

Head Agreement – Prequalified Supplier

Building Trades & Services, Minor Civil works and Horticulture and Arboriculture

EXECUTED as a deed

By Signing up for Council prequalified Local Supplier through the Vendorpanel, the Supplier will be entering into an agreement with Dubbo Regional Council under the terms and conditions of this Head Agreement.

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HEAD AGREEMENT DETAILS

Head Agreement Commencement Date (Clause H 2)	<i>The date prequalification Application is Approved by Council on the Vendorpanel system</i>
Head Agreement Initial Term (Clause H 2)	<i>[5 years – Ending on 30 June 2028]</i>
Head Agreement Further Term (Clause H 2)	<i>[The Principal has the option to extend the panel Agreement for a Further Term of 3 years.]</i>
Principal Representative (Clause H 5) and notices (Clause H 10) <i>[this officer is authorised by the contract to take the actions allocated to the Principal’s Representative, in accordance with the Contract]</i>	Name Phil Munro
	Position Manager Procurement
	Address Po Box 81 Dubbo NSW 2830
	Email Procurement@dubbo.nsw.gov.au
Supplier Representative (Clause H 5) and notices (Clause H 10)	Name
	Position
	Address
	Facsimile
	Email
Review meetings (Clause H 5.3)	<i>[Annually]</i>

Insurance Policies (Clause 8)

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products	<p>[\$10 million] for any single occurrence and unlimited in the aggregate as to the number of occurrences</p> <p>The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed [\$20 million*]</p>	<input checked="" type="checkbox"/>
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Other <i>(if requested in clause 8, insert other insurances required)</i>		<input type="checkbox"/>

GENERAL TERMS

H 1 Terms of the Head Agreement made by this deed

H 1.1 Contract structure

This Head Agreement deed consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will supply Goods and perform Services;
- (b) the Dubbo Regional Council General Conditions of Purchase Order;
- (c) each Supply Schedule - sets out the detailed provisions relating to the Goods, Services, Purchase Order terms and conditions and Service Levels; and
- (d) the other Attachments - sets out the Dictionary, the forms and other material relevant to this deed.

If there is any inconsistency between any of the parts of this deed, then the part listed higher in clause H 1.1 (Overview) prevails to the extent of the inconsistency.

H 1.2 Supply arrangement - Standing offer

- (a) With this deed, the Principal is establishing a panel of suppliers (of which the Supplier is becoming a member on the execution of this deed) to enable the Principal to acquire Goods and Services from the Supplier.
- (b) This deed sets out the terms on which the Supplier will provide the Goods and Services to the Principal from time to time. The Principal is entitled to place a Purchase Order for the supply of Goods and Services by the Supplier on the General Conditions or Purchase Order that forms part of this deed.

H 1.3 No exclusivity or minimum Orders

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of the Goods or Services, and the Principal may at any time during the Term acquire such Goods or Services or any part of them from a third party and the Principal may appoint other suppliers to provide goods or services similar to the Goods or Services to the Principal; and
- (b) The Principal is under no obligation to place any Orders or acquire any minimum quantity of Goods or Services pursuant to this deed.

H 1.4 Definitions and interpretation

The definitions used in this deed and the rules of interpretation are set out in the Dictionary.

H 2 Term

H 2.1 Term of deed

This deed commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause H 2.2 (Extension) or terminated in accordance with this deed.

H 2.2 Extension

The Principal may extend this deed on the same terms and conditions for the Further Term by notifying the Supplier in writing.

H 3 Ordering

H 3.1 Orders

Each Purchase Order placed in accordance with this deed will create a separate contract under this deed between the Supplier and the Principal for the supply of the Goods and Services specified in that Order.

H 4 Information, Confidentiality and privacy

H 4.1 Disclosure of Confidential Information

The Recipient must not disclose the Confidential Information supplied by the Discloser to any person except in the Permitted Circumstances.

H 4.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information to a Representative or with the consent of the Discloser under clause H 4.1 (Disclosure of Confidential Information) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause H 4.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

H 4.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this deed or any other deed between the parties.

