

## Supply Agreement - Goods

*The person described in Item 1 of Schedule 1*

*and*

*The person described in Item 2 of Schedule 1*

*Agreement Reference: «ProjectDescription» «Project»*

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## Supply Agreement - Goods

|          |                                                                                                                                                                                       |            |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Parties  | Perkins (WA) Pty Ltd<br>ABN 600 0884 4862 of 1 Hales Street, Bunbury WA 6230                                                                                                          | (Perkins)  |
|          | The person described in Item 2 of Schedule 1<br>«FirmName» (ABN «HQABN») of «FirmAddress», «FirmCity», «FirmState»                                                                    | (Supplier) |
| Recitals | <p>A. Perkins wishes to engage the Supplier to provide the Deliverables.</p> <p>B. The Supplier has agreed to provide the Deliverables to Perkins on the terms of this agreement.</p> |            |

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

### 1. Definitions and interpretation clauses

#### 1.1 Definitions

In this agreement:

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Business Day** means a day other than:

- (a) a Saturday, Sunday or public holiday; or
- (b) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

**Commencement Date** means the date set out in Item 3 of Schedule 1.

**Confidential Information** means all information in respect of the relevant project or the Deliverables received or obtained by the Supplier from or on behalf of Perkins, their employees, agents, consultants or contractors and includes, without limitation, this agreement and Intellectual Property referred to in clause 21.

**Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Sites or the surrounding Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) not comply with any Law relating to the Environment; or
- (c) not satisfy the contamination criteria or standards published or adopted by a relevant Government Agency.

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

**Defective Deliverables** means Deliverables which are not in conformity with this agreement.

**Deliverables** means the Goods and/or Services described in Item 5 of Schedule 1.

**Environment** means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.

**Goods** means any goods provided or to be provided by the Supplier as part of the Deliverables.

**Governing Law State** means the State of Western Australia.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the

world and includes any self-regulatory organisation established under statute or any stock exchange.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means all present and future forms of intellectual property rights (whether in a material form or otherwise) including without limitation:

- (a) copyright, design, patent, trademark, plant breeder rights, electronic layouts and any other intellectual or industrial property rights, including know-how, whether registered or not
- (b) invention, discovery, secret process, novel design, improvement or modification of any nature; and
- (c) computer program material (including computer software, computer object code, computer source code, tables, charts, flow charts, algorithms, diagrams, plans, techniques, data, structures, logical ideas, concepts and processes).

**Law** means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards or requirements of organisations having jurisdiction in connection with the supply of the Deliverables under this agreement; and
- (c) all other laws from which legal rights and obligations may arise.

**Loss** means any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability.

**Policies** means:

- (a) any policies or procedures of Perkins including the policies identified in Schedule 5; and
- (a) any other policies or procedures as notified by Perkins to the Supplier from time to time.

**Price** means the price for the Deliverables payable by Perkins to the Supplier as set out in Item 7 of Schedule 1.

**Proportionate Liability Law** means the Civil Liability Act 2002 (WA) as amended from time to time.

**Representative** means, in respect of a party, an officer, director, employee, agent, representative, contractor or subcontractor of that party (other than the other party).

**Services** means any services provided or to be provided by the Supplier which are ancillary to the provision of the Goods or otherwise provided for in the Specifications, as part of the Deliverables.

**Site** means any site at which the Deliverables are to be delivered or performed.

**SOP Legislation** means the Building and Construction Industry (Security of Payment) Act 2021 (WA), as amended from time to time.

**Special Conditions** means the special conditions (if any) set out in Schedule 2.

**Specifications** means the specifications set out in Schedule 3, if any.

**Supplier Equipment** has the meaning given in clause 6(a).

**Term** means the term of this agreement described in clause 17.

## 1.2 Interpretation

In this agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this agreement;
- (b) the singular includes the plural and the plural includes the singular and a gender includes all other genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal identity);
- (e) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any clause, annexure, exhibit and schedule;
- (f) a reference to a document (including this agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to a party to any document includes that party's successors and permitted assigns;
- (h) a reference to time is to time in the State or Territory in which the Deliverables are delivered or performed;
- (i) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (j) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (k) a provision of this agreement may not be construed adversely against a party solely on the ground that the party (or that party's Representative) was responsible for the preparation of this agreement or the preparation or proposal of that provision;
- (l) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to

another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (m) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (n) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (o) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (p) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (q) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

## 2. Deliverables

- (a) The Supplier must supply the Deliverables (and all things necessary for the supply of the Deliverables) to Perkins in accordance with this agreement.
- (b) Where some or all of the Deliverables have been supplied prior to the Commencement Date, the provisions of this agreement will apply as if those Deliverables had been supplied on the Commencement Date.
- (c) This agreement does not prevent Perkins from entering into arrangements or agreements with third parties for the supply of goods or services equivalent or similar to the Deliverables.
- (d) Where this agreement provides for the supply of Goods or provision of Services as ordered by Perkins from time to time, this agreement does not operate to require Perkins to order a minimum amount of Goods or Services, or at all.

