Services Contract No

Provision of Forest Inventory Services

[Contractor]

Title: Services Contract –

Edition: Draft

Issued:

© Forest Products Commission 2024

**Contents**

[1 Meanings 5](#_Toc168495509)

[2 Interpretation 10](#_Toc168495510)

[3 Condition Precedent and Term 11](#_Toc168495511)

[4 Start Date 12](#_Toc168495512)

[5 Consideration for Payment by the Commission 12](#_Toc168495513)

[6 Service 12](#_Toc168495514)

[7 Contractor’s Knowledge 13](#_Toc168495515)

[8 Other Contractors 13](#_Toc168495516)

[9 Contractor’s Workers 13](#_Toc168495517)

[10 Subcontracting 14](#_Toc168495518)

[11 Relationship and Representation of the Parties 15](#_Toc168495519)

[12 General Obligations, Fire Precautions, and Other Requirements 16](#_Toc168495520)

[13 Obligation to Supply Information 18](#_Toc168495521)

[14 Western Australian Industry Participation Strategy 18](#_Toc168495522)

[15 Contractor’s Work Health and Safety Obligations 20](#_Toc168495523)

[16 Possession of Sites 22](#_Toc168495524)

[17 Quantity of Services – Standing Offer Arrangement 22](#_Toc168495525)

[18 Indemnities 23](#_Toc168495526)

[19 Variation 23](#_Toc168495527)

[20 Assignment 23](#_Toc168495528)

[21 Costs 24](#_Toc168495529)

[22 Law 24](#_Toc168495530)

[23 Governing Law and Jurisdiction 25](#_Toc168495531)

[24 Notices 25](#_Toc168495532)

[25 Insurances to be maintained by the Contractor 25](#_Toc168495533)

[26 Payments 26](#_Toc168495534)

[27 Mobilisation/Demobilisation 27](#_Toc168495535)

[28 Standby Rates 27](#_Toc168495536)

[29 Equipment Breakdown 27](#_Toc168495537)

[30 Indexation of Rates 27](#_Toc168495538)

[31 Suspension by the Commission 28](#_Toc168495539)

[32 Force Majeure 29](#_Toc168495540)

[33 Default of Contractor 29](#_Toc168495541)

[34 Dispute Resolution 31](#_Toc168495542)

[35 Final Certificate 31](#_Toc168495543)

[36 Trusts 32](#_Toc168495544)

[Schedule 1 33](#_Toc168495545)

[Schedule 2 Schedule of Rates 36](#_Toc168495546)

[Schedule 3 Contractor Procedures and Work Instructions 37](#_Toc168495547)

[Schedule 4 Specifications 38](#_Toc168495548)

[Schedule 5 Indexation and Variation of Rates 39](#_Toc168495549)

[Schedule 6 Safety 40](#_Toc168495550)

[Schedule 7 Map of Service Delivery Regions 42](#_Toc168495551)

[Schedule 8 WAIPS Participation Plan 43](#_Toc168495552)

[Execution Pages 44](#_Toc168495553)

Services Contract

**Provision of Forest Inventory Services**

Date: As per the date of signing by the Commission in the execution page.

Parties: The Forest Products Commission **(the Commission)** (ABN 69 101 683 074) of Level 7, 233 Adelaide Terrace, Perth, Western Australia 6000;

and

**(the Contractor)** (ABN      )of

RECITALS:

Under sections 10(1)(h) and (i) of the FP Act, the Commission has the power to enter into contracts with a person for the management or harvesting (including delivery and transport) of Forest Products.

Under section 13(1) of the FP Act, the Commission delegates to the General Manager the power to enter into and sign this Contract.

Under section 13(4) of the FP Act, a function performed by a delegate of the Commission is to be taken to be performed by the Commission.

Under Request for Tender RFT1/2024FG, the Commission invited tenders from capable persons to perform the Services and the Commission has accepted the Contractor’s Tender.

The Commission and the Contractor agree that the Contractor performs the Services for the duration of the Contract in consideration for payments made under this Contract and subject to the terms and conditions in this Contract.

The parties intend this Contract to be a Production Contract for the management of Forest Products within the meaning of section 55 of the FP Act.

# Meanings

* 1. The following words have meanings in this Contract unless the contrary intention appears:

**Affected Party** means a party to this Contract prevented from performing its obligations or satisfying a condition because of a Force Majeure Event.

**AS/NZS** means Australian Standard/New Zealand Standard.

**AS/NZS 4708** means Australian/New Zealand standard for Sustainable Forest Management (AS/NZS 4708:2021).

**Australian Prudential Regulation Authority** means a body corporate authorised under the *Australian Prudential Regulation Authority Act 1998* (Cth) to regulate bodies in the financial sector in accordance with other laws of the Commonwealth that provide, amongst other things, prudential regulation as detailed under the *Australian Prudential Regulation Authority Act 1998* (Cth).

**Australian Standard** means an Australian standard as issued or endorsed by Standards Australia.

**Authorised Officer** means:

* + 1. an officer; employee; or agent of the Commission authorised by the Commission for purposes listed under clause 11 (Relationship and Representation of the Parties); and
    2. includes an officer of the Commission exercising powers under the FP Act or FP Regulations.

**Base Term** means the term of this Contract, without extension, as specified in item A2 of Schedule 1

**Business Day** means any day except Saturday, Sunday or any public holiday in Western Australia (either throughout or part of the State relevant to an event).

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**CALM Act CEO** means the Director General of the Department of Biodiversity Conservation and Attractions established under section 36(4) of the CALM Act.

**Claim** means a right or demand of a kind and includes entitlement to be compensated or indemnified (in whole or in part) for losses arising under a claim or compensation under statute or statutory obligation.

Commission has the same meaning as that term is defined in section 3 of the FP Act.

Confidential Information means all information of the Commission, which is also disclosed to or be observed by the Contractor, or which is created in connection with this Contract, and which is regarded by the Commission as confidential. The Confidential Information includes, but not limited to, intellectual property and information, relating to technology, process, pricing, products, trade secrets, competitors, and information of a commercially sensitive nature. Confidential Information does not include information which:

* + 1. at any time of first disclosure to or observation by the Contractor, was already in its lawful possession; or
    2. is in or comes into the public domain otherwise than by disclosure in breach of contract; or
    3. becomes available to the Contractor from any other source if it was not acquired directly or indirectly from the Commission.

Concurrent **Contract** means a contract between the Commission and the Contractor whether that contract is expressed to be collateral with this Contract.

Contract means this Contract and includes any agreement made under clause 19 (Variation).

**Contractor** means the person/s, body or bodies referred to on page 4 as the Contractor and includes the Contractor’s heirs, predecessors in law, successors and includes a corporate entity in which the Contractor held or holds an interest and its directors, officers, assigns, assignees, employees, servants and agents.

Contractor Procedure means procedures for describing the Services required under this Contract published by the Commission (as amended, supplemented, or replaced from time to time by the Commission) and referred to in Schedule 3 [Contractor Procedures and Work Instructions].

Corporations Act means the *Corporations Act 2001* (Cth).

Crown Land has the same meaning as that term is defined in section 87 of the CALM Act.

Departmental Land means:

* + - 1. State forest and timber reserves within the meaning of the CALM Act; or
      2. land that is the subject of a declaration under section 87(2) of the CALM Act; or
      3. land otherwise held by the CALM Act CEO under section 131 of the CALM Act.

**Equipment** includes (but is not limited to) vehicles, plant, machinery or tools required by the Contractor to perform the obligations under this Contract.

**Event of Default** means an event described in clause 33 (Default of Contractor).

**FIFWA** means the Forest Industries Federation of Western Australia.

**FIFWA** **Code** means the Safety and Health Code for Native Forest (Hardwood) and Softwood Logging, published by FIFWA and as amended from time to time.

