

TRAFFIC ESCORT SERVICES HEAD AGREEMENT

Between

Client:			
Full Operator Name (Full name of Company or Individual):			
Address of Registered Office (if a Company) / Business Address (if an Individual):			
Postal Address (if different to address specified above):			
ABN:		Operator Number:	
Name of Nominated Contact:			
Contact Phone Number:		Mobile Phone Number:	
Email Address:			

and

Main Roads: Commissioner of Main Roads, Waterloo Crescent, East Perth, Western Australia			
Contact Details (Heavy Vehicle Operations):	Address:	525 Great Eastern Highway, Redcliffe WA 6104 or PO Box 374, Welshpool DC WA 6896	
	Phone:	138 HVO (486)	Fax: (08) 9475 8455
	Email:	permit.applications@mainroads.wa.gov.au	

Background

- A) Main Roads issues Relevant Permits and, since 1 January 2013, has undertaken the provision of traffic escort services using staff appointed as wardens by the Commissioner of Police under section 23 of the *Road Traffic (Administration) Act 2008*.
- B) This Head Agreement sets out the terms on which the Client may submit Requests for Main Roads to provide the Services to the Client in respect of Relevant Permits and is entered into by Main Roads pursuant to section 18B of the *Main Roads Act 1930*.
- C) The fees for the provision of the Services have been formulated on a cost recovery basis.

IT IS AGREED AS FOLLOWS:

Definitions

- In this agreement, unless the context otherwise requires:
 - Contract** has the meaning given in clause 4 of this Head Agreement.
 - Contract Conditions** means the Contract Conditions attached to this Head Agreement.
 - Fee** means the price for the Services under a Contract, which is the price calculated by Main Roads in accordance with clause 4 of the Contract.
 - Fee Schedule** means the "Traffic Escort Services Fee" Schedule available at www.mainroads.wa.gov.au, as updated from time to time.
 - Head Agreement** means this Traffic Escort Services Head Agreement.
 - Party** means the Client or Main Roads, as the context requires.
 - Request** means a request for the Services for a Relevant Permit which is completed by the Client in the required form under clause 3 of this Head Agreement and submitted to Main Roads.
 - Relevant Permit** means a permit issued by Main Roads under Division 5 of the *Road Traffic (Vehicles) Regulations 2014* which includes conditions requiring the use of one or more escort vehicles.
 - Services** means traffic escort services to be provided by Main Roads to the Client in accordance with a Contract and the Relevant Permit.
 - Service Dates** means the times and date/s of the Services for a Relevant Permit, being the times and date/s nominated in the accepted Request (as amended or updated by agreement set out in written communications between the parties).
 - Service Departure Point** means the journey departure point nominated in the relevant accepted Request.
 - Service Finish Point** means the journey end point nominated in the relevant accepted Request.

Services, Requests and Contracts

- The Client engages Main Roads to provide the Services to the Client in accordance with each Contract.
- The Client may submit Requests for the Services to Main Roads in respect of Relevant Permits by completing and submitting to Main Roads:
 - at least 4 business days prior to the scheduled movement date the "*Specified Journey (Single Trip) Permit Application*" available at www.mainroads.wa.gov.au including the "*Traffic Escort Request*" section of that form; or
 - such other written document as Main Roads agrees, in its absolute discretion, to accept from the Client for this purpose;

OFFICIAL

4. Main Roads will notify the Client if a Request is accepted and, on acceptance, a contract is formed between Main Roads and the Client consisting of the accepted Request, the Fee Schedule as at the date of acceptance of the Request and the Contract Conditions (**Contract**) for:
- (a) provision of the Services by Main Roads for the Relevant Permit specified in the accepted Request;
 - (b) from the Service Departure Point to the Service Finish Point on the Service Dates; and
 - (c) for the Fee.