## 3. Delivery

- (a) The Supplier must supply the Deliverables in accordance with the schedule specifying the dates, time and locations for the supply of the Deliverables by the Supplier to Perkins as set out in Item 6 of Schedule 1.
- (b) Unless otherwise specified in Item 6 of Schedule 1, the Supplier is responsible for all transportation costs associated with the delivery of the Deliverables to or at the Site.

## 4. Suspension

- (a) Perkins may suspend the supply of all or any of the Deliverables for any time on written notice to the Supplier. The Supplier must comply with the suspension and any directions of Perkins.
- (b) Perkins will not be liable to the Supplier for any Loss by reason of a suspension under this clause, unless the suspension is as a result of a default of Perkins in which case the Supplier shall be entitled to its direct and reasonable costs incurred as a result of the suspension only provided that such costs are substantiated to the reasonable satisfaction of Perkins.

## 5. Deliverables standards

- (a) The Supplier must supply the Deliverables:
- (i) with due care and skill using that standard of diligence that would reasonably be expected from a prudent and experienced provider of goods and services which are similar to the Deliverables in Australia;
  - (ii) using appropriately qualified and trained Representatives of the Supplier;
  - (iii) in compliance with:
    - (A) this agreement;
    - (B) all Laws relevant to the Deliverables;
    - (C) the Policies and any policies or procedures of the controller of the relevant Site as notified to the Supplier from time to time; and
    - (D) the reasonable directions of Perkins or the controller of the relevant Site; and
  - (iv) to the satisfaction of Perkins (acting reasonably).
- (b) The Deliverables must be fit for the purposes for which goods and/or services of the same kind are commonly supplied.
- (c) Without limiting the Specifications, the Supplier must supply all things necessary or desirable to use the Deliverables, including all manuals, warranties, test certificates, safety data sheets, technical data sheets, batch numbers and all documents and certificates otherwise required by Law or by Perkins (acting reasonably).

## 6. Supplier Equipment

- (a) The Supplier must supply, at its own expense, all plant, equipment, tools, appliances, property, consumables or items it requires to fulfil its obligations under this agreement (**Supplier Equipment**).
- (b) Any Supplier Equipment supplied or used by the Supplier in conjunction with the Deliverables must throughout the Term be:
- (i) of merchantable quality;
  - (ii) operated and maintained in accordance with the Policies and any policies or procedures of the controller of the relevant Site as notified to the Supplier from time to time;
  - (iii) fit for the purpose for which the Supplier Equipment is commonly used; and
  - (iv) comply with all applicable Laws.

## 7. Supplier's Representatives

- (a) The Supplier must provide, at its own expense, appropriately qualified, accredited and trained Representatives to provide the Deliverables under this agreement.
- (b) All Representatives of the Supplier are either employees, officers, agents, representatives, contractors or subcontractors (as the case may be) of the Supplier. Perkins has no responsibility to the

Supplier or to the Supplier's Representatives in respect of any remuneration, taxation instalments, workers' compensation, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any industrial agreement or law.

- (c) Upon request, the Supplier must provide certified copies of all documents reasonably required by Perkins to verify that all Representatives who will provide the Deliverables are competent and appropriately qualified, accredited and trained to provide the Deliverables.
- (d) The Supplier must procure that its Representatives attend any Site induction required by Perkins (acting reasonably).
- (e) If Perkins gives notice to the Supplier that a Supplier's Representative involved in the delivery of the Deliverables has ceased to be acceptable to the Perkins (acting reasonably), the Supplier must take immediate steps to remove that Representative and provide an alternative Representative acceptable to Perkins at no cost to the Perkins.

## 8. Title and risk

- (a) Title to the Goods passes to Perkins on the earlier of:
- (i) the date on which Perkins makes a payment in respect of the Goods;
  - (ii) when the Goods are incorporated into or form part of the works; or
  - (iii) when the Goods become a fixture on the Site.
- (b) Risk in the Goods passes to Perkins when the Goods are delivered to Perkins under this agreement and Perkins signs a delivery receipt acknowledging delivery.

## 9. Records and reporting

- (a) The Supplier must maintain accurate and complete records of the Deliverables supplied to Perkins (**Records**).
- (b) The Supplier must promptly provide copies of Records to Perkins on request and permit Perkins (or any third party appointed by Perkins) to audit the Records and the performance of the Supplier's obligations against this agreement.
- (c) The Supplier must provide and ensure that its Representatives provide Perkins, or any third party on behalf of Perkins, with all reasonable assistance, including the provision of any information reasonably requested by Perkins or the third party (as the case may be) in relation to an audit pursuant to subclause (b).
- (d) The Supplier must comply with any reporting requirements notified by Perkins to the Supplier from time to time.