H 4.4 Return of Confidential Information

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this deed or other agreement between the parties; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

H 4.5 Disclosure of details of Principal contracts with the private sector

The Supplier acknowledges that the Principal may be required to publish certain information concerning this deed in accordance with ss 27 – 35 of the Government Information (Public Access) Act 2009 (NSW). If the Supplier reasonably believes that any part of this deed contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, or any other information in relation to a contract that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure, then the Supplier should immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider seeking to exempt those provisions from publication.

H 4.6 Publicity

The Supplier may only make press or other announcements or releases about this deed and the transactions related to it:

- (a) with the express, written approval of the Principal; or
- (b) as required to be made by law or the rules of a stock exchange provided that the Supplier gives the Principal 14 days' notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

H 4.7 Provide information

On request by the Principal or the Principal Representative, the Supplier will promptly provide all reasonable assistance to enable the Principal to comply with its obligations under this deed and at law, including providing details of any person (for example, a related body corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this deed; or
- (b) will receive a benefit under this deed.

This clause survives the termination of this deed for any reason whatsoever.

H 5 Representatives, reporting and audits

H 5.1 Responsibilities

The Principal Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of this deed, including ensuring the performance by the parties of their respective roles and responsibilities.

H 5.2 Reports

The Supplier must provide to the Principal Representative the reports with the content and in the frequency and form (electronic or physical) set out in the Head Agreement Details.

H 5.3 Review meetings

The Supplier Representative must attend meetings with the Principal Representative at a place and time to be notified to the Supplier by the Principal Representative on the frequency required by the Principal Representative. The Principal Representative will send an agenda for the review meeting prior to the meeting.

H 5.4 Records and inspection

The Supplier must, and must ensure, as far as reasonably practicable to do so, all Subcontractors:

- (a) keep and maintain all necessary Records during the Head Agreement Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by the Principal, the Principal Representative, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit the Principal or the Principal Representative to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with this deed; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

H 6 Change control

H 6.1 Change request

Either party may request a change to:

- (a) the scope, packaging or description of any Goods or Services; or
- (b) the requirements of a Supply Schedule;

(each a “Change”) by issuing a notice in writing to the other party.

H 6.2 Change request by the Principal

If a Change is requested by the Principal or Principal Representative, the Supplier must provide to the Principal Representative within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 6.5 (Requirements for Change Proposal).

H 6.3 Change request by Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or provide the Change Proposal at such later date as the parties may otherwise agree.

H 6.4 Assistance from the Principal

Where the Supplier requires information from the Principal in order to properly prepare a Change Proposal, the Principal will provide or arrange for the Principal Representative to provide all such information reasonably requested promptly within a reasonable period from the date of the request.

H 6.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and
- (b) specify all changes to the relevant Contract Price, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Contract Price must be based on the Supplier’s actual direct costs as a result of the Change, including a reasonable profit allowance.

H 6.6 Acceptance or rejection of a Change Proposal

The Principal Representative may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where the Principal Representative accepts a Change

Proposal, the parties will execute a Change Notice on those terms and this deed will be varied accordingly, with effect from the date of execution of the Change Notice.

H 7 Warranties and representations

H 7.1 Supplier's general representations and warranties

The Supplier represents and warrants on the date of this deed and at all time during the Term, that:

- (a) it has full capacity and authority to enter into and to perform this deed;
- (b) this deed is approved by the duly authorised representative of that party;
- (c) there are no actions, suits or proceedings pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitral tribunal that might affect the ability of that party to meet and carry out its obligations under this deed;
- (d) once duly signed this deed will constitute a legal, valid and binding obligation on that party; and
- (e) to the best of its knowledge, no conflict of interest of the Supplier, its employees, agents or Subcontractors exists or is likely to arise in the performance of its obligations under this deed.
- (f) supplier have read and understood , and comply with the obligations set out in the Council's Statement of Business Ethics available at: [Doing Business with Council - Dubbo Regional Council \(nsw.gov.au\)](http://www.dubbo.nsw.gov.au/Doing-Business-with-Council)
- (g) the supplier agrees to complete the Work Health and Safety Prequalification process when requested by the council to comply with the WHS policy and procedure adopted by the Council.

