



Town of Cottesloe

REQUEST FOR TENDER T02/2024

LIFEGUARD SERVICES

**Deadline for lodgement of Tenders:
4.00pm on Friday, 19 April 2024**

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OVERVIEW

1.1 Request for Tenders

The Town is seeking a qualified and experienced company for the provision of lifeguard services at Cottesloe Main Beach from 1 October to 30 April each year for five consecutive years.

A detailed description of the Town's requirements is contained in Part Three – Specifications.

1.2 Tender Documents

This Request for Tender is comprised of the following parts:

Part One	Overview (Read and Keep)
Part Two	Conditions of Tendering (Read and Keep)
Part Three	Specifications (Read and Keep)
Part Four	General Conditions of Contract (Read and Keep)
Part Five	Tender Form (Complete and Return)
Annexure A	Formal Instrument of Agreement (Read and Keep)
Annexure B	Special Conditions of Contract (Read and Keep)

1.3 How to Prepare Your Tender

1. Carefully read all parts of this Request.
2. Ensure you understand the Requirements.
3. Complete the Tender Form contained in Part 5 in all respects and attach any associated documents.
4. Ensure the Tender Form are signed by the authorised Tenderer's representative
5. Lodge the Tender as required by clause 2.6 before the Deadline.

CONDITIONS OF TENDERING

1.4 Definitions

In this Request (unless such an interpretation is excluded by or contrary to the context) the following words and expressions have the meanings specified in the table below:

TERM	DEFINITION
Annexures	Any contract specification documents annexed to this Request.
Attachments	The documents attached by a Tenderer as part of a Tender.
Contractor:	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, including the executors or administrators, successors and assignments of such person or persons, corporation or corporations.
Deadline:	The deadline for lodgement of Tenders.
General Conditions of the Contract:	Means the General Conditions of Contract as are contained in Part 4 of this Request.
Principal or the Town:	Town of Cottesloe
Request:	This Request for Tender comprising all Parts and Annexures
Requirements:	All requirements, terms and conditions stipulated in this Request.
Selection Criteria:	The Criteria used by the Principal in evaluating Tenders as stipulated in Part 5 of this Request.
Site	Site or sites on which works are proposed to be undertaken or goods or services provided pursuant to this Request
Special Conditions:	The additional contractual terms contained in an Annexure labelled 'Special Conditions of Contract' (if applicable).
Specifications:	The specifications contained in Part 3 of this Request.
Tender:	The completed Tender Form, Response to the Selection Criteria and Attachments submitted by a Tenderer
Tender Documents:	The documents referred to in clause 1.2
Tenderer:	Someone who has or intends to submit a Tender to the Principal.

1.5 Conditions of Tendering

The Conditions of Tender are the conditions under which the Principal will receive and evaluate Tenders. The Principal may reject a Tender that does not comply with all terms of the Request.

1.6 Contact Persons

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

Name: Shane Collie

Phone: 9285 5000

Email: town@cottesloe.wa.gov.au

Tenderers must direct all communications concerning this Request to the above contact.

The Principal reserves the right to:

- a. not answer a question asked by a Tenderer; and
- b. provide any answers to questions raised by a Tenderer to any other Tenderer, on a non-attributable basis.

No responses will be provided to tender queries received after 4:00pm on Wednesday, 17 April 2024.

1.7 Lodgement of Tenders by Deadline

1. Tenders must be received by the Town by the Deadline.
2. The Deadline for this Request is **4.00pm, Friday 19 April 2024** (Western Standard Time).
3. Tenderers should allow sufficient time for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Deadline.

1.8 Form of Tender

1. The Tenders must include the tender number and tender title and otherwise comply with the Conditions of Tendering and this Request.
2. The Tender document should only be signed by a representative of the Tenderer who is authorised to do so.
3. All pages must be numbered consecutively and the Tender must include an index. Any brochures or pamphlets must be attached to the Tender.
4. Tenderers are to assume that the Principal has no previous knowledge of the Tenderer's organisation, activities or experience. Tenderers should ensure that sufficient information is included in their Tender to thoroughly address the Requirements and the Selection Criteria.

1.9 Manner of Lodgement

1. Tenders must be submitted electronically via Tenderlink and are to be uploaded to Tenderlink as a single PDF – via:
<https://www.tenderlink.com/cottesloe/>
2. To obtain assistance with regards to submitting Tender documents to the designated e-tender box, Tenderlink may be contacted on 1800 233 533.
3. If Tenderers have obtained Request documentation other than from
<http://www.tenderlink.com/cottesloe/>, they must visit
<http://www.tenderlink.com/cottesloe/>, register as a user and download the Tender documentation for this Request.
4. In submitting their Tender electronically, Tenderers represent that they have taken reasonable steps to ensure that electronic Tender files are free of viruses, worms or other disabling features which may affect the Principal's provider portal and/or the Principal's computing environment. Responses found to contain viruses, worms or other disabling features may be excluded from the evaluation process.

1.10 Tenderlink Access

Access to and use of Tenderlink.com is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on Tenderlink.

1.11 Disclaimer and acknowledgement

Tenderers acknowledge that:

- a. although the Principal has implemented security measures, the Principal does not warrant that unauthorised access to information and data transmitted via the internet by the Tenderer will not occur; and
- b. lodgement of their Tender on time and in accordance with these Conditions of Tendering is entirely their responsibility; and
- c. the Principal will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this Request is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

1.12 Confidentiality of Tender Information

1. The Town will treat all information provided in a Tender as confidential and will not use it other than for purposes of, or related to, the Tender evaluation or as otherwise required by law or this Request.
2. Documents and other information relevant to the contract may be disclosed when required by law under the Freedom of Information Act 1992, under a Court order or this Request.

1.13 Tender Validity Period

All Tenders will remain valid for:

- a. a period of ninety (90) days from the Deadline; or
 - b. forty-five (45) days from the Principal's resolution for determining the outcome of this procurement process,
- whichever is the later, unless extended on mutual agreement between the Principal and the Tenderer in writing.

1.14 Alternative Tenders

1. The term "Alternative Tender" within this Request shall mean:
 - a. Tenders submitted and identified by a Tenderer as an "Alternative Tender";
 - b. Tenders submitted other than in accordance with the Requirements; or
 - c. Tenders not submitted using the Tender Form.
2. All Alternative Tenders must be accompanied by a conforming Tender. Alternative Tenders will only be considered if accompanied by a conforming Tender.
3. Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases be clearly marked 'Alternative Tender'. The document must clearly specify wherever it fails to comply with

- the Requirements, and state the reasons for each non-compliance. It must demonstrate, in detail, how the Alternative Tender will benefit the Principal.
4. The Principal may in its absolute discretion reject any alternative Tender as a non-conforming Tender.

1.15 Tenders to Inform Themselves

1. Tenderers will be deemed to have:
 - d. examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
 - a. examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
 - b. satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Requirements and of all matters and things necessary for the due and proper performance and completion of the work described therein;
 - c. examined the Site and surroundings; and
 - d. satisfied themselves they have a full set of the Tender Documents and all relevant Annexures.

1.16 Warranties

By submitting a Tender, a Tenderer warrants that:

- a. all information contained in the Tender is accurate;
- b. the Tender is in all respects an independent Tender; and
- c. in the preparation of the Tender, no collusion has taken place between the Tenderer and any other Tenderer or, except to the extent specifically disclosed in the Tender, between the Tenderer and any other interested party.

1.17 Joint Tenders

Where a Tender is lodged in the names of two or more persons or corporations, either by way of a joint venture, partnership or otherwise, irrespective of the relationship between the parties, each person or corporation shall be jointly and severally bound by the terms of the Tender and, if the Tender is accepted, shall be jointly and severally liable under any resulting agreement with the Town.

1.18 Exclusion of Liability

Tenderers acknowledge and agree that the Principal will not be liable to any Tenderer on the basis of promissory estoppel, quantum meruit or other contractual, quasi contractual or restitutionary grounds whatsoever or in negligence as a consequence of any matter relating or incidental to a Tenderer's participation in this Request for Tender process including any circumstances where:

- a. a tenderer is not invited to participate in any subsequent process following completion of this Request;
- b. the Principal varies or terminates the Request;
- c. the Principal decides not to contract for all or any of the Requirements; or

- d. the Principal exercises or fails to exercise any of its other rights under or in relation to this Request.

1.19 Alterations

1. The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.
2. The Principal may issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.
3. Any addendum will be issued through <http://www.tenderlink.com/cottesloe>, or such other appropriate means that will reasonably ensure that all potential Tenderers are given fair and equal access to information relating to this Request.
4. When an addendum is issued, Tenderlink.com will send a system generated email to the email address of all registered users who have original Request documentation, advising them of the issuance of an addendum.