## 10. Insurance

- (a) The Supplier must, before the Commencement Date and at its own cost, take out and maintain during the Term with a reputable insurer:
- (i) product liability insurance for a minimum cover for the amount stated in Item 9 of Schedule 1 per occurrence and in the aggregate in any one policy year, unless varied with the written consent of Perkins;
  - (ii) a comprehensive public liability insurance policy to cover all sums which

the Supplier may become legally liable to pay as compensation consequent on:

(A) death of, or bodily injury (including disease or illness) to, any person; and

(B) loss of, or damage to, property,

happening anywhere in Australia arising out of or in connection with this agreement, for an amount of at least the amount stated in Item 9 of Schedule 1 per occurrence and unlimited in the aggregate;

(iii) insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers' compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with the Deliverables, which insurance must be in compliance with the Laws of the State in which the Deliverables are supplied and be extended to indemnify Perkins and contain a waiver of subrogation from the insurer in favour of Perkins for act benefits and common law where the jurisdiction allows; and

(iv) a policy of insurance covering liability for death or personal injury to any person, and for loss or damage to property, caused by the Supplier's ownership and/or use of any motor vehicles in connection with this agreement. Unless otherwise limited by statute, the limit of liability provided by that policy must be for an amount of at least the amount stated in Item 9 of Schedule 1.

(b) The Supplier must ensure that the policies of insurance that it is required to take out under this agreement note Perkins's interest as a principal and note the interest of any other person notified by Perkins to the Supplier.

(c) Without prejudice to any other right it may have under this agreement, if the Supplier fails to comply with this clause 10 Perkins may:

(i) withhold payments owed to the Supplier under this agreement until the Supplier complies with this clause 10; and/or

(ii) take out and maintain any policies of insurance required by this clause 10 and, at its option, set off payment of any invoice against the expenses incurred in taking out such policies on behalf of the Supplier or recover the expenses as a debt payable by the Supplier on demand.

(d) On or before the Commencement Date and thereafter when requested by Perkins, the Supplier must provide to Perkins evidence of the currency of the insurance policies it is required to maintain under this clause 10 and a copy of the relevant policies.

(e) The Supplier must not do anything which prejudices any policy of insurance and must immediately notify Perkins in writing of any event which results in an insurance policy being altered where such alteration materially affects coverage under this agreement.

(f) If any event occurs which may give rise to a claim involving Perkins under any policy of insurance taken out by the Supplier under this clause 10, then the Supplier must:

(i) notify Perkins within 10 Business Days of that event; and

(ii) ensure that Perkins is kept fully informed of any subsequent actions and developments concerning the relevant claim.

(g) The Supplier must ensure that any subcontractor engaged by the Supplier in relation to the supply of the Deliverables in accordance with clause 27.3 effects and maintains the insurances, and for the amounts, required by this clause 10.

## 11. Warranties

### 11.1 Supplier warranties

The Supplier warrants to Perkins that:

(a) the Deliverables:

(i) comply with this agreement, including the Specifications and all relevant Laws;

(ii) are provided by appropriately qualified and trained personnel with due care and skill in a proper, competent and professional manner;

(iii) are fit for the purpose for which goods or services of the same kind are commonly supplied; and

(iv) are provided so as to avoid any unreasonable disruption of, interference with, or nuisance or inconvenience to people or property, including at the relevant Site;

(b) the Goods:

(i) are owned by the Supplier or will at the time of supply to Perkins be owned by the Supplier;

(ii) are free of any liens, charges or encumbrances including all security interests under the Personal Property Securities Act 2009 (Cth) and will be supplied to Perkins on that basis;

(iii) unless otherwise stated in the Specifications are new (including being made of new components); and

(iv) are free from deficiencies in design, manufacture and workmanship;

(c) it and its Representatives will act in a safe manner, in compliance with all Laws, including those Laws relating to occupational health and safety and the Environment;

(d) the supply of the Deliverables, and the subsequent use or on-sale of the Goods, will not infringe the Intellectual Property Rights of any third person;

(e) before entering into this agreement it:

(i) inspected the Sites, if the Services require the Supplier to enter a Site;

(ii) investigated and/or allowed for all local and other conditions which may affect the supply of the Deliverables, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and

(iii) made its own enquiries to satisfy itself as to the truth and accuracy of, and has

therefore not relied upon, any written or oral information provided by Perkins; and

- (iv) it was given an adequate opportunity to review, take advice about and negotiate the terms of the agreement with Perkins.
- (f) It has fully informed itself in relation to all matters relevant to the supply of the Deliverables under this agreement.

## 11.2 Mutual warranties

Each party warrants to the other party that:

- (a) it has the power to execute, deliver and perform its obligations under this agreement; and
- (b) all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

## 11.3 Australian Consumer Law Consumer Guarantees

This agreement is deemed to include all consumer guarantees that Perkins would be entitled to as set out in the Australian Consumer Law as if Perkins were a 'consumer' within the meaning of section 3 of the Australian Consumer Law. Such consumer guarantees will be incorporated into this agreement as warranties given by the Supplier to Perkins.