H 7.2 Mutual Warranties

The Principal and the Supplier warrant to each other that during the Term each will:

- (a) act reasonably and in good faith in relation to matters that arise out of, or in connection with, the Head Agreement;
- (b) work together in a collaborative manner;
- (c) to the extent that it is reasonably possible, perform obligations imposed on them so as to avoid hindering the performance of the other Party;
- (d) perform their respective obligations under the Head Agreement in compliance:
 - (i) all Statutory Requirements; and

- (ii) Government Procurement policies including the Goods and Services Procurement Policy Framework, NSW Government: Small and Medium Enterprises Policy Framework; and

H 8 Insurance

H 8.1 Insurance

The Supplier must obtain on terms that are reasonably satisfactory to the Principal and thereafter maintain the policies of insurance listed in the Head Agreement Details during the Head Agreement Term and during each Term provided that:

- (a) the Supplier is only required to obtain professional indemnity insurance (as set out in the Head Agreement Details) before the date of the first Purchase Order entered into under this deed; and
- (b) subject to paragraph (a) above, the Supplier is required to obtain all other insurance (as set out in the Head Agreement Details) prior to acceptance of the relevant Purchase Order.

H 8.2 Evidence of insurance

On request by the Principal Representative, the Supplier must provide certificates of currency proving that the policies of insurance required under this deed have been effected and are current. A certificate of currency provided under this section must be issued by the insurance company providing insurance and must contain all details reasonably requested by the Principal Representative, including a summary of all risks covered and any exclusions.

H 8.3 Supplier notification

The Supplier must notify the Principal within two Business Days of any event which affects or may affect the Supplier's compliance with this clause H8 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this deed.

H 9 Termination

H 9.1 Termination of this deed by the Principal for cause

The Principal may terminate this deed in full or, at the Principal's option, as it relates to any particular Good or Service immediately by notice to the Supplier if:

- (a) Breach of deed - the Supplier breaches this deed and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 7 Calendar Days, or such longer time as the Principal states, of receiving notice from the Principal requiring the breach to be remedied;

- (b) Recurring Breach - the Supplier:
- (i) breaches this deed on three (3) separate occasions within a three (3) month period; and
 - (ii) has been issued with a notice from the Principal stating that any further breach of this deed will give the Principal the right under this clause H9.1 (b) to terminate this deed; and
 - (iii) commits a further breach of any provision of this deed.
- (c) Insolvency - the Supplier becomes Insolvent;
- (d) Wrongful assignment or novation - the Supplier assigns, novates or purports to assign or novate its rights otherwise than as permitted by this deed;
- (e) Change of Control - the Supplier undergoes a Change of Control.

H 9.2 Survival

Clauses H 4 (Confidentiality and privacy), 8 (Insurance), H 12 (General), the Disputes Schedule and the Supply Schedule survive the termination or expiry of this deed, as do any rights and remedies accrued before termination or expiry.

H 10 Notices

H 10.1 Form

Unless stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing. All said documents shall be signed by either the Principal or Supplier representation or other authorised officer.

H 10.2 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by delivery, when it is delivered and signed off by principal's recipient;
- (b) if posted, the earlier of the date of receipt or the eighth calendar day after posting;
- (c) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

H 11 Assignment and Novation

H 11.1 Assignment or novation by Principal

Either parties to the agreement may assign any of its rights under this deed, or may delegate or novate its rights and obligations under this deed with the written consent of the other party to any

department, government agency or any other body created by or under legislation of the State of New South Wales for the purpose of administering the functions or discharging the role of the Principal.

The consenting party must execute all documents necessary to give effect to any novation or assignment permitted under this clause H 11.1.

H 12 General

H 12.1 Disputes

The parties will comply with the process for resolving disputes as set out in the Dispute Schedule.