1.20 Price Basis

The Town is to receive tenders in which the tendered rates will remain fixed, unless other price variation provision is available in this Request documentation.

1.21 In House Tenders

The Principal does not intend to submit an in-house Tender.

1.22 Risk Assessment

1. The Principal may have access to and give consideration to:
 - a. any risk assessment undertaken by any credit rating agency;
 - b. any financial analytical assessment undertaken by any agency; and
 - c. any information produced by the Bank, financial institution, or accountant of a Tenderer;so as to assess that Tender and may consider such materials in the assessment of Tenders.
2. Tenderers may be required to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to satisfy the Requirements and meet their obligations under any proposed Contract. The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact any Tenderer concerning the financial information that the Tenderer is required to provide.
3. The financial assessment is specifically for use by the Principal for the purpose of assessing Tenders and will be treated as strictly confidential.

1.23 Tender Opening

1. Tenders will be opened in the Principal's offices at the same day of Deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.
2. The names of the persons who submitted the Tender by the Deadline will be read out at the Tender Opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

1.24 Rejection of Tenders

1. A Tender will be rejected without consideration in the event that:
 - a. it is not submitted before the Deadline; or
 - b. it is not submitted in the manner specified in the Request.
2. A Tender may be rejected without consideration in the event that it fails to comply with any Requirements of the Request.

1.25 Evaluation of Tenders

1.25.1 Clarification of Tenders

1. Following the receipt of Tenders, the Principal, in its absolute discretion, may:
 - a. use any relevant information obtained in relation to a Tender (whether through this Request, previous experience with a Tenderer, its nominated staff or sub-contractors or by independent inquiry) in the evaluation of Tenders;
 - b. enter into discussions or negotiations for minor variations with any one or more Tenderers; and
 - c. seek clarification or additional information from any Tenderer.
2. Tenderers must comply with any requests to provide additional information or clarification in relation to their Tender within the timeframe specified.
3. The Principal may include or exclude from consideration in the evaluation of Tenders any additional information provided by Tenderers, whether received in response to a request or otherwise.

1.25.2 Evaluation Team

The Tenders will be evaluated by an evaluation team, which may include external experts, as selected by the Principal in its absolute discretion.

1.25.3 Evaluation Stages

1. Unless otherwise determined by the Principal in its discretion, the evaluation process will have two consecutive stages comprising:
 - a. Evaluation Stage One: Compliance Stage
 - b. Evaluation Stage Two: Selection Stageas described further below.

1.25.4 Evaluation Stage One: Compliance Stage

1. This stage will involve scrutinising the Tenders against compliance criteria referred in Part Five of this Request.

2. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of 'No' against any criterion may eliminate the Tender from further consideration. It is Tenderer's responsibility to ensure that all documents to support their response to Compliance Criteria are provided.
3. Tenderers who do not meet the compliance criteria may not be evaluated for the next stage of evaluation (Evaluation Stage Two – Selection Stage).

1.25.5 Evaluation Stage Two: Selection Stage

- This stage will involve scrutinising the Tenders against selection criteria referred in Part Five of this Request.
- A scoring system will be used as part of the assessment of the selection criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the relevant criterion. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the selection criteria and in the overall assessment of value for money.
- During the Assessment Stage the Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection where applicable.
- Referees may also be contacted prior to the selection of the successful Tender.
- Risk assessment of the Tenders will additionally form an integral part of the Assessment Stage.

1.26 Principal's Policies

The following policies of the Principal may also be considered in the Selection Stage and affect selection of a Tender:

- Beach Policy
- Community Consultation Policy
- Disability Access and Inclusion Plan Policy
- Occupational Safety and Health Policy
- Purchasing Policy
- Risk Management Policy

The Principal's policies are available at the following link:

[http://www.cottesloe.wa.gov.au/Council-Policies and Local Laws-Policies.htm](http://www.cottesloe.wa.gov.au/Council-Policies%20and%20Local%20Laws-Policies.htm)

1.27 Acceptance of Tenders

1. The Town may accept a Tender in whole or in part.
2. The Town is not bound to accept the lowest price Tender or the highest ranked Tender according to the Selection Criteria and may decline to accept any Tender.

1.28 Notification and Formation of Contract

1. No Tender is to be deemed accepted until the Town has notified the successful Tenderer in writing that its Tender has been accepted.
2. Upon acceptance of a Tender by the Town, the completed Tender Documents and any correspondence between the successful Tenderer and the Town in which the Town gives written notice of its acceptance of any minor variation to the Specifications shall constitute the contract between the Town and the Tenderer.
3. The successful Tenderer shall then be required to execute a formal agreement in the form included in Annexure A with seven (7) days of receipt of the notice of acceptance.
4. All Tenderers will be advised of the Tender outcome in writing by the Town within ten (10) working days of a Tender being accepted by the Town.

1.29 Intellectual Property

1. The Request and such intellectual property rights as may exist in the information contained in the Request shall remain the property of the Principal. A Tenderer is only permitted to use the Request for the purpose of preparing a Tender in response and for the purpose of conducting any contract negotiations with the Principal.
2. The Tenderer authorises the Principal, its officers, employees, agents and advisers to adapt, modify, disclose, reproduce or do anything else necessary (in the Principal's sole opinion) to the whole or any portion of the Tender for the purposes of:
 - a. Tender evaluation;
 - b. negotiating and/or entering into a contract with any party for the delivery of the Principal's Requirements or similar requirements;
 - c. managing a contract with a successful Tenderer (if any); or
 - d. anything else related to the above purposes, including governmental and parliamentary auditing and reporting requirements.
3. All documents, materials, articles and information submitted by the Tenderer as part of, or in support of, the Tender, will become, upon submission, the absolute property of the Principal, and will not be returned to the Tenderer at the conclusion of this procurement process, provided that the Tenderer is entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

1.30 Confidentiality

1. The Tenderer must keep confidential all information concerning the Principal, received as a result of, or in connection with, the submission of a Tender which the Principal has indicated to Tenderers is confidential or which Tenderers know or ought to know is confidential.
2. The Principal reserves the right to require that information concerning the Principal, received by a Tenderer as a result of, or in connection with, the submission of a Tender (and copies of such information) be either destroyed by the Tenderer or alternatively returned to the Principal at any time. The Principal may also require that the Tenderer provide evidence (in a form satisfactory to the Principal) that any Principal's requirements in this respect have been fully complied with.

1.31 Canvassing of Officials

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

1.32 Conflict of Interest

1. Tenderers must not place themselves in a position which may, or does give rise to a conflict of interest between themselves and the Principal during the Tender Process.
2. If any actual or potential conflict of interest with the Principal arises at any time during the Tender Process, the Tenderer is to immediately notify the Principal in writing.
3. In the event of an actual or potential conflict of interest the Principal may, in its absolute discretion:
 - a. resolve any actual or potential conflict of interest with a Tenderer; or
 - b. the Tender lodged by such a Tenderer; or
 - c. take any other action it considers appropriate.

1.33 Identify of the Tenderer

1. The identity of the Tenderer is fundamental to the Principal.
2. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 5 – Tender Form and whose execution appears on the Tender Form in Part 5 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

1.34 Costs of Tendering

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

1.35 Request for Debriefing

1. If requested to do so, the Principal will provide a debriefing for an unsuccessful Tenderer after either:
 - a. a contract has been exchanged for the supply of the Requirements; or
 - b. the Principal decides not to award a contract for the supply of the Requirements.
2. A Tenderer who would like a debriefing should contact the Contact Officer.

TENDER SPECIFICATIONS

The Town is seeking a qualified and experienced company for the provision of lifeguards to provide rescue and surveillance services ('Services') available at Cottesloe Beach within its area of operations and wants to ensure that these services are properly supervised in an effort to provide for public safety.