**Force Majeure** means any cause or event outside the Affected Party’s reasonable control and which the Affected Party has not caused or materially contributed to by its negligent acts or omissions, including:

* + 1. fire, lightning, explosion, flood, earthquake, storm, cyclone, drought, landslide, natural disaster, epidemic, radioactive contamination, risk to health or safety, or toxic or dangerous chemical contamination or force of nature;
    2. actual or threatened environmental harm within the meaning of the *Environmental Protection Act 1986* (WA) or actual or threatened serious or irreversible environmental damage to any Site or the occurrence of any hazard to bio-diversity values or the ecological integrity of any Site;
    3. the occurrence of any event which may cause continued performance of obligations to contravene any provision of a Law, riots, insurrection, civil commotion, malicious damage, sabotage, act of terrorism, act of public enemy, war (whether declared or not) or revolution;
    4. strike, lockout, boycott, work ban or other labour dispute or difficulty (other than where any such action is by the employees of the Affected Party or directed solely at the business); and
    5. order of a court, tribunal, or other Governmental Authority or the award of any arbitrator, or the inability to obtain or delay in obtaining governmental, quasi-governmental or regulatory Authorisation.

**Force Majeure Event** means an act, event, or cause of or constituting Force Majeure.

**Forest Produce** has the same meaning given as that term is defined under section 3 of the CALM Act.

**Forest Products** has the same meaning as that term is defined in section 4 of the FP Act.

**FP Act** means the *Forest Products Act 2000* (WA).

**FP Regulations** means the *Forest Products Regulations 2020* (WA) as amended or replaced from time to time.

**General Manager** has the same meaning as that term is defined under section 3 of the FP Act.

**Governmental Authority** means a government or a governmental, administrative, fiscal or judicial body, department, commission, authority (whether Federal, State, local or municipal), tribunal, agency or entity.

**GPS or “Global Positioning System”** means a satellite navigation system used to determine ground position and velocity (location, speed and direction).

**GST** has the same meaning given to that expression in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the same meaning given to that expression in the GST Act.

Insolvency Event means for a party any one or more of the following events:

* + 1. an order is made, or an application is made to a court for an order, that a body corporate be wound up;
    2. except to reconstruct or amalgamate while solvent, a body corporate:
       1. is wound up or dissolved;
       2. resolves to wind itself up, or otherwise dissolve itself, or gives Notice of an intention to do so;
       3. enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition, with or assignment for the benefit of, all or any class of creditors;
       4. a liquidator or provisional liquidator is appointed (whether under an order) or an application is made to a court for an order, or a meeting is convened, or resolution is passed, to make such an appointment in respect of a body corporate;
    3. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined under section 9 of the Corporations Act) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, or in respect of a body corporate or any asset or undertaking of a body corporate;
    4. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate;
    5. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment, or order for the payment of money or recovery of property;
    6. a body corporate –
       1. takes steps to obtain protection, or is granted protection from its creditors under applicable legislation;
       2. stops or suspends payments of all, or a class of, its debts;
       3. is or taken by applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
          1. insolvent or unable to pay its debts when they fall owing;
          2. the subject of an event described under sections 459C(2)(b) or 585 of the Corporations Act;
          3. taken to have failed to comply with a statutory demand because of the operation of section 459F (1) of the Corporations Act;
          4. ceases or threatens to cease, to carry on all or a material part of its business;
    7. a person becomes insolvent under administration as defined under section 9 of the Corporations Act or action is taken which could result in that event;
    8. a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for a reason; or
    9. anything analogous or having a substantially similar effect to any of the events specified above happens under the Laws of an applicable jurisdiction.

Key Performance Indicators means those Key Performance Indicators provided as item F of Schedule 1, which provide a guide of matters for the Commission to consider when conducting performance appraisals as per clause 3.8(a).

Law means any Commonwealth or State legislation, all regulations, by-laws, and subsidiary or subordinate made under such statute, all rules and requirements of the common law and equity.

Month means calendar month.

Notice includes any request, direction, consent, notification, document, or other communication.

**Offer of Extension** means an offer made by the Commission at its sole discretion to extend the Base Term of this Contract.

Order means instructions issued by the Commission indicating type, quantities and prices of Services.

Other Services means activities that may be specifically detailed in this Contract (Item C of Schedule 1 refers) but requiring similar equipment and skilled Workers to complete the service.

Participation Plan has the same meaning as that term is defined under section 11(1) of the *Western Australian Jobs Act* (2017).

Production Contract has the same meaning as that term is defined under section 55 of the FP Act.

Public Land means Crown Land as that term is defined under section 87 of the CALM Act and Departmental Land.

Related Entity means an entity of which is replanted to the first mentioned body within the meaning of section 9 of the Corporations Act; or another economic entity (as defined in an accounting standard approved under the Corporations Act or otherwise generally accepted in Australia) which contains the first mentioned and which is a party to a Concurrent Contract.

Resolution Institute is a non-profit association set up for resolving commercial disputes.

**Schedule** means one or more of the schedules attached and forming part of this Contract.

**Schedule of Rates** means rates listed in Schedule 2 as varied from time to time according to Schedule 5 of this Contract.

Services include (but is not limited to):

* + 1. the Contractor Procedures and Work Instructions as per Schedule 3;
    2. the Specifications (if any) as per Schedule 4;
    3. all things which the Contractor is obliged to do under this Contract;
    4. Other Services (if any) as per item C of Schedule 1; and
    5. all activities that are reasonably necessary or required and approved by the Authorised Officer as being ancillary to, or in connection with, or incidental to, or arise from or relate to the Services.

Site means any part of Public Land made available to the Contractor by the Commission for the purposes of this Contract.

Start Date means the start date of this Contract listed in item A1 of Schedule 1.

**Standing Offer Arrangement** means a standing offer coordinated by the Commission awarded to a single supplier or a Panel of suppliers to provide a Service.

State means the State of Western Australia and includes the Government for the time being of the State.

Tax Invoice has the same meaning given to that expression in the GST Act.

Taxable Supply has the same meaning given to that expression in the GST Act.

Term means the term of this Contract referred to in clause 3 (unless sooner terminated pursuant to a provision of this Contract) and includes any extension of the Term made pursuant to clause 3.

Worker has the same meaning as that term is defined in the *Work Health and Safety Act 2020*.

# Interpretation

* 1. In this Contract, unless the context otherwise requires:
     1. headings, explanations to sections, sub-headings and table of contents are for convenience only and do not affect the interpretation of this Contract;
     2. words importing a gender include any gender;
     3. words importing the singular include the plural and vice-versa;
     4. a reference to an act by name is a reference to an Act of the Parliament of Western Australia or the Commonwealth of Australia;
     5. a reference to a statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
     6. when a party comprises two or more persons, an obligation will bind those persons jointly and each of them separately;
     7. a reference to a party to this Contract includes reference to that party’s contractors, subcontractors, employees and agents;
     8. a reference to a day is a reference to a period starting at midnight and ending the following midnight;
     9. a reference to a week is reference to Monday to Friday;
     10. a reference to a year is a reference to a period of twelve Months;
     11. a reference to a time is a reference to Perth, Western Australia time;
     12. no rule of interpretation is to be applied to disadvantage the Commission on the basis that it was responsible for preparing this Contract;
     13. if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
     14. a reference to a monetary amount means that amount in Australian currency;
     15. a reference to a thing means each part of that thing;
     16. a reference to a contractor means a contractor at any tier and includes a subcontractor; and
     17. but nothing herein will mean that partial performance of an obligation amount to full performance thereof.
  2. This Contract comprises the entire agreement between the parties regarding its subject matter and contains all representations, warranties and other terms and conditions agreed by the parties.
  3. This Contract replaces prior negotiations, deeds, arrangements, understanding, documents, and documents regarding its subject matter.
  4. Any expressed or implied provision of a Schedule or any annexure of or attachment to this Contract is hereby deemed to be a provision of this Contract and as such enforceable (against the relevant Party, or the Parties, as the case may be) in accordance with its terms. In the previous sentence, the word "provision" includes a term, condition, stipulation, warranty, right or obligation.

Inconsistency

* 1. Except for clause 30, the provisions of the Schedule will prevail over the clauses in this Contract to the extent of the contradiction or inconsistency.

Discrepancy in Documents

* 1. The Contractor must advise an Authorised Officer in writing if there is ambiguity between the documents comprising this Contract.
  2. An Authorised Officer will direct the Contractor, in writing, about the Authorised Officer’s interpretation.
  3. The Contractor may apply to the Commission seeking a variation to the Schedule of Rates if there is an increase in costs based on the findings of an Authorised Officer.