No guarantee of Services or availability

5. Main Roads agrees to provide the Services under each Contract subject to Main Roads:
- (a) granting the Relevant Permit; and
 - (b) being able, in its absolute discretion, to schedule and perform the Services on the Service Dates.
6. The Client acknowledges that Main Roads makes no representation that it will accept any particular Request or the terms of a particular Request.

Fee

7. The Client is not liable to pay any Fee to Main Roads under this Head Agreement. If Main Roads provides an estimate of the Fee for any Request, the estimate is not binding on Main Roads and the terms of the Contract (and not the estimate) govern the Fee payable by the Client for the Services.
8. If a Contract is formed, the Client is liable to pay Main Roads the Fee for provision of the Services under the Contract as calculated by Main Roads in accordance with clause 4.1 of the Contract Conditions and invoiced by Main Roads to the Client.

No fetter

9. Nothing contained in or implied by this Head Agreement or any document contemplated by this Head Agreement has the effect of limiting, restricting or constraining Main Roads or placing any fetter on its statutory rights, duties, powers and functions.

Termination

10. This Traffic Escort Services Agreement commences on the date on which it has been signed by both parties.
11. Main Roads may at any time terminate this Head Agreement by 45 days' notice to the Client. If a Contract is in force pursuant to this Head Agreement at the time of termination of this Head Agreement, that Contract continues in force subject to expiry or termination in accordance with its terms.

General

12. Clauses 1.2, 4.1(d)(i), 5, 6, 7, 8, 11, 12 and 13 of the Contract Conditions have effect (with the necessary changes) as if set out in full in this Head Agreement.
13. The persons signing this Head Agreement on behalf of the Client each warrant that they have authority to do so; and if this Head Agreement is executed under a Power of Attorney, that person further warrants that, to the best of their knowledge, that Power of Attorney is in force and has not been withdrawn.

Execution		
Executed in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) by:		Signed for and on behalf of the Commissioner of Main Roads by:
Name of Company (print)		Signature of Authorised Officer
Signature of Director	Signature of Director/Co. Secretary	Name of Authorised Officer
Name of Director (print)	Name of Director/Co. Secretary (print)	Date

Email completed Head Agreement executed by the Client to: permit.applications@mainroads.wa.gov.au
 or fax to (08) 9475 8455 Heavy Vehicle Services Main Roads WA PO Box 374 | WELSHPOOL DC | WA 6986 | Telephone 138 486 |
 Fax (08) 9475 8455 www.mainroads.wa.gov.au

CONTRACT CONDITIONS

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

Unless the context otherwise requires, terms which have a defined meaning in the Head Agreement to which these Contract Conditions are attached have the same meaning when used in these Contract Conditions and:

Amendment Fee means the amendment fee specified in the Fee Schedule as at the Contract Date.

Business Day means a day other than Saturday, Sunday or public holiday in Perth, Western Australia.

Cancellation Fee means the cancellation fee specified in the Fee Schedule as at the Contract Date.

Contract Date means the date of acceptance of the Request in respect of this Contract by Main Roads.

Daily Rate means the daily rate specified in the Fee Schedule as at the Contract Date.

Force Majeure Event means an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under this Contract and which is unforeseeable and beyond the reasonable control of the affected Party, excluding:

- (a) industrial action limited to the affected party or its subcontractors;
- (b) lack of or inability to use funds for any reason;
- (c) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a reasonable and prudent manner;
- (d) an event or circumstance where it or its effects on the affected party or the resulting inability of the affected party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person; or
- (e) breakdown of equipment; or
- (f) the failure by a third party to fulfil a contractual commitment with the affected Party; or
- (g) any act or omission of a subcontractor.