1.36 Patrol Duties

The Contractor will provide two Lifeguards at Cottesloe Beach (patrol area) who must, during Patrol Hours and throughout the relevant patrol area:

- provide surveillance
- provide an emergency rescue service to respond to rescue calls
- perform the retrieval, emergency treatment and to arrange for the transport of any person requiring medical treatment as the case requires
- ensure that rubbish on the beach and surrounds are reported to the Town
- ensure all bathers are adequately covered
- report any breakages, vandalism or offensive behaviour to Town or the Police if necessary.
- ensure the provisions of local laws relating to control of beach areas to the satisfaction of the Town

The contractor on each Patrol Day throughout the Term:

- assess and determine beach safety within the relevant Patrol Area having regard to conditions generally and any rips and tides, and other dangers that may be in existence;
- erect, where appropriate, Australian Standard Signage showing the conditions then prevailing on Cottesloe Beach within the relevant Patrol Area; and flags denoting the safe swimming area
- if the Lifeguard concludes that as a result of the prevailing conditions (including the presence of dangerous marine animals), that a beach within the Patrol Area is unsafe for swimming, close that beach by following the procedures set out in the Third Schedule;

The contractor is to report to the Town:

- verbally and as soon as practicable after any action is taken on the occurrence of dangerous conditions within the Patrol Area or major emergency procedures undertaken;
- in writing and after the last Patrol Day for each year of the Term, detailing the activities of the contractor under this contract; and
- Provide assistance, generally, to members of the public in keeping with Surf Life Saving Australia's Rules and Regulations, and provide such public relations and displays, instruction in water safety and other aquatic recreational activities, and other such promotional exercises as may be agreed by the parties from time to time.

The Contractor is to provide assistance, generally, to members of the public in accordance with Surf Life Saving Australia's Rules and Regulations, and provide such public relations and

displays, instruction in water safety and other aquatic recreational activities, and other such promotional exercises as may be agreed by the parties from time to time.

1.37 Consideration

In consideration for the Contractor providing the Equipment and the Services to the Town at the Patrol Areas, on the Patrol Days, during the Patrol Hours for the Term, the Town will pay the Contractor the amounts specified in the Sixth Schedule on the dates specified in the Sixth Schedule.

For each payment by the Town under this clause 2, the Contractor agrees to promptly deliver to the Town a Tax Invoice so as to enable the Town to claim input tax credits or decreasing adjustments for Supplies.

1.38 Equipment

The Contractor must make available to the patrol area, for use by the Lifeguards during Patrol Hours, the equipment specified below.

The contractor must provide each Lifeguard with uniforms which comply with all safety standards imposed by laws, which uniforms shall prominently display the words 'LIFEGUARD'.

The Town must on Patrol Days throughout the Term, provide the Lifeguard at each beach with the signs specified in the Fifth Schedule.

1.39 Contractor not Employee

Nothing in this Contract is to be deemed to mean the Lifeguard is an employee of the Town.

GENERAL CONDITIONS OF CONTRACT

1.40 Definitions

In this Contract (unless such an interpretation is excluded by or contrary to the context):

‘Acceptance’ and **‘Accepted’** has the meaning given in **clause 4.57(2)**.

‘Approval’ means any certificate, licence, consent, permit, approval, authority or requirement of any Authority or any organisation having jurisdiction in connection with the provision of the Work under the Contract.

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

‘Australian Standards’ means the latest edition of one or more relevant standards published by Standards Australia.

‘Australian Standard Signage’ means the signage specified in the Fifth Schedule.

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

‘Clause’ means a clause of these General Conditions unless otherwise indicated.

‘Confidential Information’ means all of the Principal’s information which:

- a. is disclosed or otherwise made available to, or acquired directly or indirectly by, the Contractor at any time;
- b. relates to the Principal’s or any Local Government’s past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information);
- c. is in oral or visual form, or is recorded or stored in a Document, and includes this Contract, but does not include information which:
- d. is or becomes generally and publically available other than as a result of a breach of this Contract;
- e. is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- f. has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

‘Consequential Loss’ means any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

‘Consumer Price Index’ means the index published by the Australian Bureau of Statistics known as the table 2 index - 6401.0 (weighted average of eight cities for all groups) or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

‘Contract’ means the contract comprising:

- the Request
- the Tender
- All written variations and clarifications agreed by the Principal and the Tenderer
- Any letter of intention to award a contract to the successful Tenderer
- The Letter of Acceptance
- Any Instrument of Agreement

- The Purchase Order(s)

‘Contract Details’ means the contract information in **Schedule 1** to these General Conditions.

‘Contract Price’ means the prices or rates specified as such in the Contract Details but excluding any additions or deductions, which may be required to be made pursuant to this Contract.

‘Contractor’ means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assignments of such person or persons, corporation or corporations.

‘Contractor Maximum Liability Amount’ means the amount specified as such set out in the Contract Details.

‘Contractor’s Personnel’ means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor.

‘Contractor’s Representative’ is the person named as such in the Contract Details or any replacement person notified to the Principal.

‘Dispute’ means any dispute or difference between the Parties arising in connection with the subject matter of this Contract.

‘Document’ includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

‘End Date’ has the meaning given in the Contract Details.

‘Equipment’ means the equipment specified in the Forth Schedule.

‘Force Majeure Event’ means any one of the following events which is beyond the control of a Party, could not have been reasonably foreseen by the affected Party and which prevents that Party from discharging an obligation under this Contract, which, in the case of the Contractor, is critical to the Contractor delivering the Goods and/or providing the Services by the Completion Date:

- a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;
- a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor’s premises and has not been caused by the Contractor; or
- the enactment of any statute or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of this Contract,

but is not an event which arises from any of the following:

- a breach of a contract, including this Contract, or Law by the Contractor;
- negligence by the Contractor relating to the performance of its obligations under this Contract;
- an occurrence that is a risk assumed by the Contractor under this Contract;
- a shortage or delay in the supply of Goods and/or Services required under this Contract; or
- wet or inclement weather.

‘Framework Agreement’ means a Contract designated as such in the Contract Details.

‘Good Industry Practice’ means:

- a. the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a Professional Contractor;
- b. compliance with applicable standards and codes being the standards and codes specified in the Contract or if not specified, the standards and codes as would be applied by a Principal in the circumstances; and
- c. compliance with applicable Legal Requirements.

'Goods' means any goods or materials supplied or required to be supplied in the provision of the Work under the Contract.

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

'GST Law' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

'Insurance' means the insurances which the Contractor is required to obtain under **clause 4.41** and the Contract Details.

'Insurance End Date' means the date set out in the Contract Details as an Insurance End Date for a specific Insurance.

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

'Invoice' means an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law.

'Law' means:

- a. any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and
- b. any common or customary law and equity.

'Legal Requirement' means:

- a. Laws;
- b. Approvals;
- c. Requisitions; and
- d. fees and charges payable in connection with the foregoing.

Lifeguard means someone who is the holder of qualifications deemed suitable by Surf Life Saving Australia and who has passed a proficiency test within the last 12 months, to the standards required by Surf Life Saving Australia's Rules and Regulations;

'Liquidated Damages' means the liquidated damages payable pursuant to clause 4.17 in the amount described in the Contract Details.

'Local Government' means any local government established under the *Local Government Act 1995* (WA) other than the Principal.

'Loss' means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any

nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.

‘Officer’ means an officer nominated by the Chief Executive Officer of the Town.

‘Order’ means a purchase order from the Principal to the Contractor which requires the supply of specific Work under the Contract under this Contract where this Contract is a Framework Agreement.

‘Patrol Area’ means Patrol Area 1.

‘Patrol Area 1’ means Cottesloe Beach.

‘Patrol Days’ means those days, in respect of each Patrol Area, set out in the Schedule Two which may be varied from time to time with the agreement of the parties.

‘Patrol Hours’ means those hours, in respect of each Patrol Area, set out in the Schedule Two which may be varied from time to time with the agreement of the parties;

‘Person’ includes a natural person or persons, a corporation, a partnership, a board, a joint venture, an incorporated association, a government, a local government authority and an agency.

‘Party’ means the Principal and/or the Contractor (as the context requires).

‘PPS Law’ means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA

‘PPSA’ means the *Personal Property Securities Act 2009* (Cth).

‘Principal’ means the Town of Cottesloe.

‘Principal Maximum Liability Amount’ means the amount specified as such in the Contract Details.

‘Principal’s Personnel’ means directors, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor’s Personnel.

‘Principal’s Representative’ is the person named as such in the Contract Details or any replacement person notified to the Contractor.

‘Principal’s Technical Material’ means any Technical Material provided by the Principal to the Contractor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

‘Progress Claim’ means a document in a form approved by the Principal evidencing the delivery of Goods and/or performance of Services and which includes the information set out in the Contract Details.

‘RCTI Agreement’ means an agreement in the form provided by the Principal pursuant to which the Parties have agreed that the Principal will issue Recipient Created Tax Invoices in respect of all Goods and/or Services.

‘Recipient Created Tax Invoice (or RCTI)’ has the meaning prescribed in the GST Law.

‘Requisition’ means any order, direction, requisition, notice or other requirement issued by an Authority in relation to the Work under the Contract or the Site;

‘Review Date’ means each 12 month anniversary of the execution of this Contract.

‘Schedule of Rates’ means any schedule of rates included in the Tender accepted by the Principal.

‘Services’ means services required to be provided by the Contractor in undertaking the Work under the Contract.