# Contract Conditions and Term

Condition Precedent

* 1. It is a Condition Precedent of this Contract that within 30 days of Contract execution, the Contractor shall provide documented evidence to the Commission’s reasonable satisfaction, demonstrating that the Contractor’s Safety Management Plan has been independently verified as meeting the minimum requirements of the Contract in accordance with clause 15.3.
  2. The Commission shall not allocate any Services to the Contractor during the period that the requirement of clause 3.1 has not been satisfied.
  3. If the Contractor fails to meet the requirement of clause 3.1, the Commission, at its sole discretion, may terminate the Contract.

**Condition Subsequent**

* 1. It is a Condition Precedent of this Contract that within three months from the commencement of Services, the Contractor shall provide documented evidence to the Commission’s reasonable satisfaction, demonstrating that the Contractor is implementing the requirements of its Safety Management Plan in accordance with clause 15.8.
  2. If the Contractor fails to meet the requirement of clause 3.4, the Commission, at its sole discretion, may terminate the Contract.

Contract Term

* 1. The Base Term of the Contract is specified in item A2 of Schedule 1.
  2. During the last Quarter of each year of the Base Term, the Commission may Offer an Extension of the Base Term by the period or periods outlined in item A3 of Schedule 1.
  3. In determining whether to offer an extension under clause 3.7, the Commission may have regard to one or more of the following:
     1. the Contractor’s performance record. This will be determined by:
        1. results of annual performance appraisals against Key Performance Indicators; or
        2. other factors under Commission policies and contract management processes (including compliance with any procedures and regulations; and
     2. the Contractor’s compliance with clauses 6, 7, 12, 13, 14, 15 and Schedules 3 and 4 of this Contract; and
     3. the Contractor not being in an Event of Default.
  4. The Contractor must notify the Commission whether it accepts the Offer of Extension by the date specified in the Offer of Extension. The Contractor accepts that failure to respond by this date may result in a withdrawal of the relevant Offer of Extension.
  5. The duration of this Contract must not exceed the maximum duration as per item A4 of Schedule 1.

# Start Date

4.1 This Contract will start on the Start Date (as specified in item A1 of Schedule 1).

# Consideration for Payment by the Commission

5.1 The Contractor agrees to perform the Services allocated to it by an Authorised Officer and be bound by the terms and conditions of this Contract in consideration for payment by the Commission.

# Service

* 1. The Contractor must perform the Services or any Other Services:
     1. in line with all directions given by an Authorised Officer;
     2. in an efficient and punctual manner;
     3. to the satisfaction of the Authorised Officer; and
     4. according to the terms and conditions of this Contract including without limitation Schedules 3 and if applicable, Schedule 4.
  2. The Contractor must comply with the standards of workmanship outlined in this Contract in respect of the Services.

# Contractor’s Knowledge

* 1. The Contractor, before starting the Services on the Site, must:
     1. examine documents comprising or relevant to this Contract including (but not limited to):
        1. reports;
        2. maps; and
        3. diagrams,

issued by the Commission; and

* + 1. examine its surroundings and be satisfied of the:
       1. physical conditions on, above and below the surface;
       2. climate conditions;
       3. nature of the Service;
       4. Equipment and materials necessary to perform the Services;
       5. means of access;
       6. availability of labour;
       7. accommodation required and available;
       8. the risks associated with this Contract; and
    2. obtain necessary information regarding the risks associated with this Contract.
  1. The Contractor agrees that the Commission will not be liable for:
     1. increase in costs; or
     2. delays or inconvenience,

except for those directly caused by any act or omission of the Commission, including the provision of incorrect information contained in reports, maps, diagrams and other material issued by the Commission.

# Other Contractors

* 1. The Contractor must not engage other contractors to undertake the Services or part of the Services on Site, except as provided for in clauses 10 and 20 of this Contract.

# Contractor’s Workers

* 1. The Contractor must engage their Workers in accordance with the terms of this Contract.
  2. The Contractor must ensure that all Workers engaged in Services under this Contract are properly supervised, trained and hold relevant accreditation for:
     1. the Equipment which they operate;
     2. the tasks which they perform; and
     3. the risks and processes for managing risks.
  3. At any time, the Commission may request the Contractor to obtain and provide it with an Australia-wide police clearance in respect of any Workers and the Contractor must comply with that request within twenty (20) Business Days.
  4. If any police clearance provided in accordance with clause 9.3 evidences that any Worker has committed a criminal offence punishable by imprisonment or detention, then an Authorised Officer may direct the Contractor, in writing, to remove that Worker from any involvement in the Contract.
  5. The Contractor must ensure that their Workers throughout the Term of the Contract obtain and keep current all:
     1. licences;
     2. permits; and
     3. approvals,

required for or in relation to the performance of their obligations under this Contract, inclusive of any conditions attached to those licences, permits and approvals.

* 1. An Authorised Officer may direct the Contractor, in writing, to remove from the Site any of its Workers if an Authorised Officer reasonably believes and provides evidence to the effect that person has:
     1. engaged in misconduct or acted unlawfully;
     2. acted incompetently; or
     3. been negligent,

in their duties.

* 1. The Contractor, upon receiving a direction under clauses 9.4 or 9.6, must ensure that the relevant person is:
     1. removed from the Site as soon as practicable; and
     2. not employed or engaged to carry out the Services for the remainder of the Contract and any Concurrent Contract without the Authorised Officer’s prior written approval.
  2. The exercise of the Commission’s rights under this clause 9 shall not affect the Contractor’s obligations under this Contract. If the Contractor disagrees with the Authorised Officer’s decision under clauses 9.4 or 9.6, then the provisions of clause 34 apply.

# Subcontracting

* 1. Subcontracting is not permitted under this Contract.

# Relationship and Representation of the Parties

**Relationship of the Parties**

* 1. The Contractor is an independent contractor to the Commission.
  2. This Contract does not form any one or more of the following relationships between the Contractor and the Commission:
     1. partnership;
     2. agent;
     3. fiduciary;
     4. joint venture; or
     5. employer and employee.

**Authorised Officer**

* 1. The Commission will appoint Authorised Officers for managing the obligations of this Contract.
  2. The Contractor must perform the Services under instructions provided by and to the satisfaction of an Authorised Officer.

**Contractor’s Representative**

* 1. The Contractor must ensure that:
     1. if it is not personally supervising the Site, it employs at least one competent representative (defined as the Contractor’s Representative) acceptable to an Authorised Officer to supervise and to ensure the safe and proper carrying out of the Services for each Site;
     2. it provides the name of the Contractor’s Representative to the Authorised Officer; and
     3. the Contractor’s Representative is present at each Site during the time Services are performed and must remain contactable by UHF radio, mobile phone, or satellite phone.
  2. An Authorised Officer may direct the Contractor’s:
     1. Workers; or
     2. Visitors,

to take certain action based on safety grounds if an Authorised Officer attends the Site and the Contractor’s Representative is not present. The Contractor must do everything reasonable to ensure that such persons must immediately comply with any such direction.

# General Obligations, Fire Precautions, and Other Requirements

General Obligations

* 1. The Contractor throughout the duration of the Contract must:
     1. exercise reasonable care in the use of and access to the Site and any of the Commission’s materials, Equipment, from the date on which possession of the Site, materials and Equipment is given to the Contractor;
     2. ensure that the Services are always performed safely and in such a manner that they do not pose a risk or hazard to the safety or health of all persons including the Contractor, the Commission and their employees, agents, subcontractors and the public;
     3. at its own cost, repair, reinstate or replace or otherwise compensate the value of lost or damaged property belonging to third parties caused by an act, failure or omission of the Contractor, while undertaking Services under this Contract;
     4. avoid causing a nuisance to a person;
     5. not cut, interfere or harm Forest Products or Forest Produce on the Site unless permitted to do so;
     6. comply with the provisions outlined in the Contractor Procedures and meet the Commission’s obligations under AS/NZS 4708 and any other accreditation system as required by the Commission and as amended, supplemented or superseded from time to time;
     7. comply with legitimate instructions given by an Authorised Officer; and
     8. comply with all relevant Laws in connection with this Contract or any Law, Australian Standards and codes of practices relating to the Services or this Contract including work health and safety as per Schedule 6;
     9. inform the Commission immediately of any conflicts of interest and convictions (save and except for summary traffic convictions) for offences recorded of any its Workers under a Law (including offences under the CALM Act and any associated, ancillary or replacement Laws); and
     10. adhere to the KPIs as referred to in item F of Schedule 1.
  2. The Commission will not pay an hourly rate if any Worker has been dismissed, does not appear at the Site within agreed timeframes.

