



REFERENCE:

DBA Number:

Site Name:

Site Address:

THIS AGREEMENT is made the day of 2022,

BETWEEN

The State of Western Australia acting through its Department of Fire and Emergency Services ("DFES"), of 20 Stockton Bend, Cockburn Central, Western Australia 6164 (ABN 39 563 851 304)

AND

(**"the Client"**)

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

"Alarm" means all components of the building fire detection and/or protection system referred to in clause 3.1, and includes, but is not limited to, the Fire Indicator Panel, sensors/initiating devices, notification devices and/or suppression devices, but does not include the Automatic Signalling Equipment or the Network.

"Annual Fee" unless varied by written notice under clause 4.4, is the sum to be specified by DFES.

"Annual Fee Year" means a period of 12 months, beginning on 1 July and ending on 30 June of the following year and does not include the First Annual Fee Period.

"Automatic Signalling Equipment" means the signalling equipment supplied by DFES located between the Alarm and the Network.

"Business Day" means a day that is not a Saturday, Sunday or a public holiday in Western Australia.

"Connection Date" means the date on which the following conditions are first simultaneously satisfied: (i) the Alarm is connected to the Automatic Signalling Equipment and (ii) the Automatic Signalling Equipment is connected to the Network.

"Connection Fee" is the sum specified as such by DFES which will include costs for the connection of telecommunications equipment to the Automatic Signalling Equipment.

"Disconnection" means disconnection of the Alarm from the Automatic Signalling Equipment, resulting in the Premises not being connected to an Alarm.

"DFES Contractor" means any person engaged by DFES to provide any of the services referred to in clause 2.2.

"DFES Contractor Personnel" means any employee, agent or contractor of the DFES Contractor who performs services under this Agreement.

"Event of Default" has the meaning given at clause 11.1.

"False Alarm" means an activation of an Alarm for reasons or in circumstances it (the Alarm) was not designed to be activated.

"Fire Indicator Panel" means the centrally located control panel which manages the Alarm.

"First Annual Fee" means the fee referred to in clause 4.2 and payable for the First Annual Fee Period

"First Annual Fee Period" means the period beginning on the Connection Date and ending on the next 30 June.

"Keys" means any keys or other devices of the Client to facilitate entry into the Premises.

"Interfere" includes any action that causes the transmission of the signal from the fire indicator panel to be isolated, disconnected or disabled.

"Local Government" means the applicable local government authority having jurisdiction over the classification of building and occupancy provisions as they relate to the Premises.

"month" means a calendar month.

"Network" means the telecommunications network connecting the Automatic Signalling Equipment to the facilities by which DFES monitors Alarms.

"Obligation" means an obligation under or by virtue of this Agreement.

"Offline" means a condition that an alarm can be placed in resulting in the alarm being connected to the Automatic Signalling Equipment but not, however, monitored for fire or fault.

"Premises" means the building described at Schedule 1.

"Remedial Works" means work undertaken under clause 9 that is reasonably necessary to restore the Automatic Signalling Equipment to its proper function.

"Term" means the duration of this Agreement.

1.2 In this Agreement, unless the contrary intention appears:

- (a) Headings, underlining and numbering are for convenience only and do not affect the interpretation of this Agreement;
- (b) The singular includes, but not limited to, the plural and vice versa;
- (c) A gender includes, but not limited to, every gender;
- (d) References to parts, clauses and parties are reference to parts and clauses of, and parties to, this Agreement;
- (e) A reference to a thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually;
- (f) The word **"Person"** or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporated;
- (g) In the interpretation of this Agreement, no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this Agreement or of a part of this Agreement;
- (h) A reference in this Agreement to a sub-clause, paragraph or sub-paragraph is a reference to a sub-clause, paragraph or sub-paragraph of the clause or definition in which the reference occurs;
- (i) If a Party comprises 2 or more persons, then –
 - (i) those persons are jointly and severally liable to perform that Party's obligations under this Agreement; and
 - (ii) any conduct by one of those persons shall be deemed to be the conduct of that Party;
- (j) The Schedules to this Agreement form part of and are enforceable in accordance with, their expressed and implied terms;
- (k) A reference to a person includes, but not limited to, the legal personal representatives, successors and assigns of that person;
- (l) A reference to "including" shall mean including but not limited to; and
- (m) A reference to a contractor means a contractor or subcontractor at any tier.