‘Special Conditions’ the additional contractual terms (if any) specified in an Annexure labelled ‘Special Conditions of Contract’ (if applicable).

‘Specification’ means the technical specification for the Work under the Contract contained in Part 3 of this Request.

‘Start Date’ has the meaning given in the Contract Details.

‘Subcontractor’ means any person engaged by the Contractor in connection with the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors.

‘Supplies’ has the meaning given to that term in the GST Act.

‘Tax’ means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty.

‘Tax Invoice’ has the meaning given to that term in the GST Act.

‘Technical Material’ includes plans, designs, drawings, engineering information, data, specifications, reports, processes, concepts, manuals, specifications, accounts and any other material specified in this Contract.

‘Tender’ means the offer submitted by the Contractor to supply the Goods and/or Services under this Contract and includes associated documentation.

‘Tenderer’ means a Person who offers to deliver the Principal’s Requirements by submitting a Tender.

‘Term’ means the period of time between (and including) the Start Date and the End Date.

‘The Principle’ means the Town of Cottesloe

‘Variation’ means any change to the Work under the Contract, including any addition to, reduction in, omission from or change in the extent or quality of the Work under the Contract.

‘Variation Form’ means a notice substantially in the form set out in an Annexure labelled ‘Variation Form’ under which the Principal has directed a Variation in accordance with clause 4.18.

‘Wilful Misconduct’ means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Contract.

‘Work under the Contract’ means all of the Goods (if any) and all of the Services (if any) and all of the Works (if any) the Contractor is required to provide, as specified in the Contract Details, in accordance with this Contract.

1.41 Interpretation

In this Contract (unless the context otherwise requires):

- a. a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- b. a reference to ‘including’, ‘includes’ or ‘include’ must be read as if it is followed by ‘(without limitation)’;
- c. a reference to ‘approved’ or ‘approval’ will be deemed to mean ‘approved in writing’ or ‘approval in writing’;

- d. where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- e. words in the singular include the plural and vice-versa;
- f. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- g. a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- h. a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- i. headings are for convenience only and do not affect interpretation of this Contract;
- j. a promise or undertaking on the part of 2 or more persons binds them jointly and severally; and
- k. no rule of construction applies to the disadvantage of a Party on the basis that the Party drafted this Contract or any part of it.

1.42 Order of Precedence

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

- a. the Conditions of Tendering
- b. the Tender Specifications
- c. the General Conditions of Contract
- d. the Special Conditions
- e. the completed Tender Form and Tender response

1.43 Contractor's General Obligations

The Contractor agrees with the Principal:

- a. to perform its obligations under this Contract in a competent and professional manner and to ensure that all staff employed by the Contractor and sub contractors to perform required work are appropriately qualified, skilled and supervised to ensure that the services are provided or the contract completed in a timely and satisfactory manner;
- b. to comply with any reasonable requests by the Principal in relation to the performance of the Contractor's obligations;
- c. to accept responsibility for all matters in connection with the employment of its staff including all insurance cover required by law; and
- d. at its own expense comply with the Requirements of this Request and all relevant Legal Requirements.

1.44 Representatives

- 1. Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.
- 2. The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution

procedure in clause 4.31 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.

3. The Contractor's Representative is responsible for the quality, timeliness, cost and completion of the Work under the Contract in accordance with this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

1.45 Notices

1. Any notice or other communication under this Contract shall be in legible writing, in English and shall be given or served by:
 - a. hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
 - b. facsimile transmission to the facsimile number of the recipient specified in this Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
 - c. email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.
2. Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:
 - a. if by delivery in person, when delivered to the address of the recipient;
 - b. if by post, 3 Business Days from and including the date of postage;
 - c. if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
 - d. if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.
3. In this clause 4.6, reference to a recipient includes a reference to a recipient's officers, agents or employees.

1.46 Complying with Legal Requirements

1. The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Contractor's performance of this Contract and the delivery of the Work under the Contract.
2. Without limiting in any way the generality of the foregoing, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* (WA) and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

3. If a Legal Requirement is inconsistent with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Work under the Contract or the manner in which it must be undertaken, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

1.47 Safety Obligations

1. The Contractor must perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety.
2. The Contractor must ensure that the Work under the Contract is undertaken and completed in a manner that is safe and without risks to any person, including by ensuring that the Contractor's Personnel undertake any work in a safe manner.
3. The Contractor must:
 - a. as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident, injury or property damage which occurs during delivery of the Work under the Contract and which is notifiable under any Legal Requirement; and
 - b. provide the Principal with any further information when requested by the Principal.
4. The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the provision of the Work under the Contract.
5. The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this **clause 4.8**.
6. In performing its obligations under this Contract, the Contractor must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Site over which it has control:
 - a. the Principal's Personnel;
 - b. the Contractor's Personnel; and
 - c. the public.
7. The Contractor must comply with any order, notice, direction or other requirement issued by WorkSafe WA in relation to the Work under the Contract or the Site.
8. The Contractor shall additionally comply with any Health and Safety Instructions to Contractors contained in this Request.

1.48 Assignment and Subcontracting

1. The Contractor shall not:
 - a. assign this Contract, or any part thereof or any payment thereunder; or
 - b. subcontract the whole or any part of this Contract,without the Principal's prior written approval, which may be withheld in the absolute discretion of the Principal.
2. The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

3. The Principal may, without the Contractor's consent, assign or novate this Contract or assign any payment or any other right, benefit or interest under this Contract to another local government.

1.49 Compliance with directions

The Contractor must, and must ensure the Contractor's Personnel, comply with all directions given by the Principal's Representative or any person authorised by Law in connection with the performance of the Contractor's obligations and delivery of the Work under the Contract.

1.50 Indemnity

1. The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
 - a. any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel;
 - b. any Contamination;
 - c. any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel;
 - d. any breach of a Legal Requirement;
 - e. any breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty; and
 - f. any claim made by a third party against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel,except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.
2. The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this **clause 4.11**.

1.51 Intellectual Property Rights

1. The Contractor warrants that the Work under the Contract and any design, documents or methods of working provided by the Contractor does not infringe any Intellectual Property Right.
2. The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
3. All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
4. Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Work under the Contract and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.
5. All Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.

6. The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Work under the Contract and any documentation provided pursuant to this Contract.

1.52 Orders

If this Contract is a Framework Agreement, the following sub-Clauses apply:

- a. The Principal:
 - i. may require the Contractor to provide Work under the Contract from time to time by giving the Contractor an Order; and
 - ii. may order requirements of any one type or item of the Work under the Contract either in one single lot or instalments or in such quantities as may be required.
- b. Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:

If the Contractor:

 - i. disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
 - ii. recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.
- c. If the Contractor:
 - i. gives notice subclause (b), the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or
 - ii. does not give notice pursuant to subclause (b) the Contractor must perform its obligations under the Order in accordance with this Contract.
- d. If, pursuant to a notice issued under subclause (b), the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
 - i. the contract price applicable to that Order and such contract price will deemed to be the Contract Price for that Order; and
 - ii. the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.
- e. The Principal is not obliged to issue Orders or otherwise purchase Work under the Contract.
- f. The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Work under the Contract undertaken prior to the date the cancellation is notified to the Contractor.

1.53 Conduct of Staff

The Contractor must ensure that the Contractor's Personnel:

- a. conduct themselves towards members of the public in a civil and inoffensive manner;
- b. do not seek or demand any fee, reward or gratuity in respect of the performance of the Works;
- c. perform the works in a careful manner and with as little disturbance as is practicable;
- d. do not cause any damage to any property; and
- e. obey all relevant Acts, regulations and local laws.

1.54 Equipment

1. The Contractor must provide (at its cost) all Equipment, labour and haulage necessary for performance of the Contractor's obligations under this Contract.
2. The Contractor must ensure that all Equipment and any other items which the Contractor uses or supplies in conjunction with delivery of the Work under the Contract are of merchantable quality, comply with this Contract and all Legal Requirements, and are fit for their usual and intended purpose.
3. The Contractor is responsible for any loss or damage to its Equipment sustained in the course of undertaking the Work under the Contract.