## 11.4 Reliance on warranties

Each party enters into this agreement in reliance on the warranties given by the other party in this agreement.

## 12. Inspection and testing of Goods

- (a) Perkins may inspect and/or test the Goods prior to and/or after they have been supplied by the Supplier.
- (b) The Supplier must provide Perkins with sufficient access to the premises of the Supplier in order to enable Perkins to inspect and/or test the Goods in accordance with clause 12(a) above.
- (c) Perkin's inspection, testing or acceptance of or payment for some or all of the Goods does not in any way:
  - (i) change or affect the Supplier's obligations under this agreement; or
  - (ii) affect Perkins's rights to:
    - (A) make a claim for any Loss it may suffer because of the Supplier's breach of any warranty or failure to fulfil any of its other obligations under this agreement; and/or
    - (B) reject any Defective Deliverables.

## 13. Defective Deliverables

- (a) If Perkins becomes aware of any Defective Deliverables (whether before or after delivery), Perkins may direct the Supplier to do any one or more of the following (including times for commencement and completion):
  - (i) remove the Defective Deliverables from the relevant Site;
  - (ii) redesign, reconstruct, replace or correct the Defective Deliverables;
  - (iii) not deliver the Defective Deliverables; and
  - (iv) re-perform the Defective Deliverables.

- (b) If the Supplier fails to comply with a direction given under clause 13(a) within the time stated by Perkins in the direction (or if no time is stated within a reasonable time), Perkins may have the Defective Deliverables rectified or re-performed by persons other than the Supplier and the cost of such rectification or re-performance will be a debt due to Perkins by the Supplier.

## 14. Calculation of Price

- (a) Perkins must pay the Price for the Deliverables to the Supplier in accordance with the terms of this agreement.
- (b) Unless otherwise stated in this agreement, the Price is inclusive of:
  - (i) all costs incurred by the Supplier in supplying the Deliverables (including all labour costs and Supplier Equipment costs); and
  - (ii) all federal, state and territory taxes and duties (other than GST).
- (c) The Price excludes GST.
- (d) Subject to any change in the Price resulting from the application of any express provision of this agreement, the Price is fixed.

## 15. Payment of Price

- (a) The Supplier must invoice Perkins for Deliverables in accordance with Item 8 of Schedule 1.
- (b) Subject to clause 15(c), Perkins must pay the invoiced amount that is due to the Supplier within 25 Business Days from the date of the invoice is received. The Supplier must provide Perkins with bank account details into which payments by Perkins are to be deposited.
- (c) If the invoiced amount is disputed, Perkins shall respond in writing within 15 Business Days of receipt of the invoice with reasons why; the amount is less or why Perkins is withholding payment and Perkins shall pay the undisputed amount to the Supplier.
- (d) Payment is on account only and payment of monies is not evidence that the Deliverables have been supplied satisfactorily or an admission of liability on the part of Perkins.

## 16. GST

- (a) Words or expressions used in this clause that are defined in the GST Law have the same meaning given to them in the GST Law.
- (b) All payments to be made by Perkins under this agreement have been calculated without regard to GST. If the whole or any part if any such payment is the consideration for a taxable supply for GST purposes then, when Perkins makes the payment it must pay to the Supplier an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST.
- (c) Perkins may, at its election, issue a Recipient Created Tax Invoice ("RCTI") in respect of any supply made by the Supplier to Perkins. The Supplier must not

issue a tax invoice in respect of any supply of which Perkins has elected to issue an RCTI.

(d) The Supplier warrants that it is currently registered for GST and agrees to notify Perkins if it ceases to be registered.

(e) Perkins is registered for GST purposes. If Perkins stops being registered it must immediately notify the Supplier.

## 17. Term

(a) This agreement is effective from the Commencement Date and continues for the Term or the date of earlier termination of this agreement in accordance with its terms.

## 18. Dispute Resolution

(a) If either party considers a dispute or difference has arisen between the parties out of or in connection with this agreement:

(i) the party shall deliver to the other party by certified mail a notice in writing stating that it is a notice under this clause 18 and adequately providing details of the dispute or difference(s).

(ii) Within 15 Business Days of the notice given under this clause 18 a senior Representative of Perkins and the Supplier shall meet and undertake genuine and good faith negotiations with a bona fide objective of resolving the dispute (or difference) by agreement or by agreeing a process to resolve the dispute.

(iii) If Perkins and the Supplier cannot resolve the dispute (or difference) within 10 Business Days of that meeting, or before any later time agreed by the parties, either party may commence legal proceedings.

(b) Notwithstanding the existence of a dispute, except where Perkins has terminated the agreement the Supplier must (unless requested in writing by Perkins not to do so) continue to perform;

(c) Nothing herein shall prejudice the right of a party to issue a payment claim, institute proceedings to enforce payment due under the agreement or to seek injunctive or urgent declaratory relief in respect of a matter arising under the agreement.