2. USE OF INDEPENDENT CONTRACTORS

- 2.1** The Client acknowledges and agrees that DFES will provide the services under this Agreement through the use of independent contractors.
- 2.2** The Client acknowledges and agrees that, at the time of the execution of this Agreement, DFES has contracted an independent contractor to:
- (a) Provide and install the Automatic Signalling Equipment.
 - (b) Manage the interface between the Alarm and the Automatic Signalling Equipment.
 - (c) Manage the interface between the Automatic Signalling Equipment and the Network.
 - (d) Provide non-emergency support and maintenance services to the Client.
 - (e) Run a customer support centre intended to serve as the primary non-emergency point of contact between the Client and DFES under this Agreement.
 - (f) Collect fees under this Agreement on behalf of DFES.
- 2.3** The Client acknowledges and agrees that, at the time of execution of this Agreement, DFES has contracted with telecommunications providers as independent contractors to provide the Network.
- 2.4** Clauses 2.1, 2.2 and 2.3 shall prevail to the extent of any inconsistency (whether express or implied) with any other clause of this Agreement and the latter shall, to the extent of the inconsistency, be invalid.

3. ALARM

- 3.1** The Client must, as soon as is practicable after execution of this Agreement and at its own expense:
- (a) If an Alarm has:
 - (i) not yet been installed on the Premises at the time of execution of this Agreement - cause an Alarm to be designed and installed in accordance with current applicable Australian Standards, the Building Code of Australia requirements and the DFES Direct Brigade Alarm Connection Code; or
 - (ii) been installed on the Premises – take all necessary measures to bring the Alarm into conformity with current applicable Australian Standards, the Building Code of Australia requirements and the DFES Direct Brigade Alarm Connection Code as are applicable;
 - (b) Provide a suitable environment in which the Automatic Signalling Equipment may be installed and maintained;
 - (c) Notify DFES in writing once either clause 3.1(a)(i) or (ii) (as applicable), and clause 3.1(b) have been satisfied;

- (d) Ensure the Alarm is appropriately installed and maintained, and that it is and remains compliant with all applicable Australian Standards, Building Code of Australia requirements and Direct Brigade Alarm Connection Code; and
- (e) Ensure that at all times the Automatic Signalling Equipment is and remains adequately protected from fire, impact, lightning strikes and electricity surges.

3.2 After receiving notice under clause 3.1(c) DFES must use all reasonable endeavours to cause the:

- (a) Automatic Signalling Equipment to be provided to the Client;
- (b) Alarm to be connected to the Automatic Signalling Equipment;
- (c) Automatic Signalling Equipment to be connected to the Network;
- (d) Automatic Signalling Equipment to be maintained; and
- (e) Alarm to be monitored.

3.3 Legal ownership of the Automatic Signalling Equipment remains with DFES. DFES may, at its discretion, cause the Automatic Signalling Equipment to be removed from the Premises on termination of this Agreement. Subject to DFES exercising reasonable care in such removal, DFES is not required to reinstate or make good the Premises following such removal.

4. PAYMENTS

4.1 The Client must pay the DFES Contractor:

- (a) The Connection Fee within 30 days of the Connection Date;
- (b) The First Annual Fee within 30 days of the Connection Date;
- (c) The Annual Fee for each Annual Fee Year in advance and by the due date specified on the invoice; and
- (d) If the Client is invoiced under clause 4 or 9.5, the amount specified in the invoice by the due date specified on the invoice.