Integrated Forest Management System (IFMS)

* 1. The Contractor must provide Services in accordance with the Commission’s IFMS as advised by the Commission.
  2. All Contractor Personnel working on the Site must have successfully completed an IFMS induction as per Contractor Procedure E5 – Integrated Forest Management System (IFMS) E Learning awareness modules for Contractors.
  3. The Contractor must ensure that Personnel receive an induction prior to starting work on any Site.
  4. Personnel indirectly related to providing Services under this Contract (e.g. maintenance Personnel) are to remain under the direct supervision of inducted Personnel while on any Site**.**

Change in Personnel

* 1. The Contractor must notify the Commission within two (2) Business Days of:
     1. commencement of new Personnel performing the Services; and
     2. cessation of Personnel performing the Services,

by providing the Commission with the names, qualifications and registrations of the Personnel concerned.

Notification of Service Hours

* 1. The Contractor must, no less than 24 hours prior to commencing the Services, notify the Authorised Officer:
     1. the spread of hours (start and finish times) it proposes to carry out the Services before starting operations under this Contract, taking into consideration the Contractor’s fatigue management strategy; and
     2. regarding proposed changes to those hours.
  2. Without limiting the operation of clause 32 (Force Majeure), the Commission may suspend the Contractor’s Services at a Site:
     1. for the protection and safety of persons or property; or
     2. if an Authorised Officer believes that winds, weather, fire conditions or soil conditions are unsuitable or unsafe, or potentially unsafe or unsuitable.

Fire Precautions

* 1. The Contractor must comply (at its own cost) with the Contractor Procedures and Work Instructions set out in Schedule 3, in particular Contractor Procedure F1, otherwise with instructions or orders from an Authorised Officer or a person authorised under the *Bush Fires Act 1954* (WA) regarding:
     1. lighting a fire;
     2. fire suppression; or
     3. fire management or control.
  2. The Contractor must take necessary precautions to prevent the start or the spread of fires.
  3. To the extent allowed by Law, the Contractor is liable for damage, loss, destruction or injury to a person or property from a fire caused directly or indirectly by the Contractor or Contractor’s:
     1. Workers; or
     2. subcontractors.

Confidentiality

* 1. The Contractor acknowledges that any Confidential Information disclosed to it is valuable to the Commission.
  2. The Contractor undertakes to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information except to the extent that disclosure is required by Law.
  3. The Contractor:
     1. may only use or reproduce all or any part of the Confidential Information for the purposes of this Contract;
     2. must not disclose all or any part of the Confidential Information to any person except as permitted by this Contract or as otherwise agreed by the Commission; and
     3. must make reasonable efforts to ensure that any person who has access to Confidential Information does not make any unauthorised use, disclosure, or reproduction of that information.
  4. On termination of this Contract, the Contractor must return to the Commission (or with the Commission’s prior authorisation, destroy or erase) all documents containing Confidential Information in the possession, power or control of the Contractor.
  5. The Contractor acknowledges that any unauthorised use or disclosure of the Confidential Information or any part of it in breach of this Contract may cause material damage to the Commission.
  6. If the Contractor has breached clause 12.17, the Commission may exercise the following:
     1. seek remedies available to it under statute, in Law or in equity; or
     2. seek injunctive relief against the Contractor.

Clean Up

* 1. The Contractor, at its own cost, must when it leaves a Site, remove from that Site Equipment owned by the Contractor and those of its employees, subcontractors, agents, or visitors.
  2. The Contractor must at all times keep the Site free from litter and rubbish owned by the Contractor and those of its employees, subcontractors, agents, or visitors.

# Obligation to Supply Information

* 1. If directed by the Commission, the Contractor must within five (5) Business Days or such other time as the nominated by the Commission, provide the Commission with information or documentation (relating in any way to the Services or this Contract) reasonably requested by the Commission.
  2. The Contractor will ensure that all such information and documentation provided is accurate, easily read, complete, comprehensive, up-to-date, properly detailed, and in no way misleading or deceptive.

# Western Australian Industry Participation Strategy

The Participation Plan

* 1. The Contractor must, in performing its obligations under the Contract, comply with the Participation Plan Obligations.
  2. The Contractor acknowledges and agrees that its Participation Plan Obligations apply during the Term, any extensions of the Term and until all of its reporting obligations as set out in clause 14.5 are fulfilled.
  3. The Contractor acknowledges and agrees that the Participation Plan Obligations include the Contractor ensuring its sub-contractors (at any tier) do what is necessary to enable the Contractor to comply with clauses 14.1 and 14.2.

Variation or revision of Participation Plan

* 1. If a party wishes to vary or revise the Participation Plan, the parties must liaise in good faith with a view to agreeing and then documenting the proposed variations or revisions. If the parties cannot agree on a variation or revision of the Participation Plan, it will remain unchanged.

Participation Plan Reporting

* 1. The Contractor must submit to the Commission,
     1. an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Commission to the Contractor; and
     2. a Final Report no later than two months after the expiry of the Contract,

in accordance with this clause 14.

* 1. The reports submitted under subclause 14.5 must use the form of, and must address the matters outlined in, the Participation Plan Report Template which is available to download from the Industry Link portal provided in Item G of Schedule 1.
  2. The reports required under clause 14.5 must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

Verification of Contractor’s compliance with Participation Plan

* 1. The Contractor must:
     1. permit the Commission or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Commission’s expense of all records maintained by the Contractor for the purposes of this Contract;
     2. permit the Commission, or its duly authorised representative, from time to time to undertake a review of the Contractor’s performance of the Participation Plan Obligations; and
     3. ensure that its employees, agents and sub-contractors (at all tiers) give all reasonable assistance to any person authorised by the Commission to undertake such audit or inspection.
  2. If the Commission requests from the Contractor information or access to documentation in connection with the Participation Plan or the Participation Plan Obligations, or information or documentation in connection with any report referred to in clause 14, the Contractor must promptly comply with such request, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
  3. The Contractor authorises the Commission, and any duly authorised representative of the Commission, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor’s compliance with the Participation Plan Obligations.
  4. The obligations set out in this clause 14 are in addition to and do not derogate from any other obligation under this Contract.

Verification of Participation Plan

* 1. The Contractor must ensure that both the Participation Plan and each report referred to in clause 14.5 is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

Use of Information

* 1. Both the Commission and the State may use or disclose the Participation Plan, any report provided under this clause, or any information or documentation referred to in this clause 14 for the legitimate purposes of or relating to government or the business of government.

Compliance with Participation Plan

* 1. The Contractor acknowledges that if the Contractor does not comply with the Participation Plan Obligations, this may result in the State (including any agency, department, authority or instrumentality of the State) not awarding a supply contract, or supply contracts, to the Contractor in the future.

Clause survives

* 1. This clause 14 survives the termination or expiration of the Contract.

# Contractor’s Work Health and Safety Obligations

* 1. The Contractor must in respect of the Services and their performance:
     1. supply and maintain a safe working environment under relevant Laws for:
        1. its Workers; and
        2. members of the public; and
     2. identify the necessary precautions for the safety and health of persons including:
        1. its Workers;
        2. the Commission and its employees, agents, subcontractors, visitors; and
        3. members of the public,

in terms of:

* + - 1. providing and maintaining an appropriate and safe workplace, Equipment, personal protective equipment and service systems;
      2. providing proper information, instructions, training and supervision of its Workers and visitors; and
      3. ensuring that all persons at a Site have:
         1. an effective means of locating their position; and
         2. the necessary means of communication available always including (but not limited to) a GPS, hand-held radios or satellite phones;
    1. inform itself and comply with relevant:
       1. Laws;
       2. codes of practice;
       3. Australian Standards; and
       4. work health and safety policies, procedures and measures implemented by the Commission including the Contractor Procedures;
    2. ensure that its Workers are competent to carry out tasks properly and safely;
    3. ensure that its Workers hold relevant licences and qualifications to perform the Services;
    4. ensure that Equipment taken to a Site complies with:
       1. relevant Laws;
       2. Australian Standards; and
    5. comply with the provisions outlined in Schedule 6 as amended from time to time.
  1. If requested by the Commission or Authorised Officer, the Contractor must give satisfactory evidence that it has complied and is complying with the requirements listed under clause 15.1.