## 19. Termination

### 19.1 Termination for Insolvency

Subject to the application of the Corporations Act, in the event a party becomes insolvent, either party may terminate this agreement by notice in writing effective from the date of the notice.

### 19.2 Termination for default

If a party (defaulting party):

(a) breaches a material obligation in this agreement and, in the reasonable opinion of the non-defaulting party, the breach:

(i) cannot be remedied; or

(ii) can be remedied but is not remedied by the defaulting party within 5 Business Days after the non-defaulting party gives the defaulting party notice of the breach; or

(b) commits fraud or an act of serious or wilful misconduct,

(each a **Termination Event**), the non-defaulting party may:

(c) terminate this agreement immediately by notice to the other party; and

(d) exercise its rights as if it had accepted a repudiation of this agreement by the other party.

### 19.3 Termination for convenience

Where item 4 of Schedule 1 provides for the supply of Goods or provision of Services on a standing offer basis, either party may terminate this agreement for any reason on not less than 10 Business Days written notice to the other party.

### 19.4 Head Contract termination

If the relevant head contract for which the Deliverables are supplied is terminated, Perkins may require the Supplier to novate the Contract to the head contract principal or the head contract principal's nominee in accordance with clause 27 or Perkins may terminate the agreement with immediate effect by written notice to the Supplier.

### 19.5 Consequences of termination or expiry

On expiry or termination of this agreement:

(a) the Supplier must stop working on any incomplete or undelivered Deliverables;

(b) if requested by Perkins, the Supplier must deliver to Perkins all completed Deliverables which conform in quality to the requirements of this agreement;

(c) within 5 Business Days after the date of expiry or termination, each party must return to the other party the other party's Confidential Information;

(d) any accrued rights and remedies of each party as at the date of termination are unaffected; and

(e) the Supplier's sole and exclusive right in respect of the termination is limited to the payment of:

(i) the Price for Deliverables provided up to the date of termination, including the cost of any Deliverables provided under clause 19.5(b);

(ii) in the case of a termination by the Supplier under clause 19.1 or 19.2 (for Perkins default or insolvency), or under clause 19.3 or 19.4:

(A) the cost of materials or goods properly ordered for the Deliverables for which the Supplier is liable to pay (provided that on payment such materials or Goods become the property of Perkins) and for which it has not been paid; and

(B) any reasonable re-stocking fee referred to in this agreement.

## 20. Indemnity

### 20.1 Indemnity by Supplier

The Supplier must indemnify Perkins from and against any Loss arising from or in connection with:

(a) breach of this agreement by the Supplier;

(b) fraudulent, reckless, unlawful or negligent act or omission by the Supplier;

- (c) personal injury to, or illness or death of, any person (including the Supplier's Representatives, Perkins's Representatives or a third party) in connection with the Deliverables;
- (d) damage to any property (including to any property of the Supplier, Perkins or a third party) caused or contributed to by an act or omission of the Supplier or in connection with the Deliverables;
- (e) any claim that the Deliverables or anything the Supplier does in connection with the Deliverables infringes or allegedly infringes the Intellectual Property Rights of any person;
- (f) Perkins's use of the Deliverables infringes or allegedly infringes the Intellectual Property Rights of any person; and except and to the extent that any such Loss is caused or contributed by the breach or negligence of Perkins or its Representatives (other than the Supplier or the Supplier's Representatives).

## 20.2 Continuing indemnity

The indemnity in clause 20.1 and any other indemnity in this agreement is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of this agreement.

## 21. Intellectual Property Rights

- (a) The Supplier remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Supplier prior to the date of this agreement (**Supplier Background Intellectual Property Rights**).
- (b) The Supplier grants or must procure the granting to Perkins of a non-exclusive, royalty-free licence to use the Supplier Background Intellectual Property Rights for the purpose of using, or otherwise obtaining the benefit of, the Deliverables.
- (c) Perkins remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by Perkins prior to the date of this agreement.
- (d) Any Intellectual Property Rights developed by the Supplier solely, or developed by the Supplier and Perkins, in relation to this agreement are owned by Perkins. The Supplier assigns all right, title and interest in such Intellectual Property Rights to Perkins. The Supplier must provide Perkins with all reasonable assistance, at Perkins's cost, to protect such Intellectual Property Rights, including obtaining patents and other registered protection in Perkins's name.

## 22. Confidentiality

- (a) Each party must keep confidential and must not disclose the Confidential Information to any person other than:
  - (i) if a party is required to disclose this agreement to its employees and advisers for the purpose of obtaining advice in relation to this agreement but only if disclosed on a confidential and "need to know" basis;
  - (ii) if required by law provided that the disclosing party gives the other party prior written notice; or
  - (iii) to the extent that it is required by order of a court or tribunal, if the disclosing party makes reasonable efforts to ensure that the other party is given the opportunity to make submissions to the court or tribunal in relation to any proposed order.

## 23. Proportionate Liability

To the maximum extent permitted by Law, the operation of the Proportionate Liability Law is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this agreement, however such rights, obligations or liabilities are sought to be enforced.