Insolvency Event means the occurrence of any of the following events:

- (a) (informs creditors) a corporation informs its creditors generally that it is insolvent;
- (b) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) (execution) a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (d) (voluntary liquidation) a corporation enters into voluntary liquidation;
- (e) (application) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days of being made;

- (f) (winding up) an order is made for the administration, dissolution or winding up of a corporation;
- (g) (resolution) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (h) (arrangement or composition) a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (i) (statutory demand) a corporation fails to comply with, or fails to apply to have set aside, a statutory demand within 10 Business Days of the time for compliance, or:
 - (i) a corporation applies to have a statutory demand set aside within 10 Business Days of the time for compliance;
 - (ii) the application to set aside the statutory demand is unsuccessful; and
 - (iii) the corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application;
- (j) (execution levied against it) a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge or circulating security interest;
- (k) (insolvency - corporation) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (l) (insolvency - persons) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event;
- (m) (death etc.) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (n) (analogous matters) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Load means the load being carried by the Vehicle.

Personnel means a party's officers, employees, agents and contractors and its contractor's officers, employees and agents.

Short Move Rate means the short move rate specified in the Fee Schedule as at the Contract Date.

Vehicle means the vehicle specified in the Request and the Relevant Permit that is the subject of the Services.

1.2 Interpretation

In this Contract, unless the context otherwise requires:

- (a) a reference to a person includes a public body, a company and an incorporated or unincorporated association or body of persons;
- (b) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

- (c) if a Party consists of two or more persons whether by way of partnership or joint venture or otherwise, then:
 - (i) an obligation imposed on a Party under this Contract binds each person who comprises that person jointly and severally;
 - (ii) each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under this Contract to be undertaken; and
 - (iii) the act of one person who comprises a Party binds the other persons who comprise that Party;
- (d) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (e) no rule of interpretation applies to the disadvantage of a Party on the basis that it put forward the Contract terms;
- (f) "includes" in any form is not a word of limitation;
- (g) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;
- (h) a reference to this Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of the relevant Party;
- (i) a reference to a clause is a reference to a clause of these Contract Conditions;
- (j) headings are included for convenience only and do not affect the interpretation of this Contract;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (l) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (m) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (n) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (o) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (p) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (q) a reference to a monetary amount means that amount in Australian currency; and
- (r) a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

2. SERVICE STANDARDS

Main Roads will perform the Services:

- (a) in accordance with the terms of this Contract;
- (b) with due care and skill and in a professional, punctual and diligent manner;
- (c) in accordance with all relevant Western Australian and Commonwealth laws; and
- (d) subject to Main Roads granting the Relevant Permit.

3. GENERAL OBLIGATIONS OF THE PARTIES

3.1 Personnel Generally

Each Party must ensure that its Personnel:

- (a) are properly qualified and suitable for the tasks that they are to perform;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a safe, fit and proper manner.

3.2 Premises

If a Party must attend, or have access to, premises of the other Party in order to provide or receive the Services, that Party must:

- (a) comply with all reasonable directions and procedures of the owner or occupier of the Premises relating to occupational health, safety, security and confidentiality in connection with the Premises;
- (b) do everything reasonably necessary to protect people and property on the Premises;
- (c) prevent any undue nuisance or disturbance being caused at the Premises; and
- (d) remove any of its Personnel from the Premises if the owner or lawful occupier of the Premises so requires.

3.3 Equipment and Resources

If one Party gives the other Party use of its equipment or other resources in connection with this Contract, that Party must:

- (a) take the same degree of care with that equipment or resources as it would its own;
- (b) if the equipment or other resources are damaged or destroyed due to any act or omission of the Party, pay to the other Party the cost of repair or replacement of the equipment or other resources; and
- (c) return the equipment or other resources on the expiry or termination of this Contract.

3.4 Client's Vehicle and Load

The Client must ensure that:

- (a) the Vehicle is suitably rated;
- (b) the Vehicle is in a roadworthy condition;
- (c) the Vehicle is fully licensed;
- (d) both the Vehicle and the Load are safe;
- (e) it discloses to Main Roads if the Load contains hazardous materials;
- (f) all other permits that are required by law have been obtained for the Vehicle's journey and the Load;
- (g) the Client has the consent of the owner or any person required to convey the Load;
- (h) the Vehicle's driver has a full driver's licence for the type of Vehicle, is not unfit to drive for any reason, and complies with all road traffic laws; and
- (i) that its Personnel comply with the operating conditions set out in the Permit.