1.55 Time for Performance and Extensions of Time

1. This Contract commences on the Start Date and continues for the Term, unless terminated earlier.
2. The Contractor must achieve Completion of the Work under the Contract by the Completion Date. In this respect time shall be of the essence under this Contract.
3. Subject to subclauses (4), (5) and (6), if the Works are unlikely to be completed by the Completion Date the Contractor is entitled to an extension to the Completion Date if the delay is due to:
 - a. breach by the Principal of its obligations under this Contract;
 - b. delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
 - c. a Force Majeure Event occurring before the Completion Date;
 - d. suspension of this Contract under **clause 4.19**, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
 - e. a Variation being granted under **clause 4.18**.
4. The Contractor may only claim an extension to the Completion Date if the Contractor:
 - a. could not reasonably have been expected to foresee the delay at the date of signing this Contract;
 - b. has taken all reasonable steps to mitigate the delay and the effect of the delay; and
 - c. the Contractor or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.
5. The Contractor's claim for an extension to the Completion Date must:
 - a. be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and

- b. include the facts on which the claim to the extension to the Completion Date is based.
- 6. If the Principal's Representative reasonably considers that:
 - a. the claim for an extension of time under subclause (5) relates to an event listed in subclause (3); and
 - b. subclauses (4) and (5) have been satisfied,the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time under subclause (5) (or such other time agreed by the Parties) that an extension of time to the Completion Date is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in subclause (3) (as determined by the Principal, acting reasonably).
- 7. The Principal may by written notice to the Contractor direct an extension of time to the Completion Date at:
 - a. any time that the Principal directs a Variation; or
 - b. at any other time at the absolute discretion of the Principal,notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Completion Date. The Contractor acknowledges that the mechanism in this subclause (7) is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:
 - a. impose any obligations on the Principal;
 - b. to the maximum extent permitted by Law, give rise to any duty to act in good faith;
 - c. in any way constitute a waiver or relaxation of any of the requirements under this clause 4.16; or
 - d. entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this subclause (6).
- 8. If the Principal, acting reasonably considers that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim under subclause (5) that the Completion Date remains unchanged.
- 9. If the Contractor fails to comply with subclause (5) and fails to obtain approval of the Principal to a requested extension of time, the Contractor will have no entitlement to an extension of time of the Completion Date.
- 10. If an extension of time is granted in accordance with this clause 4.16, provided that those costs are not also reimbursable pursuant to clauses 4.18 or 4.19, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay, but without regard to overheads, profit or any other cost, loss, expense or damage.

1.56 Variation

- 1. A direction to the Contractor to perform a Variation may only be effected in accordance with this **clause 4.18**.
- 2. If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation ('Variation Proposal').

- The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within five Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.
3. If a Variation requires the omission of Work under the Contract, the Principal's Representative may have the omitted Work under the Contract provided by others or not as the Principal sees fit.
 4. The Variation Proposal must specify:
 - a. the effect the Contractor anticipates the proposed Variation will have on the Completion Date and the Contract Price (if any); and
 - b. any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
 5. Following receipt of the Variation Proposal by the Principal, subject to subclause (2), the Parties must seek to agree on the price for the Variation and the impact of the Variation on the relevant Completion Date.
 6. The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.
 7. The Contractor acknowledges and agrees that, subject to subclause (1), the Principal or the Principal's Representative may direct the Contractor in accordance with subclause (13) to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the relevant Completion Date.
 8. The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with subclause (13).
 9. If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
 10. If the Parties are unable to agree on:
 - a. the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
 - i. if this Contract prescribes rates or prices to be applied in respect of the Works, those rates or prices must be used; or
 - ii. if subclause 10(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
 - b. the impact of the Variation on the Completion Date, then the Principal's Representative must determine a reasonable impact and amend the relevant Completion Date by notice in writing to the Contractor.
 11. A Variation does not invalidate this Contract.
 12. The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under this **clause 4.18** or elect not to direct a Variation.
 13. A direction is not a Variation unless a Variation Form has been signed by the Principal.

1.57 Suspending this Contract

1. The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
2. When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
3. Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Loss.
4. If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with subclause (1) (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Completion Date and the End Date are extended by the period of that suspension.
5. The remedies set out in subclauses (3) and (4) are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

1.58 Warranties

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

1.59 Variation to Contract Terms

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

1.60 Price Basis

1. **Unless stated elsewhere in this Request, the Contract Price for the Work under the Contract shall be fixed for the term of the Contract and not subject to rise and fall.**
2. The Contract Price for the Work under the Contract should be stated in the following terms:
 - a. price excluding Goods and Services Tax (GST);
 - b. Goods and Services Tax amount; and
 - c. total price including GST.
3. Where no stipulation is made as to GST, the Contract Price shall be deemed to include GST, unless clarification is provided to the Principal by the Tenderer prior to acceptance of Tender.
4. Unless otherwise indicated the Contract Price shall include all disbursements, allowances, sites visits, printing, plotting, delivery, and all applicable fees, levies, duties, taxes and charges. Any charge not stated in the Tender as being additional, and accepted by the

Principal as such, will not be allowed as a charge for any transaction under any resultant Contract.

1.61 Currency

In this Contract, a reference to “\$” or “dollars” is a reference to Australian dollars.

1.62 Payment and Invoicing

1. Subject to **clause 4.49**, in consideration of the Contractor providing the Work under the Contract the Principal shall pay to the Contractor the Contract Price in accordance with this clause.
2. As soon as reasonably practicable following the end of each calendar month (or as otherwise agreed by the Parties), the Contractor must provide to the Principal a Progress Claim or if the Principal directs, an Invoice.
3. A Progress Claim and any Invoice must include all details set out in the Contract Details.
4. Upon approval of a Progress Claim or Invoice by the Principal:
 - a. if the Contractor has entered into an RCTI Agreement, the Principal will, generate a Recipient Created Tax Invoice. References to ‘Invoice’ in the remainder of this clause should be taken to include RCTI where applicable; or
 - b. if the Contractor has not entered into an RCTI Agreement, the Contractor will submit an Invoice, in respect of the Work under the Contract that is the subject of the approved Progress Claim or Invoice.
5. Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Progress Claims or Invoices that comply with subclause (3) within 20 Business Days (or such other period as the Principal’s Representative and Contractor agree) of their generation or receipt (as the case may be), except where the Principal:
 - a. is required by any Legal Requirement to pay within a shorter time frame, in which case the Principal must pay within that time frame;
 - b. exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
 - c. disputes the Progress Claim or Invoice, in which case:
 - i. to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Progress Claim or Invoice pending resolution of the Dispute; and
 - ii. if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.
6. A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Work under the Contract the subject of the Progress Claim or Invoice was to the satisfaction of the Principal, but will only be taken to be payment on account.
7. Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid this Contract.
8. The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price.

1.63 Confidential Information and Publicity

1. The Contractor must not advertise, publish or release to the public:
 - a. any Confidential Information; or
 - b. other information concerning the Work under the Contract, or this Contract, without the prior written approval of the Principal.
2. The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:
 - a. use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or
 - b. disclose the Confidential Information:
 - i. other than (to the extent they require the information to enable the Contractor to fulfil its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
 - ii. where disclosure is required by Law (including disclosure to any stock exchange).
3. The rights and obligations under this clause 4.25 continue after the End Date.

1.64 Goods and Services Tax

1. Any reference in this Clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
2. Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**'GST Exclusive Consideration'**) except as provided under this Clause.
3. Any amount referred to in this Contract (other than an amount referred to in subclause (8)) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
4. To the extent that GST is payable in respect of any supply made by a Party ('Supplier') under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
5. The recipient must pay the additional amount payable under subclause (4) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
6. The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under subclause (4) or at such other time as the Parties agree.
7. Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under subclause (5), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

8. If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with subclause (4).

1.65 Consequential Loss

In relation to Consequential Loss:

- a. subject to clause 4.11 and subclause (b) but notwithstanding any other clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- b. subclause (a) does not exclude liability of the Contractor for Consequential Loss, if, but for subclause (a) the Contractor would have insurance cover for that Consequential Loss under an Insurance.

1.66 Limits on Liability

1. The Contractor's liability to the Principal in respect of Loss under this Contract in the aggregate for all claims is limited to the Contractor Maximum Liability Amount.
2. To the extent that the Principal is liable to the Contractor under any Legal Requirement or under this Contract, the Principal's liability to the Contractor in respect of Loss under this Contract in the aggregate for all claims is limited to the Principal Maximum Liability Amount.
3. The limitation of liability in subclause (1) does not apply in respect of any fraud, deliberate default, gross negligence or Wilful Misconduct or any act or omission done or not done with a reckless disregard for the consequences by the Contractor, the Contractor's Personnel, or for any loss arising from any claim by a third party against the Principal arising out of any act or omission of the Contractor or the Contractor's Personnel.

1.67 Force Majeure Event

1. A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract ('Affected Obligations') and must either:
 - a. to the extent practicable, specify in the notice the length of delay in the Completion Date that will result from the Force Majeure Event; or
 - b. where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.
2. The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
3. The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.

