. The Contractor shall observe all applicable industrial laws and awards in each sphere of its activities in connection with the Services and carry out the Services under this Agreement in accordance with the highest professional standards.
- 26.2. This Agreement shall be governed by and construed in accordance with the laws in force in the **State or Territory** specified in the Schedule. The parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that State or Territory.

## 27. NOTICES

- 27.1. Notices given to either party under this Agreement may be given by email, ordinary prepaid mail or personally, and shall be addressed to the following addresses or to such other addresses as may be notified in writing by one party to the other.
- 27.2. Notices take effect from the time they are received unless an earlier time is specified:
- 27.2.1. if sent by post, notices are taken to be received two (2) Business Days after posting (or four (4) Business Days after posting if sent from a place outside of Australia); and
- 27.2.2. if sent by email, notices are taken to be received at the time when the email becomes capable of being retrieved by the addressee at the email address designated by the addressee.
- 27.3. Despite clause 27.2, if notices are received after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day.

## 28. GENERAL PROVISIONS

- 28.1. This Agreement constitutes the entire agreement between the Principal and the Contractor regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between the parties, whether oral or in writing.
- 28.2. This Agreement may only be varied by both parties in writing.
- 28.3. If any part of this Agreement is (or becomes) void or unenforceable, that part is (or will be) severed from this Agreement, so that all parts that are not (or do not become) void or unenforceable remain in full force and are unaffected by that severance.
- 28.4. The Contractor may only assign, encumber, declare a trust over, or otherwise deal with its rights under this Agreement with the prior written consent of the Principal.
- 28.5. The Principal may assign, encumber, declare a trust over, or otherwise deal with its rights under this Agreement without the consent of any other party, and may disclose to any potential holder of the right, or an interest in the right, any information relating to this Agreement or any party to it.
- 28.6. Each party must do all things and execute all further documents necessary to give full effect to this Agreement.
- 28.7. Each party must pay their own expenses incurred in negotiating and

executing this Agreement.

- 28.8. The Principal may deduct and set off from the monies otherwise due to the Contractor under this Agreement any money due or which may become due from the Contractor to the Principal under this Agreement.
- 28.9. The Principal may deduct and set off from any monies paid under this Agreement any sum in respect of losses incurred by the Principal as a consequence of the termination of this Agreement.
- 28.10. Waiver of any right arising from a breach of this Agreement or upon default under this Agreement must be in writing and signed by the party granting the waiver.
- 28.11. A failure or delay in exercise, or partial exercise, of:
- 28.11.1. a right arising from a breach of this Agreement; or
  - 28.11.2. a power created or arising upon default under this Agreement,
- does not result in a waiver of that right or power.
- 28.12. A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this Agreement or on a default under this Agreement as constituting a waiver of that right or power.
- 28.13. A party may not rely on any conduct of another party as a defence to the exercising of a right or power by that other party.
- 28.14. Clauses 28.10 to 28.13 may not in themselves be waived except by writing.
- 28.15. The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.