3.5 Main Roads' Directions

- (a) The Client must ensure that the driver of the Vehicle immediately complies with all directions given to the driver by the Main Roads' traffic escort in the provision of the Services.
- (b) If there is any inconsistency between a direction given by the traffic escort and a direction given by the Client or any other person acting on behalf of the Client, the directions of the traffic escort prevail.

3.6 Request to Amend or Cancel Booking

- (a) All requests to amend or cancel the accepted Request must be submitted by the Client to Main Roads in writing.
- (b) Main Roads will consider every request for an amendment to a Contract, provided the request for an amendment is submitted 14 days prior to the time the Services are to be provided, but Main Roads is not obliged to agree to any amendment.
- (c) If Main Roads:
 - (i) agrees to an amendment request, clause 4.3 applies; or
 - (ii) declines to agree to an amendment request and the Client cancels the booking, clause 4.2 applies, and otherwise the Contract continues in accordance with the accepted Request.
- (d) If Main Roads agrees to a cancellation request, clause 4.2 applies.

3.7 Main Roads Cancellation of Booking

Main Roads may at any time (in its discretion) by notice to the Client cancel an accepted Request in which case:

- (a) Main Roads will have no liability to the Client, other than to refund the Fee (if any) paid by the Client in respect of the accepted Request;
- (b) Main Roads will work with the Client to reschedule the Services to the next available slot acceptable to the Client and Main Roads; and
- (c) if the Parties do not agree an acceptable alternative slot within 2 weeks of Main Roads' cancellation notice, either Party may immediately terminate this Contract by notice to the other.

4. FEES AND PAYMENT**4.1 Fee**

- (a) The Client must pay the Fee to Main Roads at the times and in the manner specified in this Contract.
- (b) The Client must pay the Fee, or provide evidence of payment in the case of EFT, within 2 Business Days of the Contract Date, unless:
 - (i) the booking is made more than 1 month prior to the date the Services are to be provided; and
 - (ii) evidence is provided from the person who has engaged the Client to move the load the subject of this Contract that confirms the Client is contracted to transport the Load that requires the Services,

and Main Roads will provide an invoice for the Fee to the Client at the time of payment of the Fee.

- (c) Where the Contract Date is more than 1 month prior to the date the Services are to be provided, and payment is not made within 2 Business Days of the Contract Date, the Client must pay the Service Fee at least 1 month prior to the date the Services are to be provided. If payment is not received by that date, Main Roads may terminate the Contract.
- (d) The Fee is to be calculated in the following manner:
 - (i) subject to paragraph (ii) below, the Daily Rate shall apply for each day or part thereof (e.g. the Fee for 2.5 days of the Services shall be calculated at the rate of 3 days at the Daily Rate);
 - (ii) if the Services are required for less than a total of 4 hours, the Short Move Rate shall apply as a minimum cost which shall not be further reduced to take into account shorter periods of use of the

Services;