4. If a Force Majeure Event continues to affect the supply of any Goods and/or Services or construction of the Works for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

1.68 Damage to Property

1. If the Contractor or the Contractor's Personnel damage property, including property on or adjacent to the Site or Delivery Point (if applicable), the Contractor must promptly:
 - a. make good the damage; and
 - b. pay any compensation which the Contractor is required to pay under the Contract or under any Legal Requirement.
2. If the Contractor fails to comply with an obligation under subclause (1), the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

1.69 Settlement of Disputes

1. In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('**Notice of Dispute**').
2. The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
 - a. alleged facts on which the claim is based;
 - b. legal basis on which the claim is made; and
 - c. relief that is claimed.
3. Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
 - a. its position in relation to the Dispute; and
 - b. the basis for its position.
4. Within 10 Business Days of receipt of the response referred to in subclause (3), the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.
5. If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with subclause (4), either Party may initiate proceedings in a court of competent jurisdiction.
6. Either Party may, with the agreement of the other Party, at any time, refer the Dispute to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.
7. The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience agreed between the parties. Failing agreement, the matter in dispute must be determined under the provisions of the Commercial Arbitration Act 2012.

8. The independent expert's or arbitrator's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.
9. Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

1.70 Termination of Contract

1. If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.
2. The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 10 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:
 - c. the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
 - d. the cost of materials and equipment reasonably ordered by the Contractor for the construction of the Works or provision of the Goods and/or Services and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,and shall have no further liability to the Contractor.
3. If the Contractor:
 - a. subject to clause 4.29, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
 - b. **(being a corporation)** goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;
 - c. **(being a natural person)** commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
 - d. assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;
 - e. or any Contractor's Personnel, are found guilty of any criminal act related to the Goods and/or Services that may bring the Principal into disrepute;

- f. includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- g. or the Contractor's Personnel:
 - i. cause a safety issue, condition or any risk to health in breach of this Contract; and
 - ii. the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,then the Principal may by notice in writing to the Contractor immediately terminate this Contract and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.
- 4. The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in subclause (3) and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.
- 5. When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.
- 6. The termination of this Contract does not affect:
 - a. any rights of the Parties accrued before the End Date; and
 - b. the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after the End Date.

1.71 Waivers and Amendments

- 1. This Contract may only be amended, or its provisions waived, in writing by the Parties.
- 2. No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

1.72 No Fettering of Principal's Powers

It is acknowledged and agreed that this Contract does not fetter or restrict the power or discretion of the Principal in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Contractor.

1.73 Counting of Days

Where under any provision of this Contract any notice is to be given, any payment made or anything else must be done in a stated period of days, the stated number of days will exclude Saturdays, Sundays and public holidays. The days comprising any period of days computed in accordance with this clause are deemed to be consecutive if interrupted only by days which are not to be taken into account under this clause.

1.74 No Partnership or Relationship

Nothing in this Contract will operate or be deemed to create a partnership between the Principal and any of the parties to the Contract.

1.75 Entire Agreement

1. To the extent permitted by Law, this Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this Contract.
2. To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Principal in respect of the Works, those terms and conditions will be of no legal effect and will not constitute part of this Contract.

1.76 Rights and Remedies

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether under a Legal Requirement or this Contract.

1.77 Reporting

The Contractor must keep the Principal fully informed on all aspects of the delivery of the Goods and/or Services or Works as the case may be, and must supply on request:

- a. progress reports on the performance of the Contractor's obligations in such detail as will allow the Principal to ascertain whether such is in conformity with this Contract; and
- b. the Contractor's Technical Material, reports, data and a detailed supply program, relating to the Goods and/or Services or Works under the Contract.

1.78 Agency

The Contractor must not:

- a. hold itself out as being an agent of the Principal or being in any other way entitled to make any contract on behalf of the Principal or to bind the Principal to the performance, variation, release or discharge of any obligation; or
- b. hold out its employees or agents, or allow its employees or agents to hold themselves out, as being employees or agents of the Principal.

1.79 Insurance

1.79.1 General requirements

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

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- i. carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
 - ii. if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
2. The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
3. Without limiting subclause (1), the Contractor must:
 - a. pay all premiums and all deductibles applicable to the Insurance when due; and
 - b. promptly reinstate any Insurance required under this **clause 4.41** if it lapses or if cover is exhausted.
4. To the extent available at the times of placement and each renewal, each Insurance must:
 - a. provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
 - b. come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - c. provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
 - d. provide, where the Principal is entitled to cover under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and,
 - e. state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
5. The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.
6. The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.
7. The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
8. The Contractor must ensure that its subcontractors are insured as required by this **clause 4.41**, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
9. The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal current and updated Certificates of Insurance or the terms and conditions (including schedules) of the Insurances, to demonstrate compliance with this Contract. Nothing in this clause will be construed as providing the Principal with notice of the contents

of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.

10. If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
11. Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.
12. The Contractor must:
 - a. inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
 - b. where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
13. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.
14. The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.
15. Insurances shall be provided in the amount and in accordance with any details stipulated in the Contract details and otherwise in accordance with this **clause 4.41**.

1.79.2 Public and product liability insurance

1. Unless otherwise stipulated by the Principal, the Contractor must maintain public and product liability insurance. The public and product liability policy must:
 - a. be endorsed to note the Principal for their respective rights and interests in relation to this Contract;
 - b. be for an amount of not less than \$50M and unlimited in the amount of occurrences and not less than \$50M in the aggregate in relation to Products Liability during any one 12 month period of insurance;
 - c. include a cross liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each Party insured (without increasing the deductibles or reducing the overall limit of indemnity);
 - d. cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
 - i. loss of, damage to, or loss of use of, any real or personal property; and
 - ii. the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers compensation policy),

arising out of or in connection with the performance of this Contract by the Contractor; and

- e. be endorsed:
 - i. to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
 - ii. to cover sudden and accidental pollution; and
 - iii. to provide waiver of subrogation in favour of the Principal in relation to this agreement where the Principal is not a named insured.

1.79.3 Workers compensation insurance

1. The Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be obtained prior to the Start date and shall be maintained until completion of all Work under the Contract. The insurance policy or policies shall be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.
2. In the event that the Contractor is a sole trader and no workers compensation policy is in place, the contractor must insure against the loss of income and illness by the purchase of income protection or salary continuance policy.

1.79.4 Professional indemnity insurance

1. Unless otherwise stipulated by the Principal, the Contractor must maintain professional indemnity insurance. The professional indemnity policy must:
 - a. be for not less than \$5M in respect of any one claim and not less than \$5M in the aggregate for all claims arising in any one 12 month period of insurance;
 - b. include one full automatic reinstatement of the limit of liability;
 - c. cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Contract; and
 - d. cover claims in respect of this Contract under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.

1.79.5 Works insurance

1. Where the Contract is a contract for Works, the Contractor in the joint names of the Contractor, the Principal and all sub-contractors (insured) for their respective rights and interests must have or effect insurance under a contractors all risk insurance policy or policies which must cover the whole of the Works including any associated temporary works and including material incorporated or to be incorporated in there, the property of the insured or for which they are responsible and while on or adjacent to the Site regarding loss, destruction or damage of or to the property insured for the full reinstatement and replacement cost.
2. The sum insured must consider the full Contract Sum with an amount for escalation costs as incurred during any period of reinstatement and replacement during the period up to Practical Completion of the Works.

1.80 Industrial Awards

1. With respect to all work done in Western Australia under this Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and this Contract.
2. Failure by the Contractor to comply with subclause (1) hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate this Contract, but without prejudice to any other rights or remedies of the Principal.

1.81 Governing Law

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

1.82 Proportionate Liability

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

- a. this Contract; and
- b. any of the Contractor's Subcontractors or the Subcontractor's personnel.

1.83 Construction Contracts Act

1. The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation to the Construction Contracts Act that the Contractor gives to the Principal or receives from a Subcontractor.
2. If the Principal's Representative becomes aware that a Subcontractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Subcontractor such money that may be owing to the Subcontractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.
3. The Contractor must ensure that none of its subcontracts contain terms which are prohibited by the Construction Contracts Act.

1.84 Personal Property Securities Act

1. For the purposes of this clause 4.46:
 - a. the 'Principal's Personal Property' means all personal property the subject of a security interest granted under this Contract; and
 - b. words and phrases used in this clause 4.46 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
2. If the Principal determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do

- anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
- a. ensuring that the security interest is enforceable, perfected and otherwise effective;
 - b. enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - c. enabling the Principal to exercise rights in connection with the security interest.
3. The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
 4. The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
 - a. if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
 - b. if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.
 5. The Contractor must not:
 - a. create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
 - b. sell, lease or dispose of its interest in the Principal's Personal Property;
 - c. give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
 - d. permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
 - e. change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
 6. Everything the Contractor is required to do under this clause 4.46 is at the Contractor's expense.
 7. Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This clause 4.46 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

1.85 Application of this Contract

This Contract applies to the performance of the Contractor's obligations under this Contract whether performed before, on or after the Start Date.