**Safety Management Plan**

* 1. The Contractor must provide documented evidence to continually demonstrate the Commission’s reasonable satisfaction, that its Safety Management Plan has been independently verified by an assessment process approved by the Commission.
  2. The continuous verification referred to in clause 15.3 may be demonstrated by either:
     1. at the commencement of the Contract, and thereafter upon the expiry of any previous certification, the provision of a current certificate confirming the Contractor’s compliance to AS/NZS ISO 45001:2018; or
     2. at the commencement of the Contract and:
        1. upon the termination or expiry of the currency of any certification held in accordance with clause 15.4(a); or
        2. upon the specific request of the Commission,

the provision of documented evidence from an approved WorkSafe Plan Assessor verifying that the Contractor’s Safety Management Plan meets the minimum requirements of the Contract.

* 1. The Contractor must immediately notify the Commission if the currency of any certification held in accordance with clause 15.4(a) ceases.
  2. If the Contractor fails to give satisfactory evidence that it has complied or is complying with the requirements listed under clause 15.1 and 15.3, the Commission may:
     1. direct the Contractor to take relevant steps to ensure that it is meeting the obligations under clause 15.1 and 15.3; or
     2. treat the failure as an Event of Default.
  3. At the commencement of the Contract and at any time upon the request of an Authorised Officer, the Contractor must provide to the Commission an up-to-date copy of its Safety Management Plan.

## **Field Safety Audit**

* 1. Within a period of three months from the commencement of Services, the Contractor must arrange at its own expense, a field-based safety audit that demonstrates the Contractor is fully implementing the requirements detailed in its SMP.
  2. The field audit referred to in clause 15.8 must be completed by the same organisation that the Contractor used to meet the requirements of clause 15.4.

# Possession of Sites

* 1. The Commission agrees to give the Contractor non-exclusive possession of whole or part of one or more of the Sites to enable the Contractor to start Services.
  2. Possession of a Site or part of a Site is considered to confer on the Contractor a non-exclusive right to such possession to enable it to perform the Services.
  3. Possession of a Site by a Contractor does not diminish, in any way, the right of an Authorised Officer to take possession of the whole or part of a Site for reasons to carry out the Service or for any other purpose.
  4. The Contractor must:
     1. accommodate and cooperate with other persons or contractors (including their Workers and Equipment) engaged by the Commission to ensure the efficient conduct of the Commission’s operations; and
     2. do all things reasonable to assist other persons as directed by the Commission throughout the Term.
  5. The Contractor must not deliver materials or Equipment to a Site unless and until an Authorised Officer has first given written approval.

# Quantity of Services – Standing Offer Arrangement

* 1. The Contractor accepts that under this Contract, it is a Panel Member under a wider Standing Offer Arrangement established by the Commission to provide Services to the Commission.
  2. The Commission offers no minimum volume of Services under this Contract.
  3. The Contractor acknowledges that:
     1. the Commission may request Services from the Contractor;
     2. neither the Commission or the General Manager makes any representation that the Commission will procure or seek to procure the Services from the Contractor; and
     3. the Commission will request Services from a Panel Member by submitting an Order to proceed to the Contractor; and
     4. the Contractor may not receive any orders from the Commission during the Term; and
     5. appointment to a Panel does not give the Contractor an exclusive right to provide Services to the Commission.
  4. Selection of Panel Members from the Standing Offer Arrangement for any given Services will be at the discretion the Authorised Officer on a job-by-job basis and may be dependent on factors including, but not limited to:
     1. extent of Services and the cost-effectiveness of engaging a Panel Member; and
     2. each Panel Member’s previous performance under the Standing Offer Arrangement; and
     3. the Panel Member’s availability and proximity to the required Services.
  5. On termination of this Contract, the Contractor is immediately removed from the Panel.
  6. The Contractor acknowledges that the Commission may submit orders to the Contractor or any other member of thePanel.

# Indemnities

* 1. The Contractor must indemnify:
     1. the Commission; and
     2. the State,

and all their Workers (each, an Indemnified Person) from and against all:

* + 1. loss,
    2. damage;
    3. liability;
    4. claims;
    5. demands; and
    6. legal proceedings and the like,

suffered, sustained or brought against any Indemnified Person and arising from or in connection with either or both Services and this Contract (including, but not limited to, a suspension under clause 31 of this Contract); and

* + 1. the death of or illness of or injury to any person; or
    2. the loss of or damage to property or the infringement of any person’s rights,

to the extent that the same has been caused or contributed to by any:

* + 1. actionable (including tortious) wrong;
    2. breach of contract;
    3. criminal act or omission; or
    4. other wrong, fault, default or malfeasance,

by or on the part of the Contractor or Workers (at any tier), invitee or licensee of the Contractor.

* 1. Each indemnity provided by the Contractor:
     1. is a continuing obligation, separate and independent from other obligations of the Contractor; and
     2. survives after termination of this Contract.

# Variation

* 1. The parties may, except otherwise provided for under this Contract, agree to vary, cancel or replace all or some of the provisions of this Contract.
  2. Any variation under this clause 19 must be in writing by the Commission’s Procurement Manager or General Manager.
  3. Any purported variation that is not in writing by the Commission’s Procurement Manager or General Manager is not effective.

# Assignment

* 1. The Contractor may not assign all or part of the Contractor’s rights and obligations under this Contract to a third person without the prior written consent of the Commission.
  2. At the time the Contractor seeks the Commission’s consent required under clause 20.1, the Contractor must provide the Commission with the identity of the potential assignee and any other information in relation to the proposed assignment reasonably required by the Commission.
  3. The Commission may impose reasonable conditions to the grant of its consent to the proposed assignment by the Commission of all or part of its right and obligations under this Contract to a third person at its sole absolute discretion.
  4. The Contractor must ensure that the assignee enters into a deed of assignment with the Commission and the Contractor in a form acceptable to the Commission if the Commission consents to an assignment of all Contractor’s rights and obligations under this Contract. The Contractor agrees to bear all reasonable legal costs incurred by the Commission to the deed of assignment.
  5. If the Contractor:
     1. is a corporation, any change in control of the Contractor; or
     2. is a subsidiary, any change in the control of its holding company,
     3. is taken to be an assignment of the Contractor’s interest in this Contract.
  6. Under clause 20.5(b), “change in control” means:
     1. control of the composition of the board of directors;
     2. control of more than 50% of the shares with the right to vote in general meetings of the corporation; or
     3. other words with similar meaning to section 46 of the Corporations Act.
  7. In the preceding provisions under this clause 20, “assign” means assign, novate, subcontract or transfer and the words “assignee” and “assignment” will bear corresponding meanings.

# Costs

* 1. Each party will bear its own costs and charges including solicitor’s costs in negotiating, preparing and executing this Contract.
  2. The Commission bears the cost of stamp duty, if applicable, relating to this Contract.
  3. The Contractor must pay or reimburse:
     1. the Commission for expenses the Commission has incurred for enforcing or preserving a right made under this Contract (including legal costs on a full indemnity basis); and
     2. the costs in preparing, executing and, if applicable, stamping and registration of Security.

# Law

* 1. Nothing contained in this Contract will affect or prejudice rights or powers conferred or imposed on the:
     1. General Manger;
     2. Commission;
     3. CALM Act CEO; or
     4. State,

under any Law.

# Governing Law and Jurisdiction

* 1. The laws of Western Australia will govern this Contract.
  2. Each party submits to the jurisdiction of the courts of Western Australia.

# Notices

Format, Addressing and Delivery

* 1. A Notice under this Contract is only effective if it is written in English and delivered to the relevant address shown in item D of Schedule 1 or last communicated in writing to the person giving the Notice.
  2. A Notice must be:
     1. delivered by hand (and signed by the person giving the Notice);
     2. sent by pre-paid post (and signed by the person giving the Notice); or
     3. sent by email by person giving the Notice.
  3. Each party may change its particulars for delivery of notices by Notice to each other party.

When Effective

* 1. A Notice is deemed effective:
     1. if delivered by hand – upon delivery at the relevant address;
     2. if sent by post – within three (3) Business Days after sending it to the relevant address; or
     3. if sent by email – when the sender receives an acknowledgement that the email has been received. Unless the sender receives a delivery failure notification or a delivery delay notification indicating that the electronic mail has not been delivered to the addressee or the sender receives an “out of office” notice, such notification shall be deemed to have been received by the receiver two (2) hours after it has been sent.
  2. If a Notice is received on a day which is not a Business Day, or after 5.00 pm on a Business Day, it is taken to be received on the next Business Day.