- (iii) the Daily Rate shall apply on a per night basis for any Services conducted at night which shall not be further reduced to take into account shorter periods of use of the Services;
- (iv) the timeframes in paragraphs (i) to (iii) above shall be calculated from the commencement of the traffic escort warden's prestart checks at the Service Departure Point to the Service Finish Point;
- (v) if the Services are to be provided for a continuous period which is comprised of any combination of day and night (in either order) or parts thereof (i.e. for a continuous move rather than one taking place on consecutive days or consecutive nights), extra Personnel may be required and the Short Move Rate shall apply in addition to the Daily Rate; and
- (vi) if Main Roads forms the view that provision for such a possibility is warranted (e.g. due to the need to ensure that a Vehicle or Load are not left stationary in an inappropriate section of road at the end of a day or night of movement), extra Main Roads' Personnel may be required and the Short Move Rate shall apply in addition to the Daily Rate;
- (e) If the Client does not pay the Fee in accordance with this clause 4.1 Main Roads is not required to provide the Services under the Contract.
- (f) In the event that the movement of the Load under the Relevant Permit takes one or more days fewer than scheduled under this Contract then the Client is entitled, within a reasonable time following a written request from the Client to Main Roads, to a refund of any portion of the Fee paid for the Services for those days where the Services were not required.
- (g) In the event that the movement of the Load under the Relevant Permit takes longer than scheduled under this Contract then the Client shall pay Main Roads, within 30 days of a written invoice being sent by Main Roads to the Client, for the difference between the Fee payable for the Services as scheduled and the Fee that would have applied had the Services been scheduled for the time for which those Services were ultimately required.
- (h) Clause 4.1(g) does not apply to the extent that Main Roads determines, in its absolute discretion, that the movement of the Load under the Permit took longer than scheduled because of the breakdown or other failure of equipment being used by Main Roads for the provision of the Services.
- (i) Main Roads reserves the right to withhold the provision of Services to a Client under any Contract and to refuse to accept any Request from a Client who has any post move invoices that remain unpaid for more than 30 days after being sent by Main Roads to the Client.

4.2 Cancellation Fee

If the Client cancels the Services for any reason, or is unable to commence the movement in accordance with the Relevant Permit's conditions and this Contract:

- (a) within 14 days of the time the Services are to be provided, Main Roads will be entitled to retain the full Fee; or
- (b) within 1 month and prior to 14 days of the time the Services are to be provided, Main Roads will be entitled to charge the Cancellation Fee and Main

Roads will refund to the Client the Fee paid less the Cancellation Fee.

4.3 Amendment Fee

If, at the request of the Client, Main Roads agrees to amend the Contract for any reason within 1 month of the time the Services are to be provided then Main Roads will:

- (a) be entitled to charge:
 - (i) the Amendment Fee; and
 - (ii) for any additional days or part days of Services that the amendment involves; and
- (b) refund any days that are no longer required as a result of the amendment.

Clause 4.3(a) does not apply to an amendment to the commencement time on the Service Date if the amended time is on the same day as the original commencement Service Date and no additional days of Services are required.

4.4 Method of payment

The Client may pay the amount specified in an invoice in any of the following ways:

- (a) by cheque, EFTPOS or credit card; or
- (b) unless the Request is received less than 72 hours prior to the Service Date specified for the departure of the Service, by EFT.

5. GST

- (a) In this clause 5, **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* and unless the context indicates otherwise expressions which have a defined meaning in the GST Law have the same meaning in this clause 5.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) To the extent that GST is payable in respect of any supply made by a Party (**Supplier**) under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (d) If a payment is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred a Party, then the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

6. INSURANCE

6.1 Insurance Requirements

The Client must have the following insurances in place while the Services are being provided:

- (a) public liability insurance covering the legal liability of the Client and the Client's Personnel for an amount of not less than \$20 million for any one occurrence and unlimited in the aggregate;
- (b) 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 of workers of the Client and extended to cover any claims and liability that may arise with an

indemnity under section 175(2) of that Act;

- (c) motor vehicle third party insurance covering legal liability against property damage and bodily injury to, or death of, persons (including bodily injury gap protection) caused by motor vehicles used in connection with the Services for an amount of not less than \$20 million for any one occurrence and unlimited in the aggregate;
- (d) compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Services; and
- (e) any other insurances specified by Main Roads in this Contract.

6.2 Warranty by the Client

The Client further warrants and represents to Main Roads that the Load is insured for its full re-instatement value.

6.3 Reputable and Solvent Insurer

Any policy of insurance taken out by the Client must be taken out with a reputable and solvent insurer reasonably acceptable to Main Roads which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

6.4 Evidence of Insurance

The Client must on request give to Main Roads sufficient evidence of the insurances required under this clause 6 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance.

6.5 Incidents and Claims

If the Client becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under this clause 6, it must as soon as reasonably practicable notify Main Roads (as applicable) in writing of that event or incident. Failure to comply with this clause will not invalidate or otherwise affect any indemnities, liabilities and releases under this Contract.