## 24. Sites

The Supplier:

- (a) may only gain access to and enter and remain on each Site as specified in this agreement or as directed by Perkins or the controller of the Site;
- (b) enters each Site at its own risk;
- (c) must not, in delivering the Deliverables, disrupt any activities on a Site and must ensure that it and its Representatives:
  - (i) take all measures necessary to protect people and property;
  - (ii) avoid unnecessary interference with the passage of people and vehicles;
  - (iii) comply with any direction of Perkins or the controller of the Site with respect to parking vehicles on or around the Site;
  - (iv) do not undertake any activity which may result in a Contaminant being introduced to the Site, or use substances which may give rise to or become a Contaminant at any time; and
  - (v) prevent nuisance and unnecessary noise and disturbance;
- (d) must ensure that each Site or part of a Site over which it has control is kept secure, clean, orderly and fit for immediate use;
- (e) must ensure each Site is left in the same condition as it was as at the Commencement Date, fair wear and tear excepted;
- (f) must notify Perkins of any potential breach of any Law relating to the Environment at a Site of which it becomes aware; and
- (g) must immediately notify Perkins of any accident, injury, property damage or Contaminant which occurs during delivery of the Deliverables and co-operate with any investigations undertaken in relation to any accident, injury, property damage or Contaminant which occurs during delivery of the Deliverables.

## 25. Special Conditions

The Special Conditions are incorporated into and form part of this agreement. In the event of an inconsistency between any Special Condition and any other term or condition of this agreement, the Special Conditions will prevail to the extent of the inconsistency.

## 26. Notices

### 26.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this agreement (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;

- (c) addressed to a party in accordance with its details set out in Item 1 or Item 2 of Schedule 1 (as applicable) or as most recently specified by that party by Notice to the other party (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

## 26.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by express post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

## 26.3 When Notices considered given and received

Subject to clause 26.4, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by express post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the second Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting; and
- (e) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

## 26.4 Time of delivery and receipt

If pursuant to clause 26.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

## 27. General

### 27.1 No assignment or novation by the Supplier

The Supplier must not assign transfer any of its rights or obligations under this Agreement or novate this agreement to any person without the prior written consent of Perkins which consent may be given or withheld in Perkins' absolute discretion.

### 27.2 Novation by Perkins

- (a) Perkins may assign or novate its rights under this agreement by giving 5 Business Days prior written notice to the Supplier.
- (b) If required by Perkins (including where the head contract has been terminated for any reason) the Supplier must:

- (i) agree to assignment or novation of the agreement to the Principal or the Principal's nominee; and
- (ii) not unreasonably withhold or delay its consent to a novation of the Agreement to any other third party nominated in writing by Perkins (including executing any document required to effect that novation).

## 27.3 Subcontracting

- (a) The Supplier must not subcontract any of its obligations under this agreement without the prior written consent of Perkins, which consent shall not be unreasonably withheld.
- (b) The Supplier is not as a result of any subcontracting arrangement relieved from the performance of any obligation under this agreement.
- (c) The Supplier is liable to Perkins for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Supplier.
- (d) The Supplier must ensure that all subcontractors engaged by the Supplier in relation to the supply of the Deliverables in accordance with this clause 27.3 comply with all relevant Laws concerning insurance cover for liabilities in relation to employees and subcontractors.

## 27.4 Trusts

If the Supplier is the trustee of a trust (**Trust**), it enters into this agreement both as trustee of that Trust and in its personal capacity and it warrants that:

- (a) it has power to enter into and perform its obligations under this agreement in its capacity as trustee of the Trust;
- (b) the Trust has been validly created and is in existence at the date of this agreement;
- (c) the Supplier has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;
- (d) the Supplier has valid rights of indemnity against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by it under this agreement; and
- (e) the rights of the beneficiaries of the Trust relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of the Supplier in the property of the Trust pursuant to its right of indemnity.

## 27.5 Set off

Perkins may set off from any amounts it owes the Supplier any amounts the Supplier owes to Perkins.

## 27.6 Variation

A variation of any term of this agreement will be of no force or effect unless it is in writing and signed by each of the parties.

## 27.7 Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this agreement. The Supplier must pay any stamp duty payable on this agreement or in connection with any of the transactions contemplated by this agreement.

## 27.8 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.

- (b) A waiver given by a party in accordance with clause 27.8(a) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and

## 27.9 Severance

If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

## 27.10 Governing law and jurisdiction

This agreement is governed by and is to be construed under the laws in force in the Governing Law State. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Governing Law State and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 27.11 Entire agreement

To the extent permitted by law, this agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all discussions, negotiations, understandings, credit application terms and conditions, purchase order terms and conditions, supplier terms and conditions, and all other agreements in respect of its subject matter.

## 27.12 Counterparts and electronic communications

- (a) This agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this agreement may exchange that counterpart with another party by emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this agreement

is not affected if the party who has emailed the counterpart delays in delivering or does not deliver it by hand or by post.