# Insurances to be maintained by the Contractor

* 1. Before starting any Service for or in connection with the Contract, the Contractor and, if applicable, each of the Contractor’s subcontractors must have in place the insurance coverage for the minimum amounts specified in item E of Schedule 1.
  2. The insurance in clause 25.1 must note the interest of the Commission in the policy.
  3. Any insurance policy required under this Contract must:
     1. contain a provision requiring the insurer, whenever the insurer gives or serves on the Contractor a notice of cancellation or any other notice under or in relation to the said policy of insurance;
     2. at the same time, inform the Commission in writing that the notice has been given to or served on the Contractor;
     3. ensure that notice of any claim is given by the insurer to the Commission; and
     4. inform the Commission of subsequent action and developments concerning such claim.
  4. The insurer must be authorised by the Australian Prudential Regulation Authority or approved by the Commission’s insurer.
  5. The Contractor must provide certificates of currency or other approved documentation before the commencement of Services, when requested by the Commission.
  6. The Contractor must ensure that each insurance policy under this Contract or any subcontract is valid for the duration of the Contract.
  7. The Contractor must ensure that it and its Workers (at any tier) comply with the following throughout the duration of the Contract:
     1. not to do anything which prejudices any insurance;
     2. immediately rectify anything which might prejudice any insurance;
     3. immediately reinstate an insurance policy if it lapses;
     4. not to cancel, vary or allow an insurance policy to lapse without the written consent of the Commission;
     5. immediately notify the Commission regarding an event which may result in an insurance policy lapsing or being cancelled; and
     6. immediately give full, true and information to the insurer of all matters and things that might prejudice or affect a policy or payment of all or any benefits under the insurance.
  8. Any payments under this Contract are subject to the Contractor meeting the requirements of this clause 25.
  9. The keeping of insurances as required under this clause 25 will not limit the responsibilities (whether express or implied) of the Contractor under the other provisions of this Contract in any way.

# Payments

Tax Invoice

* 1. The Contractor must issue invoices to the Commission no less frequently than on a monthly basis, reflecting the preceding month’s Services.
  2. The Contractor may elect to issue invoices to the Commission fortnightly or on the completion of an Order.
  3. Tax Invoices for Services completed by the Contractor must contain the following information as a minimum:
     1. date;
     2. Contractor’s name;
     3. Contract number; and
     4. Commission purchase order number.
  4. The Contractor must prepare the Tax Invoice according to clause 26.6 and unless otherwise agreed in writing by the parties, the Commission will pay the Contractor within 20 days of each Tax Invoice issued by the Contractor.
  5. The Commission, without prejudice to the provisions of this Contract, may deduct from monies otherwise payable by the Commission to the Contractor under this Contract, money owing to the Commission from the Contractor on any account.
  6. The Commission will pay the Contractor for payments if the Tax Invoice:
     1. meets relevant requirements and procedures outlined in the GST Act and Australian Taxation Office (ATO) guidelines;
     2. stipulates the amount of GST; and
     3. includes a valid Commission purchase order number.

Outstanding amounts

* 1. If this Contract requires a party to:
     1. pay for an expense incurred; or
     2. satisfy a demand under an indemnity or enforcement of Security for the benefit of that party,

the amount required to be paid by the first-mentioned party will comprise the sum of:

* + 1. the amount of such expense or demand net of Input Tax Credits (if applicable);
    2. GST payable, if the other party’s recovery from the first-mentioned party is a Taxable Supply,

to ensure that the other party meets the GST liability and retains the net amount.

# Mobilisation/Demobilisation

Not applicable.

# Standby Rates

Not applicable.

# Equipment Breakdown

Not applicable.

# Indexation of Rates

* 1. The Commission will vary the Contract rates in Schedule 2 on the basis outlined in Schedule 5.
  2. The Commission may conduct a review of the Schedule of Rates based on improvements in industry operating procedures that have been or are about to be implemented.
  3. The Commission will:
     1. notify the Contractor in writing regarding the implementation of a review under clause 30.2; and
     2. supply a report to the Contractor if the review concludes that an adjustment will or should occur.

# Suspension

* 1. Either Party throughout the duration of the Contract may request the suspension of part or all the Contract to enable a review of the Contract to assess whether the other party has performed or failed to perform the Services satisfactorily and any such request will not be unreasonably refused.
  2. Without derogating from the above 31.1, either party may further request a suspension of this Contract in the event:
     1. the other party is subject to an Event of Default;
     2. any breach of clause 15 of this Contract;
     3. the Contractor’s insurance coverage under clause 25 has expired;
     4. a direct or an indirect act of environmental harm is caused by either party within the meaning of section 3A(2) of the *Environmental Protection Act 1986* (WA);
     5. if in the reasonable opinion of either party the performance or continued performance of the Services contravenes the Law; or
     6. if an Authorised Officer believes that weather or soil conditions are unsuitable or unsafe, or potentially unsafe or unsuitable.
  3. An order given under clause 31.1 can only be given by Notice (Suspension Notice).
  4. The Suspension Notice must specify the reasons for the suspension and, if practicable, the expected period of suspension.
  5. During the period of any order to suspend Services by the Commission given by Suspension Notice, the Commission must by Notice to the Contractor, cancel the suspension if;
     1. the Contract is suspended under clauses 31.1(a)(ii), 31.1(d), or 31.1(g) as soon as is reasonably practicable after the Contractor remedies the breach giving rise to the suspension;
     2. the Contract is suspended pursuant to clause 31.1(c) as soon as is reasonably practicable after the Commission considers the necessity for the suspension has passed; or
     3. the Contract is suspended pursuant to clause 31.1(b) no later than the sooner of: the expiration of 20 Business Days from service of the Suspension Notice; and the Commission electing not to terminate this Contract under clause 33.2(b).
  6. A party must immediately suspend performance of the Services if it receives a Suspension Notice under clause 31.2.
  7. During the suspension of a Contract under this clause 31 the Commission reserves the right to engage another person to perform the Services or any part thereof.
  8. This clause does not prejudice clause 3232 in any way.
  9. Where:
     1. the Commission has determined to suspend the whole or any part of the Contract under clause 31.8; and
     2. in the opinion of the Commission the reason for suspension of such Service no longer exists,

the Commission by Notice to the Contractor at any time to that effect direct the Contractor to resume Service and the Contractor must promptly comply with that direction.

* 1. No claim may be made by either party against the other under this Contract, to the extent the non-performance is due to a suspension imposed by the Commission under this clause 31.

# Force Majeure

* 1. The parties agree a Force Majeure Event occurs when there is failure by an Affected Party to perform obligations that is not caused by circumstance arising from breach of Contract.
  2. The Affected Party, following a Force Majeure Event, must:
     1. give Notice to the other party as soon as possible;
     2. provide the other party with particulars of that event and supply supporting evidence within five (5) Business Days;
     3. take reasonable steps to resume the performance of their obligations with the exception that neither party is required to settle:
        1. strikes;
        2. lockouts; or
        3. other labour difficulties,

except on reasonable terms.

* 1. Either party may terminate this Contract by written Notice to the other party if:
     1. that other party is unable to perform its obligations; or
     2. both parties are prevented from performing their obligations,

because of a Force Majeure Event which last, or the effects of which last, for more than 10 Business Days.

* 1. This Contract will resume as soon as the cause referred to in clause 32.1 ceases to have effect.