4.2 The First Annual Fee is a proportion of the Annual Fee and is calculated by dividing the number of whole months in the First Annual Fee Period by 12 and multiplying that by the Annual Fee. By way of example, if the Connection Date occurred at any time in the month of December, there are 6 whole months in the First Annual Fee Period. Therefore the First Annual Fee would be 6/12 of the Annual Fee.

4.3 The fees charged by DFES under this Agreement are set out in Schedule 2.

4.4 DFES may, in its unfettered discretion, increase or decrease the Annual Fee by notice in writing to the Client.

4.5 The Client acknowledges and agrees that it is obliged to reimburse DFES all costs reasonably incurred by DFES in recovering monies owed to DFES under this Agreement including legal and debt collection costs.

5. CHANGING THE ALARM

- 5.1** The Client must not make, cause, suffer or permit to be made any alteration or addition to the Alarm without the prior written approval of DFES. The client, or their nominated fire alarm agent, shall obtain permission for any such changes through the submission of a DFES DBA C8 form to DFES or the DFES Contractor.
- 5.2** Subject to clause 5.1 the Client must upgrade, update or replace the Alarm as required from time to time in order to ensure ongoing compliance with applicable Australian Standards, Building Code of Australia requirements and the DFES Direct Brigade Alarm Connection Code.
- 5.3** DFES will not unreasonably withhold consent to alter or amend the Alarm for the purposes contemplated at clause 5.2.
- 5.4** DFES may at any time during the Term direct the Client in writing to replace the Alarm, repair the Alarm, or to make such additions or alterations to the Alarm, as DFES reasonably considers necessary. The Client must comply with any such direction within 30 days of the direction being given.

6. TESTING THE ALARM

- 6.1** The Client must maintain and test the Alarm in accordance with Australian Standard AS-1851 as amended from time to time, or with any Australian Standard replacing AS-1851.
- 6.2** The Client must ensure the Automatic Signalling Equipment is not left in 'test' mode on the conclusion of testing.
- 6.3** The Client must immediately notify DFES by telephone or electronic mail if defects in the Alarm are discovered during testing unless such defects are immediately remedied by the Client.

7. OTHER OBLIGATIONS OF CLIENT

- 7.1** The Client must maintain areas adjacent to the Automatic Signalling Equipment and the Fire Indicator Panel in a clean condition and free from obstruction.
- 7.2** The Client must provide and maintain suitable environmental conditions for the proper working of the Automatic Signalling Equipment and Fire Indicator Panel.
- 7.3** The Client must provide an adequate and uninterrupted power supply to the Alarm and Automatic Signalling Equipment.
- 7.4** The Client must comply with all laws and the requirements of all government authorities in relation to the Alarm.
- 7.5** The Client must comply with all reasonable requirements or directions of DFES in relation to the Alarm, the Automatic Signalling Equipment and any of its Obligations.
- 7.6** The Client must provide notice in writing to the relevant DFES Contractor Personnel before work commences, of the existence of concealed pipes, wires and cables for water, gas, electricity, telephone or other services affecting the Premises. The Client must immediately notify the DFES Contractor Personnel in writing should any of these matters change.

- 7.7** The Client must promptly comply with all requirements from DFES to ensure that the Alarm installed is appropriate and applicable to the current purpose of the Premises and is in accordance with the occupancy certificate (however described) issued by the Local Government.
- 7.8** The Client must do all that is reasonable (including complying with its Obligations and complying with all reasonable directions issued by DFES or the DFES Contractor) to ensure that no False Alarm occurs in respect of the Premises.
- 7.9** The Client must not, without the written approval of DFES, damage or Interfere with a fire indicator panel other than in the following circumstances:
- (a) whilst maintenance, remedial or building works are being undertaken at the premises; or
 - (b) for testing the alarm in accordance with clause 6; or
 - (c) as otherwise instructed by DFES or the DFES Contractor.
- 7.10** If a fire indicator panel sounds an alarm, the Client must not, without the consent of DFES, reset the fire indicator panel.
- 7.11** The Client acknowledges that DFES has, under reg. 12A of the Fire and Emergency Services Regulations 1998, the legal power to levy fees as a consequence of False Alarms occurring in respect to the Premises. The Client is responsible for the payment of such fees in such circumstances. The relevant fee for an attendance, in response to a False Alarm, by a permanent or a volunteer fire brigade is set out in the Fire and Emergency Services Regulations 1998.