H 12.2 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

H 12.3 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party will be taken to have waived that right, unless, written notice reserving such right is provided to the other party within 7 calendar days’.

H 12.4 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.

H 12.5 Remedies cumulative

The rights and remedies provided in this deed or an Order are in addition to other rights and remedies given by law independently of this deed.

H 12.6 Variation and waiver

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

H 12.7 Indemnities

The indemnities in this deed are continuing obligations, independent from the other obligations of the parties under this deed and continue after this deed ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this deed.

H 12.8 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

H 12.9 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this deed and other related documentation.

H 12.10 Counterparts

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

H 12.11 Governing law and jurisdiction

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

H 12.12 Severability

If any part or provision of this deed is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this deed will continue to operate.

H 12.13 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this deed; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this deed, including execution and delivery of documents and other instruments.

H 12.14 Entire agreement

This deed, read in conjunction with the relevant Purchase Order and the Purchase Order Terms and Conditions, constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

MASTER SUPPLY SCHEDULE – SERVICES

Trades and Services (Includes but is not limited to)

<ul style="list-style-type: none"> • Air Conditioning • Data Cabling and Communication Services • Electrical • Engineering Services • Fire Extinguisher Service and related Services • Gutter Cleaning • Pest Control • Plumbing and Gas Fitting 	<ul style="list-style-type: none"> • Carpentry & Joinery • Electrical Design Plus NBN - Level 3 Accredited • Electrical Engineering • Fencing • Glazing
<ul style="list-style-type: none"> • Security and CCTV Services • Surveying • Welding & Metal Fabrication • Tiler • First Aid Kit Inspections • Signage / Signwriting 	<ul style="list-style-type: none"> • Guardrail Fabrication & Installation • Painting • Plumbing – Backflow Prevention Accredited - \$150.00 excl. GST per install • Solar installation & Maintenance • Locksmiths • Ad hoc Cleaning Services • Electrical Safety Inspections • Height Safety Inspections

Minor Civil Works (Includes but is not limited to)

<ul style="list-style-type: none"> • Concrete works • Gross Pollutant Trap cleaning 	<ul style="list-style-type: none"> • Confined Space Entry • High Pressure Water Cleaning, Graffiti Removal and Rubbish pickup
<ul style="list-style-type: none"> • Kerb and Gutter Installation • Pavement Construction 	<ul style="list-style-type: none"> • Line Marking • Pipeline Maintenance

- | | |
|--|--|
| <ul style="list-style-type: none">• Paving• Supply of traffic control services• Underground service locating including non-destructive digging• Roofing• Manhole and Sewer pits Cleaning | <ul style="list-style-type: none">• Storm water Construction and Maintenance• Supply and Lay Bitumen Seal• Asbestos Licensed Contractor• Reservoir Cleaning/ Divers• Water mains Constructions and Maintenance |
|--|--|

Horticulture and Arboriculture Service (Includes but is not limited to)

- | | |
|---|---|
| <ul style="list-style-type: none">• Irrigation• Mowing• Turf Management and Weed Spraying | <ul style="list-style-type: none">• Landscaping• Slashing• Tree Management Services |
|---|---|

DICTIONARY

Agency Confidential Information means all Information disclosed (including inadvertently) by the Principal, in connection with the Head Agreement deed, all Information disclosed by a third party which the Principal or a is required to keep confidential and all Information created by the Supplier in the course of providing the Services or in respect of Intellectual Property Rights owned by the Principal:

- (a) confidential information of the Principal, or a third party to whom the Principal owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,
- (d) but excludes the Excluded Information.

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Change is defined in clause 8 of the Head Agreement;

Change of Control occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to the Head Agreement deed relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Contract Price means the charges set out in a Supply Schedule for the Goods and Services.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information in relation to the Principal means Agency Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

Consequential Loss means loss subsequent to, and related to, an immediate loss incurred by a party to this deed as a result of the conduct, act or omission of a party, or agent or employee of a party to this deed.

Control of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,
- (c) whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Delivery Address means the address specified in the Order for delivery of the Goods.