# Default

Event of Default Notice

* 1. The Parties agree that it is an Event of Default if:
     1. **(breach of contract)** either party breaches this Contract, Concurrent Contract, or both and does not remedy the breach within five (5) Business Days after having received from the Commission a Notice calling upon the Contractor to remedy the breach;
     2. **(representation or warranty)** a representation or warranty made or taken to be made by or on behalf of either party in connection with this Contract, Concurrent Contract, or both; or the Services is found or is notified by the other party to be materially incorrect or misleading when made or taken to be made;
     3. **(breach of undertaking)** an undertaking given to a party or its solicitors in connection with this Contract, Concurrent Contract or both, is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within five (5) Business Days from the date of the undertaking;
     4. **(Insolvency Event)** an Insolvency Event an Insolvency Event occurs in respect of the Contractor; or Related Entity of the Contractor except to the extent the right to terminate is stayed by sections 415D, 434J, or 541E of the Corporations Act’;
     5. **(ceases to have control)** without the prior written consent of the Commission which consent will not be unreasonably withheld, the persons who at the date of this Contract have control of the Contractor, cease to have control of the Contractor;
     6. **(breach of Law)** either party breaches any Law including any statute or subordinate legislation of the Commonwealth or the State; or is convicted in a court of a competent jurisdiction of a breach of a Law, which breach, in the innocent party’s reasonable opinion, materially or detrimentally affects the business of the other party in performing its obligations under this Contract;
     7. **(Western Australian Industry Participation Strategy Reporting)** the Contractor has not fulfilled its obligations under the clause 14 to the reasonable satisfaction of the Commission;
     8. **(conflict of interest)** a party becomes aware of a perceived, potential or actual undeclared conflict of interest by the other consequences of which may be adverse to the Commission;
     9. **(breach of contract)** the party persistently or regularly breaches this Contract or any Concurrent Contract; or
     10. **(three breaches)** a party commits three breaches of its obligations under the Contract, Concurrent Contract or both over a 12-month period, whether or not the party has received Notice of any such breaches and whether or not the party in breach has rectified such breaches.

Consequences of Event of Default

* 1. If an Event of Default occurs during the Contract, then the party not in default may:
     1. suspend the performance of all or some of the other party’s obligations under this Contract;
     2. terminate this Contract without prejudice to any rights it has under the common law, in equity or under statute; or
     3. (in the event the Contractor is in default), the Commission may take the Services under this Contract out of the hands of the Contractor (in whole or in part), and re-allocate to another contractor, whilst keeping the Contract on foot.
  2. The suspension under clause 33.2 continues:
     1. until the Event of Default is remedied to the reasonable satisfaction of the party not in default; or
     2. until the time to remedy the Event of Default has expired.

No Claim by the Party in default

* 1. The party in default has no claim against the other party or the State for compensation based on action undertaken under this clause 33.
  2. If a party acts under clause 33, this will not:
     1. limit clause 31 in any way;
     2. impair the legal validity of this Contract; or
     3. operate to prejudice the rights of that party;

#### under this Contract or any Concurrent Contract at Law, in equity or under statute.

# Dispute Resolution

* 1. If dispute arises between the parties under this Contract, either Party must issue a Notice to the other party (defined as a Dispute Notice).
  2. The Dispute Notice must:
     1. be in writing;
     2. state that it is given under clause 34;
     3. include particulars of the dispute including:
        1. a brief description of the circumstances in which the dispute arose;
        2. reference to provisions of this Contract, acts or omissions of any person relevant to the dispute; and
        3. if relevant, the amount in dispute (whether in monetary or volume).
  3. Upon receiving the Dispute Notice, the parties must agree upon an appropriate procedure to resolve the dispute.
  4. Both parties must attempt to resolve this dispute within ten (10) Business Days from the date the Dispute Notice is received under clause 34.3.
  5. If the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the Parties must refer the dispute to the Resolution Institute for mediation according to the Resolution Institute’s Mediation Rules.
  6. The parties must cooperate with the Resolution Institute as facilitator and agree to share the facilitator’s costs equally.
  7. If, within ten (10) Business Days after referral of the dispute to the Resolution Institute the dispute is not resolved, then either party may give the other party Notice stating that fact (defined as a Non-Resolution Notice).
  8. Party after issuing a Non-Resolution Notice on the other party may commence court proceedings to resolve the dispute.
  9. Before the resolution of the dispute, the parties must continue to perform their obligations under this Contract insofar as those obligations are not the subject matter of the dispute.

# Final Certificate

* 1. An Authorised Officer will issue a final certificate (Final Certificate) when the Contractor has:
     1. completed the Services; and
     2. fulfilled all other obligations under this Contract.
  2. The above issuance of a Final Certificate is subject to there being:
     1. no Event of Default remaining unresolved; or
     2. no indemnity benefiting or in favour of the Commission under or related to the Contract remaining unsatisfied,

at the time of the Contractor fulfilling the obligations set out in clause 35.1.

# Trusts

* 1. If the Contractor has entered into this Contract in the capacity of trustee whether the Commission has any notice of the trust, the Contractor:
     1. is taken to enter into this Contract both as trustee and in the Contractor’s personal capacity and acknowledges that the Contractor is personally liable for the performance of the Contractor’s obligations under the Contract;
     2. will take any action necessary to ensure the assets are available to satisfy the claim by the Commission for any default of the Contractor;
     3. warrants that:
        1. the Contractor has a right to be fully indemnified out of the assets of the trust in respect to obligations incurred under the Contract;
        2. the assets of the trust are sufficient to satisfy the indemnity referred to in this sub-clause (c) and all other obligations in respect of which the Contractor has a right to be indemnified out of those assets; and
        3. the Contractor has the power and authority under the terms of the trust to enter into the Contract.

Schedule 1

1. BASE TERM   
   (mentioned in clauses 1 and 3)
   1. Start Date

The Contract will start on the date of execution by the Commission.

* 1. Base Term

The Base Term is three (3) years from the date set out in Item A1 above.

* 1. Extensions of Base Term

There are two, one-year extension options available at the absolute discretion of the Commission.

* 1. Maximum Duration

The maximum duration of this Contract, including all available extension options is five years.

1. SERVICES/REGION  
   (mentioned in clause 1)

Forest Inventory Services in the Albany, Central Forest, Central Wheatbelt, Esperance, Katanning, Midwest, Southern Forest and Swan Plantation Regions (Refer to the map in Schedule 7) [*Amend to suit on Contract Award]*

1. OTHER SERVICES  
   (mentioned in clause 1)
2. ADDRESS FOR NOTICES   
   (mentioned in clause 24)

**1 The Commission**

Office address: Level 7, 233 Adelaide Terrace

PERTH WA 6000.

Postal address: Locked Bag 888,

PERTH BUSINESS CENTRE WA 6849.

Email address: [contracts@fpc.wa.gov.au](mailto:contracts@fpc.wa.gov.au)

**2 Contractor**

Office address:

Postal address:

Email address:

1. INSURANCES TO BE MAINTAINED BY THE CONTRACTOR   
   (mentioned in clause 25)

* **Public liability insurance** covering the legal liability of the Contractor and the Contractor’s Workers and Subcontractors arising out of the Services for an amount of not less than **$5 million** for any one occurrence and unlimited in the number of occurrences happening in the period of insurance;
* **Workers’ compensation insurance** in accordance with the provisions of the Workers’ Compensation and Injury Management Act 1981 (WA), including cover for common law liability for an amount of not less than **$50 million** for any one occurrence in respect to Workers and Subcontractors of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 217 of the *Workers’ Compensation and Injury Management Act 2023* (WA); and
* **Comprehensive Motor vehicle insurance** including coverage for legal liability against property damage and bodily injury to, or death of, persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the Services for an amount of not less than **$20 million** for any one occurrence or accident owned/hired by the Contractor or Sub-Contractor. Insurance coverage to be for “business use”.

1. key performance indicators  
   (mentioned in clauses 3 and 14)

Key Performance Indicators at the commencement of the Contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI** | **RELEVANT CONTRACT CLAUSE** | **REPORTS** | **PERFORMANCE**  **THRESHOLD** |
| KPI 1  Performance | Contractor Procedures (Schedule 3) | Compliance to Procedures | 95% of inventory assessments compliant to procedures |
| KPI 2  Performance | Work Instructions (Schedule 3) | Compliance to Work Instructions | 95% of inventory assessments compliant to work instruction protocols and methodologies |
| KPI 3  Staff | WAIPS Reporting timeliness  (Clause 14) | Participation Report | 95% of WAIPS reporting is provided to [contracts@fpc.wa.gov.au](mailto:contracts@fpc.wa.gov.au) within 1 month of the anniversary date of this Contract. |

The Key Performance Indicators Report must be provided to the Commission within one (1) month of the anniversary this Contract and the format must include:

### a presentation of all Key Performance Indicators demonstrating both a raw figure for the reporting period and a twelve (12) month rolling average result for each Key Performance Indicator and its status against the target value;

### where the Key Performance Indicators are not meeting the target and/or trending away from the target, the report must include some comment as to why and recommend corrective actions for both the Commission and Contractor as applicable; and

### in respect to the recommended corrective action, the report must include accountable Personnel and timings for both the Commission and the Contractor as applicable.