8. OFFLINING THE ALARM

- 8.1** If anything occurs which, in the reasonable view of DFES or the DFES Contractor, compromises the efficiency of DFES or the DFES Contractor's fire monitoring systems or equipment (including when the Alarm or the electrical circuit to which the Alarm is connected operates to signal a fire or fault condition when in fact that is not the case), or if the Client is in breach of its Obligations, DFES or the DFES Contractor may immediately place the Alarm in an "Offline" condition (i.e. connected but not monitored).
- 8.2** If the Alarm is placed in an 'Offline' condition under clause 8.1, DFES must cause the Client to be notified by telephone or via electronic mail of the changed status of the Alarm. DFES may in its discretion take additional steps to notify the Client (including writing to the Client) but is under no legal obligation to do so.
- 8.3** The Client must repair the Alarm as soon as possible after receiving notice under clause 8.2, and must notify DFES either via telephone or via electronic mail as soon as possible after repairs are completed.
- 8.4** DFES must cause the Alarm to be returned to an "Online" condition as soon as reasonably practicable after being notified by the Client of the Alarm having been repaired, and being satisfied the Alarm has been satisfactorily repaired.

9. ACCESS TO PREMISES AND REMEDIAL WORKS

- 9.1** Subject to clause 9.2, the Client must permit DFES and the DFES Contractor to access the Premises at any reasonable time, provided 24 hours' prior notice of an intention to inspect is provided to the Client, for the purposes of:
- (a) Inspecting the Alarm, the Automatic Signalling Equipment, and all associated plant, equipment and wiring;
 - (b) Installing, maintaining, updating, renovating or improving the Automatic Signalling Equipment; and/or
 - (c) Removing the Automatic Signalling Equipment following termination of this Agreement.
- 9.2** Nothing in clause 9.1 limits the ability of DFES and the DFES Contractor to access the Premises at any time and without notice in the event of an actual or likely emergency.
- 9.3** If DFES reasonably believes that the Automatic Signalling Equipment is not functioning, or is functioning in a manner that compromises DFES's ability to monitor other alarms in an efficient manner, DFES may undertake or cause the DFES Contractor to undertake Remedial Work.
- 9.4** If DFES reasonably believes that the need for Remedial Work under clause 9.3 resulted from an act or omission on the part of the Client, DFES may invoice the Client to recover any costs reasonably incurred by DFES or the DFES Contractor in causing the Remedial Work to be undertaken.
- 9.5** If the Client requests support in respect of the Automatic Signalling Equipment, DFES or the DFES Contractor may attend the Premises. If, on such attendance:
- (a) No material fault can be found with the Automatic Signalling Equipment, DFES may invoice the Client to recover any costs reasonably incurred by DFES as a result of DFES or the DFES Contractor attending the Premises.
 - (b) Fault is found necessitating Remedial Work and DFES believes on reasonable grounds that the need for Remedial Work resulted from an act or omission of the Client, DFES may invoice the Client to recover any costs reasonably incurred by DFES or the DFES Contractor in causing the Remedial Work to be undertaken.
 - (c) Fault is found necessitating Remedial Work and DFES does not believe such fault resulted from an act or omission of the Client, the Client is not responsible for the cost of the Remedial Work.
- 9.6** For the purposes of this clause 9, the Client acknowledges and agrees that DFES is entitled to rely upon the observations and judgement of the DFES Contractor in forming reasonable beliefs.

10. KEYS

- 10.1** The Client may arrange for DFES to keep the Keys. DFES will use reasonable endeavours to use the Keys for any entry by DFES into the Premises.
- 10.2** Notwithstanding anything in clause 10.1, the Client releases DFES from all responsibility, liability, claims and demands whatsoever (including, negligence) which arise, or may arise, from or in connection with any forced entry by DFES into the Premises.