Delivery Timeframe means the timeframe for delivery of the Goods set out in the relevant Supply Schedule.

Discloser means the party disclosing Confidential Information.

Early Termination Fee means the fee calculated in accordance with the relevant Supply Schedule.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of the Head Agreement deed, a Purchase Order or an obligation of confidence owed to the Discloser; or
- (b) Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

Further Term means the period identified in the Head Agreement Details as the Further Term.

Goods means all goods set out in a Supply Schedule as required to be provided by the Supplier under a Purchase Order in accordance with this Head Agreement.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999, as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Head Agreement Details means the Head Agreement Details set out at the front of the Head Agreement deed.

Initial Term means the period identified in the Head Agreement Details as the Initial Term.

Information means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Goods, the Services or the Head Agreement deed or a Purchase Order;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause H 7.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to Head Agreement deed or, in relation to a Purchase Order, the parties to that Purchase Order); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (a) or (b) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to Head Agreement deed or a Purchase Order reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Input Tax Credit has the meaning it has in the GST Act.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-

how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Invoice Timing means the timing for issue of invoices set out in a Supply Schedule.

Moral Rights means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any statute (including the Copyright Act 1968 (Cwth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Order means a valid order issued to a Supplier in accordance with the Head Agreement deed.

Ordering Process means the process for ordering Goods and Services set out in a Supply Schedule.

Permitted Circumstances means, in respect of a Recipient, a disclosure by that Recipient of the Discloser’s Confidential Information to:

- (a) the Recipient’s Representatives who require the Confidential Information for the purposes of the Head Agreement deed; or
- (b) to enable the Recipient to obtain professional advice in relation to the Head Agreement deed; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (e) if the Recipient is required to do so in connection with legal proceedings relating to the Head Agreement deed or other deed between the parties.

Principal Representative means the person identified in the Head Agreement Details as the Principal Representative, as varied by notice to the Supplier from time to time.

Proof of Delivery has the meaning given to it by clause C3.4

Receiver includes a receiver or receiver and manager.

Recipient means the party receiving Confidential Information.

Records means records and documentation relating to the Head Agreement deed and each Purchase Order (including Goods, Services, Service Levels, Service Credits and/or Contract Price).

Related Bodies Corporate has the meaning it has in the Corporations Act.

Relevant Offence means an offence specified by the Principal in its Order

Repair Location means the location set out in the relevant Supply Schedule as the Repair Location.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venture, contractor or sub-contractor of that party.

Service Credits means an amount calculated in accordance with the relevant Supply Schedule in respect of the failure by the Supplier to meet one or more Service Levels that are set out in that Supply Schedule.

Service Levels means the minimum performance levels set out in a Supply Schedule.

Services means all services set out in a Supply Schedule required to be provided by the Supplier under a Purchase Order.

Specifications means the specification for the Goods set out in a Supply Schedule.

Subcontractor means subcontractors of the Supplier.

Supplier Confidential Information means all Information, other than Principal Confidential Information, disclosed to the Principal by the Supplier or any Representative of the Supplier for or in connection with the Head Agreement deed and a Purchase Order including:

- (a) Information which, either orally or in writing, is designated or indicated as being the property or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Supplier Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors) of the Supplier.

Supplier Representative mean the person identified in the Head Agreement Details as the Supplier Representative, as varied by notice to the Principal from time to time.

Supply Schedule means the Schedule to the Head Agreement detailing the Goods and/or Services that the Supplier will, on receipt of a Purchase Order, supply to the Principal.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of the Principal, but excluding GST.

Term means the period commencing from the Commencement Date and ending on the date that the Head Agreement deed is terminated or expires.

Use means to load, run, execute, display, distribute, copy, perform or access.

Warranty Period means the periods set out in a Supply Schedule.

(variation or replacement) a document (including the Head Agreement deed and a Purchase Order) includes any variation or replacement of it;

(clauses, annexures and schedules) a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, the Head Agreement deed or, in relation to a Purchase Order.

(law) law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);