6.6 Continuing Obligations

The obligations of the Client under this clause 6 are continuing obligations and survive expiration or termination of this Contract.

6.7 Insurance by Main Roads

Main Roads being an instrumentality of the State of Western Australia is covered by the self insurance arrangements administered by the Insurance Commission of Western Australia.

7. PUBLIC DISCLOSURE AND CONFIDENTIALITY

7.1 Disclosure

- (a) Main Roads may disclose any information provided by the Client to Main Roads under or in connection with this Contract:
 - (i) as authorised in writing by the Client;
 - (ii) in accordance with all laws;
 - (iii) under any current or future policy of Main Roads or the State of Western Australia;
 - (iv) to (and by) any Minister and the Auditor General of Western Australia ;
 - (v) to satisfy requirements of parliamentary accountability;
 - (vi) under annual reporting obligations of Main Roads; or
 - (vii) to satisfy any other reporting or recognised public requirement.

- (b) Main Roads may publicly disclose the identity of the Client, the value of this Contract and the terms and conditions of this Contract.

7.2 Freedom of Information

The Client acknowledges that the *Freedom of Information Act 1992 (WA)* applies to this Contract and information held or compiled by Main Roads or the State of Western Australia in relation to this Contract and the Services.

7.3 Auditor General

- (a) The Client agrees and acknowledges that the powers and responsibilities of the Auditor General of Western Australia under any law are not limited or otherwise affected by this Contract.
- (b) The Client must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Client's records (in any format) concerning this Contract.

7.4 Release

The Client releases Main Roads from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of information under clause 7 by Main Roads.

8. LIMITATION OF LIABILITY

8.1 General limitation of liability

Subject to clauses 8.2(d) and 8.3, the total maximum aggregate liability of one Party to the other Party in respect of any loss or claim under or relating to this Contract is the total value of the Fee paid or payable under this Contract.

8.2 No liability for Consequential Loss

- (a) In this clause 8.2, **Consequential Loss** means loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, including any failure to realise anticipated savings, penalties payable under contracts other than this Contract, cost of capital and financing costs or damage to reputation.
- (b) Subject to clause 8.3, neither Main Roads nor any Main Roads Personnel has any liability to the Client, any Client Personnel or any person with an interest in the Vehicle or the Load, nor is the Client or any Client Personnel, or any person with an interest in the Vehicle or the Load entitled to make any claim against Main Roads or any Main Roads Personnel, in respect of any Consequential Loss suffered, incurred or sustained by the Client, any Client Personnel or any person with an interest in the Vehicle or the Load arising out of or in connection with this Contract, and the Client indemnifies Main Roads and Main Roads Personnel against such Consequential Loss.
- (c) Subject to clause 8.3, neither the Client nor any Client Personnel has any liability to Main Roads or any Main Roads Personnel, nor is Main Roads or any Main Roads Personnel entitled to make any claim against the Client or any Client Personnel, in respect of any Consequential Loss suffered, incurred or sustained by Main Roads or any Main Roads Personnel arising out of or in connection with this Contract.
- (d) The Client releases and indemnifies Main Roads from all Consequential Loss suffered or incurred by the Client, any Client Personnel or any person with an interest in the Vehicle or the Load, as a result of or in connection with any damage to or destruction of the Vehicle or the Load however caused..

8.3 Exclusions to limitations of liability

The limitations of liability in clauses 8.1, 8.2(b) and 8.2(c) do not apply to limit or restrict in any way the Parties liability to

each other for the following:

- (a) any statutory fine levied against a Party arising from any breach of law by the other Party;
- (b) personal injury, sickness or death;
- (c) damage to property other than damage to or destruction of the Vehicle or the Load;
- (d) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a Party;
- (e) wrongful acts committed by a Party with a reckless indifference to the consequences;
- (f) wilful and intentional default by a Party;
- (g) the abandonment or repudiation of this Contract by the Client;
- (h) matters that cannot be excluded at law;
- (i) exemplary or punitive damages; and
- (j) in respect of liability of the Client or the Client's Personnel to Main Roads, for amounts that the Client or the Client's Personnel recover or are entitled to recover under the insurance policies required by this Contract (or that the Client or the Client's Personnel would have been entitled to recover but for the Client's breach of the insurance policies required by this Contract).