- (c) This agreement may be executed by a party in soft copy by electronic means, including by affixing a signature by an electronic execution platform such as DocuSign. Any electronically executed soft copy, and any print out of such a copy, will constitute an executed original counterpart.

## 27.13 Relationship of parties

Nothing in this agreement creates a partnership, joint venture, employment or fiduciary relationship between the parties or gives a party authority to bind any other party in any way.

## 27.14 Remedies cumulative

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

## 27.15 Time is of the essence

The Supplier acknowledges that time is of the essence in this agreement and that a breach of any time obligation under this agreement by the Supplier will be deemed to be a breach of a material obligation by the Supplier for the purposes of clause 19.2(a).

## 27.16 Clauses that survive termination

- (a) Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of this agreement, clauses 9, 10, 11.1, 18, 19.3, 20, 21, 22, 26 and this clause 27 survive the termination of this agreement.
- (b) Each indemnity contained in this agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination of this agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

# SUPPLY AGREEMENT - GOODS



## Schedule 1 Agreement Details

|        |                                    |                                                                                                                                                        |                                                 |
|--------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Item 1 | Perkins Details                    | Name:                                                                                                                                                  | Perkins (WA) Pty Ltd                            |
|        |                                    | ABN:                                                                                                                                                   | 60 008 844 862                                  |
|        |                                    | Address:                                                                                                                                               | 1 Hales Street, Bunbury, Western Australia 6230 |
|        |                                    | Email:                                                                                                                                                 | [Insert]                                        |
| Item 2 | Supplier Details                   | Name:                                                                                                                                                  | [Insert] Pty Ltd                                |
|        |                                    | ACN:                                                                                                                                                   | [Insert]                                        |
|        |                                    | Address:                                                                                                                                               | [Insert]                                        |
|        |                                    | Email:                                                                                                                                                 | [Insert]                                        |
| Item 3 | Commencement Date<br>(clause 1.1)  | The date of this agreement.                                                                                                                            |                                                 |
| Item 4 | Term<br>(clause 1.1)               | [Insert:                                                                                                                                               |                                                 |
|        |                                    | (a) If a set period – the duration of agreement;                                                                                                       |                                                 |
|        |                                    | (b) If a specific order of Goods - 'until all the Deliverables have been delivered to and accepted by Perkins in accordance with this agreement.'; or  |                                                 |
|        |                                    | (c) If a standing offer arrangement - 'Ongoing until terminated in accordance with clause 19.3.                                                        |                                                 |
| Item 5 | Deliverables<br>(clause 1.1)       | [Insert:                                                                                                                                               |                                                 |
|        |                                    | (a) If a specific order of Goods/Services - description of the Goods and/or Services or refer to Schedule 3 for detailed specifications; or            |                                                 |
|        |                                    | (b) If an ad hoc and ongoing arrangement – [Type of goods/Services] as ordered by Perkins in writing from time to time.]                               |                                                 |
| Item 6 | Delivery schedule<br>(clause 3(a)) | See Schedule 6 or as varied by Perkins by Notice from time to time.                                                                                    |                                                 |
| Item 7 | Price<br>(clause 1.1)              | [Insert pricing or refer to Schedule 4 for detailing pricing]                                                                                          |                                                 |
| Item 8 | Supplier invoicing (clause 15(a))  | [Insert e.g. 'In respect of Deliverables delivered during a calendar month, the Supplier must invoice Perkins on or after the last day of that month'] |                                                 |
| Item 9 | Insurance<br>(clause 10)           | Product liability insurance:                                                                                                                           | \$20 million                                    |
|        |                                    | Public liability insurance:                                                                                                                            | \$20 million                                    |
|        |                                    | Motor vehicle insurance:                                                                                                                               | \$30 million                                    |



Schedule 2                      Special Conditions (Clause 25)

#[insert]#

SUPPLY AGREEMENT - GOODS



Schedule 3      Specifications

**#[insert]#**

SUPPLY AGREEMENT - GOODS



Schedule 4      Pricing

#[insert]#

## Schedule 5 Health, Safety and Environmental Compliance

### Perkins Occupational Health and Safety Policy

Perkins is totally committed to the elimination of work-related injury and disease and the provision of a safe and healthy working environment for workers, subcontractors, visitors and the public. Safety excellence is recognised as good business and the safety of workers is a value which is not to be compromised.

### Suppliers

Perkins is committed to working with companies who share our philosophy and objectives to achieve zero harm. Perkins recognise the value of workers that demonstrate a commitment to working safely.

The Supplier must be familiar with the requirements of all current industrial safety and health legislation and provide all protective clothing and equipment required under current legislation.

### Conditions of entry to the site

The Supplier and its employees, contractors, sub-consultants and agents must report to Perkins' site manager on arrival to the site.

The Supplier must comply with the requirements of the OSH Legislation; must abide by the Principal's and Perkins environment policies, site safety rules, safety policies and safety procedures and any other requirements regarding, building, construction safety and/or other regulations as they may apply, and as directed by Perkins site manager or Perkins Representative.