1.86 Restructure of the Principal

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined the Principal or the successors of the Principal under the restructure.

1.87 Deduction of Charges or Debts

1. Without limiting the Principal's rights under this Contract any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal and if such moneys are insufficient for this purpose, then from the Contractor's security or retention under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
2. The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

1.88 Environmental Activities

Without limiting **clause 4.7**, the Contractor must:

- a. ensure that any Work under the Contract affecting the Environment is carried out in accordance with the *Local Government Act 1995* (WA) or other relevant Legal Requirements, including the *Environmental Protection Act 1986* (WA); and
 - b. complies with all:
 - i. Approvals (including Approvals issued by the Principal authorising clearance of native vegetation from prescribed areas); and
 - ii. conditions of such Approvals, which in relation to clearance of native vegetation may include conditions specific to the management of flora, fauna, die-back and weed control, re-vegetation and rehabilitation within the prescribed area,
- in providing the Work under the Contract.

1.89 Severability

In the event any part of this Contract is held by a court of law to be invalid or unenforceable, that part shall be:

- a. read down, if possible, so as to be valid and enforceable; or
- b. severed from this Contract to the extent of the invalidity or unenforceability, and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

1.90 Access to Site

1.90.1 Possession

1. The Principal shall before the Start Date, give the Contractor possession of sufficient area of the Site for commencement of the Works on the Site. If the Principal has not given the Contractor possession of the whole Site, the Principal shall give the Contractor possession of such further portions of the Site as may, from time to time, be necessary for carrying out the Works.
2. Possession of the Site shall confer in the Contractor a right to only such use and control of the Site as is necessary to enable the Contractor to carry out Work under

the Contract and shall exclude camping, residential purposes and any purpose not connected with the Work under the Contract, unless approved by the Principal's Representative.

1.90.2 Access for the Principal and Others

1. The Principal and the Principal's Personnel may at any time after written or verbal notice to the Contractor, have access to any part of the Site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the Site other than the Works and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.
2. The Contractor shall at all reasonable times give the Principal's Representative access to the Works under contract.
3. The Principal shall ensure that none of the persons referred to in this subclause impedes the Contractor.

1.90.3 Minerals, fossils and other relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value, found on the site shall be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:

- a. take precautions to prevent their loss, removal or damage; and
- b. give the Principal written notice of the discovery.

1.90.4 Compliance with heritage requirements

1. Where the Principal has notified the Contractor that the works are subject to section 18 of the *Heritage of Western Australia Act 1990* conditions, or other requirements, the Contractor shall comply with these requirements.
2. All costs so incurred by the Contractor shall be assessed by the Principal and added to the Contract Price, except for any requirements already included in the Specifications.

1.91 Contractor's Employee and Subcontractors

1.91.1 Personal Protective Equipment

The Contractor must ensure that:

- a. all its employees or Subcontractors are provided with and wear during the performance of the Works appropriate personal protective equipment for each task, including coloured safety vests or jackets, approved by the Principal. In accordance with AS 1742.3, SAA HB81, AS/NZS 1906.4; and
- b. any clothing referred to above is to be kept in a neat and tidy condition by its employees and Subcontractors.

1.91.2 Removal of Contractor employees

The Principal may direct the Contractor to have removed, within a stated time, from the Site or from any activity of Work under the Contract, any person employed to undertake the Work under the Contract who, in the Principal's opinion, is incompetent, negligent, or guilty of misconduct.

SCHEDULE ONE – CONTRACT DETAILS

Item 1 Principal's Representative

Name: Shane Collie

Position: Director Corporate and Community Services

Phone: (08) 9285 5000

Email: town@cottesloe.wa.gov.au

Address: 109 Broome Street, Cottesloe WA 6011

Item 2 Contractor's Representative

To be confirmed

Item 3 Start Date

Tentatively, 1 July 2024

Item 4 Completion Date

Before 1 October 2029

Item 5 Contract Price

As stipulated in the Tender accepted by Principal.

Item 6 Works under the Contract

As stipulated in the Specification.

Item 7 Defects Liability Period

To be advised

Item 8 Insurance

As per section 4.41

Item 9 Progress Claims

Progress Claims shall be submitted at the end of each month.

Progress Claims and Invoices must be addressed to the Principal's Representative and must clearly state the following information:

- a. Contract Number;
- b. Date of Issue
- c. Date which the Goods and/or Service or Works was provided;
- d. Detailed description of Goods and/or Service or Works provided;
- e. Contractor's ABN or ACN;
- f. Contractor's contact details;
- g. Progress Claim or Invoice reference number
- h. Purchase Order Number (Invoice only);
- i. Aggregate amount claimed and paid to date in preceding Invoices;
- j. Discount items; and
- k. GST inclusive and exclusive amounts.

Item 10 Liquidated Damages

N/A

Item 11 Contractor's or Principal's Security

Security shall be provided by the Contractor within 7 days of the Start Date:

- a. by way of cash or bank bond or bank guarantees in a form satisfactory to the Principal;
- b. where bank guarantees are required the Contractor shall provide two guarantees, each for half the value of the security;
- c. in an amount equal to 10% of the total value of the Contract Price;

Where retention is permitted by the Principal as a form of security, retention shall be by way of 10% of monies payable withheld by the Principal against each invoice until the total retention of 10% of the total value of the Contract price is held.

SCHEDULE TWO – PATROL DAYS AND HOURS

Patrol Days - Patrol Area 1, Cottesloe Beach

Year 1 (2024/2025)

01 October 2024 to 31 March 2025, Monday to Friday (excluding public holidays)

01 April 2025 to 30 April 2025, Monday to Sunday (including public holidays)

Year 2 (2025/2026)

01 October 2025 to 31 March 2026, Monday to Friday (excluding public holidays)

01 April 2026 to 30 April 2026, Monday to Sunday (including public holidays)

Year 3 (2026/2027)

01 October 2026 to 31 March 2027, Monday to Friday (excluding public holidays)

01 April 2027 to 30 April 2027, Monday to Sunday (including public holidays)

Year 4 (2027/2028)

01 October 2027 to 31 March 2028, Monday to Friday (excluding public holidays)

01 April 2028 to 30 April 2028, Monday to Sunday (including public holidays)

Year 5 (2028/2029)

01 October 2028 to 31 March 2029, Monday to Friday (excluding public holidays)

01 April 2029 to 30 April 2029, Monday to Sunday (including public holidays)

Patrol Hours - Patrol Area 1, Cottesloe Beach

Year 1 (2024/2025)

01 October 2024 to 31 October 2024, 6am – 6pm

01 November 2024 to 30 April 2025, 6am – 6pm*

Year 2 (2025/2026)

01 October 2025 to 31 October 2025, 6am – 6pm

01 November 2025 to 30 April 2026, 6am – 6pm*

Year 3 (2026/2027)

01 October 2026 to 31 October 2026, 6am – 6pm

01 November 2026 to 30 April 2027, 6am – 6pm*

Year 4 (2027/2028)

01 October 2027 to 31 October 2027, 6am – 6pm

01 November 2027 to 30 April 2028, 6am – 6pm*

Year 5 (2028/2029)

01 October 2028 to 31 October 2028, 6am – 6pm

01 November 2028 to 30 April 2029, 6am – 6pm*

* An additional lifeguard will patrol from 10am – 6pm for the December/January school holidays;
An additional lifeguard will patrol for the period of 'Sculpture by the Sea'.

SCHEDULE THREE – CLOSING OF BEACHES

Should the prevailing sea and weather conditions or the presence of dangerous marine animals warrant the closing of the beach, the bathing local laws of the Town, where applicable, shall be strictly enforced.

There are a number of important procedures that will be enforced to inform the community of the closing of the beach:

- a. where access points to the beach are easily identified, an Australian Standards 'Swimming Prohibited' sign must be posted;
- b. at intervals along the water's edge, an Australian Standards 'Swimming Prohibited' sign must be posted.

When a beach is closed, the Lifeguard must continue to provide the Services including patrolling the beach, to endeavour to prevent swimmers from entering the water, and to be ready, in the case of an emergency.