8.4 Civil Liability Act

The Parties agree that Part 1F of the *Civil Liability Act 2002* does not apply to this Contract.

9. DEFAULT AND TERMINATION

If:

- (a) the Client does something or omits to do something which poses a risk to persons or property in the course of the Services;
- (b) the Client breaches:
- (i) an obligation under this Contract that cannot be remedied; or
- (ii) any other obligation under this Contract and that breach is not remedied within the period of time specified in the notice (being not less than 6 hours) after Main Roads gives notice to the Client requiring the breach to be remedied;
- (c) an Insolvency Event occurs in respect of the Client, except to the extent Main Roads' right to terminate is stayed by operation of section 415D, 434J or 451E of the *Corporations Act 2001* (Cth);
- (d) the Client ceases, or threatens to cease, to carry on business;
- (e) it becomes unlawful for the Client to perform its obligations under this Contract; or
- (f) in the reasonable opinion of Main Roads, the reputation of Main Roads, the State of Western Australia or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Client,

Main Roads may by notice in writing to the Client immediately terminate this Contract.

10. FORCE MAJEURE

10.1 Main Roads Force Majeure

If Main Roads is affected by a Force Majeure Event, Main Roads will promptly notify the Client and clause 3.7 will apply.

10.2 Client Force Majeure

- (a) If the Client claims it is or will be prevented from performing its, or receiving the benefit of Main Roads',

obligations under this Contract by a Force Majeure Event in respect of the Service Dates the Client must, within 5 Business Days of the date on which the Client should reasonably be aware of the Force Majeure Event, give Main Roads written notice containing full particulars of the Force Majeure Event, including:

- (i) the nature of the Force Majeure Event;
- (ii) the date of the first occurrence of the Force Majeure Event;
- (iii) the effect of the Force Majeure Event on the Service Dates; and
- (iv) the expected duration of the Force Majeure Event.

- (b) A notice under clause 10.2(a) will be deemed to be a request to cancel the accepted Request, and Main Roads will, provided that the notice complies with clause 10.2, accept the Request and refund to the Client the Fee paid without deducting any Cancellation Fee and clauses 3.7(b) and 3.7(c) will apply as if the reference to Main Roads' cancellation notice were to the notice under clause 10.2(a).

10.3 [Amendments to Permits and to scheduled Services]

Nothing in clause 10 prevents:

- (a) the Parties from working together to reschedule the Services to the next available timeslot in the event that a Force Majeure Event prevents the Services, or the movement of the Load and the Vehicle, from proceeding as scheduled;
- (b) Main Roads from refunding the Fee to the Client if, in the circumstances to which clause 10.6(a) apply, Main Roads is unable to reschedule the provision of the Services to a time suitable to the Client; or
- (c) the Parties from:
 - (i) notifying each other of; or
 - (ii) communicating with each with respect to:

issues, problems or events impacting on the provisions of the Services or the movements of a Load under a Permit for the purposes of addressing, or otherwise attempting to resolve, those issues, problems or events without reverting to the processes set out in clauses 10.1 to 10.4.

11. WARRANTIES AND REPRESENTATIONS

11.1 Client warranties and representations

The Client warrants and represents to Main Roads that:

- (a) the Client is properly authorised and has the power to enter into this Contract and perform the Client's obligations under this Contract;
- (b) the Client's obligations under this Contract are valid and binding and are enforceable against the Client;
- (c) all information provided by the Client to Main Roads in connection with this Contract is true and correct;
- (d) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Client which could have a materially adverse effect on the Client's ability to receive the Services in accordance with this Contract; and
- (e) there is nothing that prevents the Client from complying with any obligation under this Contract.