1. Western australian industry PARTICIPATION PLAN – reporting   
   (mentioned in clause 14)

The Participation Plan submitted as part of the Contractor’s offer for RFT1/2024FG forms part of this Contract and is attached as Schedule 8.

The Contractor must complete a WAIPS Participation Report and return it to the Commission at [contracts@fpc.wa.gov.au](mailto:contracts@fpc.wa.gov.au):

### each year on the anniversary of the Start Date, or on such other date each year as is notified by the Commission to the Contractor (Annual Report); and

### within two months of the expiry of the Contract (Final Report).

The reporting template is available from the Department of Jobs, Tourism, Science and Innovation: <https://www.wa.gov.au/government/publications/waips-participation-plan-report-template>.

Schedule 2 Schedule of Rates

[Insert Awarded Rates]

The above rates are inclusive of all consumables, travel and accommodation.

Depending on the scale of Services required from a Panel Member appointed to the Panel, at any point in time, the Commission’s Authorised Officer may, at its discretion, request an itemised quote for Services.

Schedule 3 Contractor Procedures and Work Instructions

(mentioned in clause 1)

1. APPLICABLE PROCEDURES AND WORK INSTRUCTIONS

The Contractor in order of precedence must comply with the following as amended, superseded or replaced by the Commission from time to time:

* Contractor Procedure E1 - Contractor Incident Reporting
* Contractor Procedure E3 - Contractor Environmental Compliance
* Contractor Procedure E5 - Integrated Forest Management System (IFMS) E-Learning awareness modules for contractors
* Contractor Procedure F1 – Fire Requirements
* Contractor Procedure O1 - Contractor Safety Requirements
* Contractor Procedure O3 - Alcohol and other drugs
* Work Instruction 129 - Protocol for Plantation Post-thin, Early Rotation Inventory and Pre harvest Inventory
* Work Instruction 220 - Protocol for PSP
* Work Instruction 251 - Quality Assessment

1. ORDER OF PRECEDENCE

Should there be any inconsistencies or conflicts between any of the Codes or Procedures above, the order of precedence will be as follows:

1. Work Instructions (Appendix C);
2. Contractor Procedures (Appendix B); and
3. FIFWA Code.

Schedule 4 Specifications

(mentioned in clause 1)

1. Extent and Description of Services

The frameworks in which the Services must be undertaken are set out in Schedule 3 Contractor Procedures and Work Instructions.

1. Buy Local Commitments

Schedule 5 Indexation and Variation of Rates

(mentioned in clause 19)

Contract rates will remain fixed until 30 June2025 Thereafter, a price variation will occur 1 July each year for the balance of the term based on the movement of 100% CPI.

Movements in CPI will be in accordance with the movement in the Consumer Price Index (Cat No. 6401.0:1 All Groups, Index Numbers) for Perth for the previous twelve months based on the movement between March quarters.

Schedule 6 Safety

(mentioned in clause 15)

Additional work health and safety obligations

* 1. The Contractor must:
     1. provide, continuously improve and comply with their Safety Management Plan which may include, but not limited to:
        1. a safety policy (with associated objectives);
        2. the organisation structure with safety responsibilities;
        3. hazard management procedures;
        4. safe Services practices and procedures for forestry Services;
        5. safety training and induction procedures;
        6. safety auditing and inspection procedures;
        7. safety issue resolution and consultation procedures;
        8. safety performance monitoring;
        9. sub-contractor safety management procedures;
        10. emergency procedures for relevant hazards; and
        11. drug and alcohol testing in accordance with Contractor Procedure O3.
     2. ensure their employees, agents and subcontractors successfully complete the Commission’s mandatory E-learning modules;
     3. in consultation with the Commission prepare and submit for approval a risk assessment plan and Risk Register in respect of the Services which identifies hazards, assessing the risk and details of risk methods/controls to be employed by the Contractor prior to the commencement of the Services;
     4. prepare Site safety plan(s) for each Site, acceptable to the Commission, which responds to the specific hazards and any other identified safety or health issues relevant to the Services and Site;
     5. ensure that their employees, agents and subcontractors are trained, comply with, and are informed of any changes to, the Site safety plan;
     6. update the Site safety plan as hazards or other safety and health issues, in relation to the Services and Site, are identified or change; and
     7. supply warning signs, lights, guards, fencing, traffic flagging, or temporary roadways required under this Contract or by Law.
  2. The Contractor, under clause 1 of this Schedule 6 must comply with a direction provided by the Commission or Authorised Officer.
  3. The Contractor must supply to the Commission or an Authorised Officer within three (3) Business Days:
     1. a copy of a Notice issued by a Governmental Authority in relation to the Services or Site; and
     2. written notification of a verbal direction given by any Governmental Authority in relation to the Services or Site.
  4. The Contractor must notify the Commission or Authorised Officer of any incident resulting or having potential to result in injury and/or any injury resulting in medical treatment, harm to health or damage occurring at a Site immediately or as soon as practicable.
  5. The notification requirement under clause 3 is in addition to, and independent of, any incident notification duty required by Law.
  6. The Commission or Authorised Officer may direct the Contractor to perform or refrain from performing an act based on reasons relating to work health and safety, conduct an investigation, or direct the Contractor to conduct an investigation on terms and conditions the Commission or Authorised Officer sees fit.
  7. The Contractor must supply access to the Site, cooperate and do other things necessary including (but not limited to) allowing the Commission, Authorised Officer or their representative to interview the Contractor, its employees, agents and subcontractors and providing to the Commission or Authorised Officer all relevant documentation and information if the Commission or Authorised Officer decides to conduct an investigation under clause 6.
  8. The Contractor must provide the Commission, when requested, a written report in relation to the Services, which includes, but is not limited to:
     1. number of lost time injuries;
     2. days lost due to injury;
     3. number of medical time injuries;
     4. number of incidents including near miss incidents;
     5. current status of any injured Workers or damaged property;
     6. new hazards identified and documented;
     7. percentage of Contractor employees, and subcontractors at the Site that have completed the Contractors and Commission’s Site safety inductions;
     8. subcontractors working at the Site; and
     9. other details, if directed, by the Commission or Authorised Officer.
  9. Upon request by the Commission, the Contractor must provide the Commission with an up-to-date Equipment Register that demonstrates that all Equipment involved in the provision of Services complies with the safety requirements detailed in Contractor Procedures, including documented evidence of compliance plates (e.g. photo) or engineer reports specifying compliance with standards for ROPS, FOPS and OPS.
  10. Notwithstanding any other provision of this Contract, the Commission may, by Notice direct the Contractor to cease the Services and direct all of the Contractor’s Workers to vacate the Site should the Commission be reasonably satisfied that the Services are being conducted, or may be conducted, in an unsafe manner. For the avoidance of doubt, the inability of the Commission to reasonably satisfy itself that all Workers on a Site have tested negative on a drug and alcohol test, may be evidence that work on that Site is not being conducted in a reasonably safe manner.

Schedule 7 Map of Service Delivery Regions

Schedule 8 WAIPS Participation Plan

*[WAIPS Participation Plan submitted as part of the offer for RFT1/2024FG will be inserted here.]*

Execution Pages

|  |  |  |  |
| --- | --- | --- | --- |
| **Execution – Forest Products Commission (Commission)** | | | |
| SIGNED by Stuart West the **General Manager** of the Forest Products Commission as delegate of the Forest Products Commission under section 13 of the *Forest Products Act 2000 (*WA). | | | |
| Dated |  |  |  |
| Day of | Month | Year |
| Signature |  | | |
| In the presence of: | | | |
| Signature of Witness |  | | |
| Name of Witness *(Print)* |  | | |
| Witness Address | C/- Forest Products Commission  Level 7, Adelaide Terrace, Perth WA 6000 | | |
| Witness Occupation | Public Servant | | |

and

|  |  |  |  |
| --- | --- | --- | --- |
| **Execution – Contractor** | | | |
| Executed for and on behalf of [Contractor name (ABN xx xxx xxx xxx) in accordance with Section 127 of the *Corporations Act 2001* (Cth) | | | |
| Dated |  |  |  |
| Day of | Month | Year |
| Signature of Director |  | | |
| Name of Director *(Print)* |  | | |
| Signature of Director/Secretary |  | | |
| Name of Director/Secretary *(Print)* |  | | |