SCHEDULE FOUR – EQUIPMENT

1. Flags

One (1) set Red/Yellow Patrol Area

2. Rescue

Two (2) rescue boards

Four (4) rescue tubes

One (1) pair swimmer fins per lifeguard

3. Communications

One (1) loud hailer

One (1) whistle per lifeguard

4. First Aid

One (1) first aid kit

One (1) Oxygen resuscitator

One (1) Defibrillator

5. Patrol Tower

A patrol tower owned by the Cottesloe Surf Life Saving Club is located on Cottesloe Beach. It is recommended the contractor negotiate with the Cottesloe Surf Life Saving Club for access to this facility.

SCHEDULE FIVE – AUSTRALIAN STANDARD SIGNAGE

Two (2) Shark (WS 25)

Two (2) Swimming Prohibited (RS 40)

Two (2) Strong Currents (WS 29)

Two (2) No Riding between Flags (RS 27)

SCHEDULE SIX – PRICING

1. For the 2024/2025 year the amount of \$_____ plus GST is payable. This is payable in 7 consecutive monthly instalments of \$_____ plus GST commencing on or before 1 October 2024;
2. For the 2025/2026 year the amount of \$_____ plus GST is payable. This is payable in 7 consecutive monthly instalments of \$_____ plus GST commencing on or before 1 October 2025;
3. For the 2026/2027 year the amount of \$_____ plus GST is payable. This is payable in 7 consecutive monthly instalments of \$_____ plus GST commencing on or before 1 October 2026;
4. For the 2027/2028 year the amount of \$_____ plus GST is payable. This is payable in 7 consecutive monthly instalments of \$_____ plus GST commencing on or before 1 October 2027;
5. For the 2028/2029 year the amount of \$_____ plus GST is payable. This is payable in 7 consecutive monthly instalments of \$_____ plus GST commencing on or before 1 October 2028;

TENDER FORM

1.92 Tenderer's Offer

The Chief Executive Officer
Town of Cottesloe
109 Broome Street
COTTESLOE WA 6011

I/We (Registered Entity Name): _____

of: (Registered Street Address): _____

Phone: _____ Fax: _____

ABN: _____ ACN: _____

Email: _____

In response to this Request for Tender:

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

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

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

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

Signature of authorised signatory of Tenderer: _____

Name of authorised signatory: _____

Authorised signatory position: _____

Authorised signatory phone: _____

Authorised signatory postal address: _____

Authorised signatory email address: _____

1.93 Tender Documents

Tenderers should submit the following documents:

- This Part 5 - Tender Form; and,
- Tenderer response to Request for Tender including requirements in Part 3- Specifications.

A Tender may be rejected at the absolute discretion of the Principal if Part 5 is not completed and returned.

A Tender must contain all the information and details required by this Request.

The price schedule MUST be submitted as a separate document from the responses to the qualitative criteria.

1.94 Evaluation Criteria

1.94.1 Selection Criteria

1. Tenders will be assessed with the following qualitative and compliance criteria to determine the most advantageous outcome to the Principal. Although price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.
2. Additional information requested in Section 5 below will be reviewed during the review process and any anomalies may result in additional information being requested from the Tenderer, and in extreme cases, may result in a rejected tender.

1.94.2 Compliance Criteria

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

Description of Compliance Criteria	Yes/No
Compliance with the Specification contained in the Request.	Yes/No
Compliance with the Conditions of Tendering.	Yes/No
Compliance with all necessary licenses and registrations	Yes/No
Compliance with the Tender Deadline	Yes/No
Compliance with and completion of the Price Schedule.	Yes/No

1.94.3 Qualitative Criteria

1. In determining the most advantageous quote, the Evaluation Panel will score each Tender against the qualitative criteria.
2. Before responding to the following qualitative criteria, Tenderers must note the following:
 - a. it is essential that Tenders address each qualitative criterion;

- b. all information relevant to answers is to be contained within the response to each criterion;
 - c. respondents are to assume that the Evaluation Panel has no previous knowledge of the respondent's organisation, its activities or experience;
 - d. respondents are to provide full details for any claims, statements or examples used to address the qualitative criteria;
 - e. respondents are to address each issue outlined within a qualitative criterion; and
 - f. failure to provide the specified information may result in elimination from the Tender evaluation process or a low score.
3. The qualitative criteria for this Request are as follows:

Description of Qualitative Criteria	Weighting	Tick if document(s) demonstrating compliance attached
Relevant Experience Demonstrate experience and skill in all aspects of the design of projects of a similar nature displaying high quality outcomes, with emphasis on provision of similar goods and/or services or facilities and construction practices (as the case may be) as detailed in the specification. <ul style="list-style-type: none"> • Provide details of each project; • Outline key design principles and objectives; • Include photo records and location details of each construction project (if applicable); • Provide the scope of the Tenderer's involvement including details of outcomes; and • Demonstrate competency and sound judgement. 	50%	<input type="checkbox"/>

1.95 Price Schedule

1.95.1 Price Considerations

1. Criteria on which a quantitative assessment shall be made are:
 - a. the lump sum or schedule of rates pricing as required by this Request;
 - b. rise and fall, if part of this Request; and
 - c. disbursements, allowances, hourly rates and other costs provided by the Tenderer which may impact on the overall value for money, if part of this Request.
2. Where a price is fixed the quantitative criteria shall be assessed against the amount of goods or services provided (where applicable).

PART FIVE – COMPLETE AND RETURN THIS PART

The weighted cost criteria for this Request are as follows:

Criteria	Weighting	Tick if Price Schedule attached
Tendered price – Schedule Six – Pricing is to be used as a template to demonstrate the tendered price.	50%	<input type="checkbox"/>

1.95.2 Price Basis

All prices for Goods and/or Services or the construction of Works (where applicable) offered under this Request shall be fixed for the term of the Contract from the date of acceptance of the Tender.

1.95.3 GST

1. The quoted price for the Work under the Contract should be stated in the following terms:
 - a. Price excluding Goods and Services Tax (GST);
 - b. Goods and Services Tax amount; and
 - c. Total price including GST.
2. Where no stipulation is made as to GST, the Contract Price shall be deemed to include GST, unless clarification is provided to the Principal by the Tenderer prior to acceptance of Tender.

1.95.4 Prices inclusive

Unless otherwise indicated, prices tendered shall include recruitment, administration and induction and all applicable levies, duties, taxes and charges. Any charge not stated in the quote, as being additional, will not be allowed as a charge for any transaction under any resultant Contract.

1.96 Additional Information

Organisation Profile Attach a copy of your organisational structure and provide background information on your company and label it Organisation Structure If companies are involved, attach their current ASIC company extracts search including latest annual return and label it "ASIC Company Extracts"	Tick if Attached <input type="checkbox"/> Tick if Attached <input type="checkbox"/>
Referees Attach details of your referees and label it "Referees". You should give examples of your work provided for your referees where possible.	Tick if Attached <input type="checkbox"/>
Agents Are you acting for another party? If Yes, attach details (including name and address) of your principal and label it "Agents"	Yes / No Tick if Attached <input type="checkbox"/>
Trusts Are you acting as a trustee of a trust? If Yes, in an attachment labelled "Trusts": a. Give the name of the trust and include a copy of the trust deed (and any related documents); and b. If there is no trust deed, provide the names and addresses of beneficiaries.	Yes / No Tick if Attached <input type="checkbox"/>

PART FIVE – COMPLETE AND RETURN THIS PART

<p>Subcontractors Do you intend to subcontract any of the requirements?</p> <p>If Yes, In an attachment labelled “Subcontractors” provide details of the subcontractor(s) including:</p> <p>a. The name, address and the number of people employed; and</p> <p>b. The requirements that will be subcontracted</p>	<p align="center">Yes / No Tick if Attached <input type="checkbox"/></p>
<p>Conflicts of Interest Will any actual or potential conflict of interest in the performance of your obligations under this contract exist if you are awarded the contract, or are any such conflicts of interest likely to arise during the Contract</p> <p>If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it “Conflicts of Interest”</p>	<p align="center">Yes / No Tick if Attached <input type="checkbox"/></p>
<p>Health and Safety Instructions to Contractors Do you comply with the Health and Safety Instructions appendix issued with this request?</p>	<p align="center">Yes / No</p>
<p>Financial Position Are you presently able to pay all your debts in full as and when they fall due?</p> <p>Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?</p> <p>If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?</p> <p>In order to demonstrate your financial ability to undertake this contract, in an attachment labelled “Financial Position” include a profit and loss statement and the latest financial return for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant.</p>	<p align="center">Yes / No Yes / No Yes / No Tick if Attached <input type="checkbox"/></p>
<p>Insurances The insurance requirements for this Request are stipulated in the Annexure. Respondents are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled “Insurance Coverage”. A copy of the Certificate of Currency is to be provided to the Principal within ten (10) days of acceptance.</p>	<p align="center">Tick if Attached <input type="checkbox"/></p>