11.2 Client obligations

The Client must:

- (a) promptly notify Main Roads if any warranty under this Contract is breached or becomes untrue;

- (b) promptly notify Main Roads if there is any material change in circumstances relating to this Contract;
- (c) always act ethically in connection with this Contract and in accordance with good corporate governance practices;
- (d) comply with all Western Australian and Commonwealth laws relevant to this Contract;
- (e) cooperate fully with Main Roads in respect of the administration of this Contract; and
- (f) ensure that no Client Personnel cause the Client to breach this Contract.

12. NOTICES

- (a) Each notice or other communication given under this Contract must be in writing, in English and sent to the address, email address or facsimile number of the other Party listed in the Head Agreement (or such other address as notified by that Party) and may be given by an authorised officer or solicitor of a Party.
- (b) A notice is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting;
 - (iii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email from the recipient;
 - (iv) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted,

unless it is received after 5.00 pm or on a day other than a Business Day, in which case it is taken to be received on the next Business Day.

13. MISCELLANEOUS

13.1 Assignment

- (a) Main Roads may subcontract or assign any of its rights or obligations under this Contract without the consent of the Client.
- (b) The Client must not assign, novate or otherwise deal with any of its rights or obligations under this Contract without the prior written consent of Main Roads.
- (c) If the Client is a corporation (other than a public company as defined in the *Corporations Act 2001* (Cth)) the Client is taken to have assigned this Contract if:
 - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Client to another person; or
 - (ii) there is any change in control of the Client (where control has the meaning given in the *Corporations Act 2001* (Cth)).

13.2 Waiver

- (a) A waiver is only effective if in writing and signed by the Party giving the waiver, and then only in respect of the specific obligation or breach, and occasion, for which the waiver is given.
- (b) Any delay or failure by a Party to enforce any right under or in connection with this Contract or any law will not be construed as a waiver of their respective rights under this Contract or any law.

13.3 This agreement

- (a) (*entire agreement*) This Contract supersedes all prior negotiations, understandings and agreements

(whether in writing or not) between the Parties relating to the matters covered by this Contract and constitutes the full and complete agreement between the Parties relating to the matters covered by this Contract.

- (b) (*variation*) No variation of this Contract will be of any force or effect unless it is in writing and signed by both Parties.
- (c) (*costs*) Except as otherwise set out in this Contract, each Party must pay its own costs in relation to preparing, negotiating and executing this Contract and any related document related to this Contract.
- (d) (*severability*) To the extent that a clause or part of a clause of this Contract is or becomes illegal, unenforceable or invalid it is to be treated as being severed from this Contract and the remaining clauses remain in full force and effect.
- (e) (*further assurance*) Each Party must do everything reasonably necessary, at that Party's expense, including signing further documents, to give full effect to, perfect or complete, this Contract.
- (f) (*governing law and jurisdiction*) This Contract is governed by the laws of the State of Western Australia. Each Party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia and courts of appeal from them.

13.4 Rights Are Cumulative

Unless otherwise stated the rights, powers and remedies in this Contract are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

13.5 Dispute Resolution

The Parties will use reasonable efforts to resolve disputes and differences by negotiation. If a dispute or difference arises between the Parties in connection with this Contract, either Party may notify the other and, except in the case of urgent interlocutory proceedings:

- (a) management representatives of the Parties will meet within 14 days of the notice to endeavour in good faith to agree a resolution; and
- (b) if the dispute is not settled at the end of that period, either party may commence proceedings in respect of the dispute.

13.6 Relationship

Nothing in this Contract may be construed to make a Party a partner, agent, employee or joint venturer of the other Party.

13.7 Survival

On termination of this Contract any rights of one Party against the other Party accrued prior to the date of termination will survive the termination. All provisions of this Contract which expressly or by implication from their nature are intended to survive termination or expiry of this Contract will survive such termination or expiry.