The Supplier must ensure that it and all of its employees, contractors, sub-consultants and agents have completed a recognised industry-based safety induction course (e.g. White Card - Safety Induction Course). In addition, they will be required to undergo a Perkins (and, if applicable the Principals) site specific induction in accordance with the procedures for the site prior to entry to the site.

The Supplier must ensure that no persons, unrelated to the Deliverables, enter the site without the express permission of Perkins.

The Supplier and its employees, contractors, sub-consultants and agents must participate in trial emergency procedures evacuations as they occur on the Site.

A statement of the emergency procedures and a site plan for the evacuation areas will be communicated to the Supplier at the induction. In an emergency, all workers should leave the area immediately, using the approved exit path, and proceed to the evacuation assembly area.

On all Perkins' sites, smoking is only permitted in areas designated by Perkins. On sites where the site is within or adjacent to school or university grounds smoking is forbidden on the site at all times.

Perkins may require the Supplier or its employees, contractors, sub-consultants and agents to submit to random, blanket, or 'for cause' drug or alcohol tests before or whilst attending the Site

A person who returns a non-negative result for any unauthorised drugs or alcohol or refuse to take a test will no longer be authorised to work at, and will immediately be dismissed from, the Site.

Consumption of alcohol is not permitted on the Site.

### General Requirements

The Supplier will ensure that its employees, contractors, sub-consultants and agents comply with the requirements of the OSH Legislation, Codes of Practice and Australian Standards in accordance with the requirements of State and Territory requirements.

The Supplier shall supervise its employees, contractors, sub-consultants and agents to ensure they comply with Perkins minimum Occupational Safety & Health standards and requirements.

If requested by Perkins (acting reasonably) the Supplier must provide documentation to evidence of compliance with these requirements.

### Incidents / Accidents / Near Miss

All hazards, actual personal injury, equipment or property damage, near misses, incidents or accidents must be reported to Perkins immediately.

If the Supplier or its employees, contractors, sub-consultants or agents require medical treatment, the Supplier must ensure that Perkins site manager is informed prior to departure from the workplace. If the incident is of a type that requires notification to any statutory authority, the Supplier must provide notice in accordance with the relevant statutory regulations.

*An injured person requiring medical treatment shall be accompanied by a Representative of Perkins or the Supplier with the ability and aptitude to liaise with medical personnel regarding the injury management/return to work plan of the injured worker.*

*If the Supplier or its employees, contractors, sub-consultants or agents are involved in or are witness to any incident at site, the Supplier must cooperate and ensure that its employees, contractors, sub-consultants and agents cooperate with Perkins or any other authorities' investigation of the incident.*

## **Security**

*The Supplier must sign in and sign out each time they enter or leave the Site on the site attendance register.*

*Emergency exits must not be used except in the event of an emergency.*

## **Motor Vehicles**

*Any motor vehicles within the boundary of the Site or the site compound must adhere to the site speed limit and enter and leave in accordance with the project site HSE management plan. Where no speed limit is stated, motor vehicles within the boundary of the Site or the site compound should not exceed 10 km per hour.*

*If parking is permitted on the Site it is only permitted in designated parking areas.*

## **Use of Personal Protective Equipment**

*The Supplier and its employees, contractors, sub-consultants and agents must provide its own personal protective equipment (PPE).*

*The minimum PPE requirement on Site is :*

- *hard hat*
- *safety boots or safety shoes*
- *hi-vis safety vest*
- *long trousers*
- *long sleeved shirt*

*Failure of any person to wear the appropriate PPE will result in the refusal of that person's access to the site;*

*Other PPE, as indicated by signage at the Site, must be worn in designated areas.*

## **Environment**

*All Suppliers will adhere to environmental aspects on site as per the site induction and Perkins Environmental Management Policy and Procedures which is available upon request from Perkins site manager.*

*Perkins complies with the requirements of AS/NZS ISO 14001:2015 Environmental Management Systems and requires all Suppliers to comply.*

*In addition to the above certification all Suppliers are to comply with State Environmental Protection Agency (EPA) legislation.*

SUPPLY AGREEMENT - GOODS



Schedule 6      Delivery Schedule

#insert#

Signing page

Executed as an agreement

Dated \_\_\_\_\_

Executed for and on behalf  
of **Perkins (WA) Pty Ltd:**

\_\_\_\_\_  
**Authorised Signatory**

\_\_\_\_\_  
**Witness Signatory**

\_\_\_\_\_  
**Name of Authorised Signatory**  
(Block letters)

\_\_\_\_\_  
**Name of Witness** (Block letters)

\_\_\_\_\_  
Executed for and on behalf  
of **the Supplier:**

\_\_\_\_\_  
**Authorised Signatory**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Name of Authorised Signatory**  
(Block letters)

\_\_\_\_\_  
**Name of Witness** (Block letters)

\_\_\_\_\_  
**Position**