11. DEFAULT

- 11.1** The Client commits an Event of Default if the Client:

- (a) Fails to comply with any direction of DFES pursuant to subclause 5.4 within the required time; or
- (b) defaults in the due and punctual performance and observance of any other Obligation, and that default continues for more than a reasonable time (having regard to the nature and seriousness of the breach and its ease of rectification) after DFES has given the Client notice in writing specifying the default; or
- (c) is unable, or is deemed by legislation to be unable, to pay its debts as and when they fall due, or places itself, or is placed, under any form of external administration.

- 11.2** If an Event of Default occurs then DFES may terminate this Agreement and effect Disconnection, and upon doing so:

- (a) All rights or benefits to which the Client is entitled under this Agreement will immediately cease; and
- (b) The Client will not be entitled to any refund of the moneys paid pursuant to the provisions of clause 4; and
- (c) Any action taken by DFES under this clause is without prejudice to any other rights of DFES and does not release the Client from liability under this Agreement.

- 11.3** If Disconnection occurs under clause 11.2, DFES must cause written notice to be provided to the Client advising the Client the Alarm has been disconnected. DFES may at its discretion take additional steps to notify the Client (including contacting the Client by telephone) but is under no legal obligation to do so.

- 11.4** The Client acknowledges and agrees that if the Alarm is disconnected under this Agreement (whether under this clause 11, under clause 12, or howsoever), DFES may, in its discretion, notify the relevant Local Government.

12. TERMINATION BY NOTICE

- 12.1** Subject to clause 11, this Agreement will remain in force until terminated by at least 3 months prior notice in writing given by either party to the other. Upon such a termination, the proportion of any Annual Fee which has been paid for any remaining whole months in the Annual Fee Year following the date of termination shall be refunded by DFES to the Client.

- 12.2** Termination of this Agreement will not release the Client from liability in respect of any breach of this Agreement by the Client that occurs prior to the date of termination.
- 12.3** On termination of this Agreement under clause 12.1, or howsoever, DFES may immediately effect Disconnection.

13. RISK AND RESPONSIBILITY

The Client acknowledges and agrees:

- (a) Notwithstanding any other provision in this Agreement, the Client is solely responsible for ensuring the Alarm is, at all times, functional, in working order, appropriately tested, and compliant with Australian Standards and Building Code of Australia requirements and the DFES Direct Brigade Alarm Connection Code. Failure of the Alarm may cause or contribute to injury (including death), loss or damage being sustained by the Client or by third parties. The Client releases and indemnifies DFES and the DFES Contractor from and against any liability for any such injury (including death), loss or damage (except to the extent that any negligent act or omission by DFES or the DFES Contractor directly caused damage to the Alarm).
- (b) Failure by the Client to discharge its Obligations, or other defaults on the part of the Client, may cause or contribute to injury (including death), loss or damage being sustained by the Client, DFES Contractor Personnel or third parties. The Client releases and indemnifies DFES and the DFES Contractor from and against any liability for any such injury (including death), loss or damage (except to the extent that any negligent act or omission by DFES or the DFES Contractor directly caused any such injury (including death), loss or damage).
- (c) The Network is provided by a third party provider. Neither DFES nor the DFES Contractor is responsible or liable in negligence, or howsoever, for any Network failure or interruption that prevents or delays the transmission of information to DFES, or for the consequences of such a failure or interruption.
- (d) Notwithstanding any other provision of this Agreement, DFES offers no guarantee or warranty that DFES will respond to any particular event in any particular manner. On receiving notice of an actual or potential fire or other event, DFES will attend to that event in accordance with usual DFES practices including usual prioritisation practices.
- (e) Neither DFES nor the DFES Contractor are insurers of the Premises or other property and risks. The services provided under this Agreement cannot be, and are not, guaranteed to prevent all or any loss or damage at the Premises. It is extremely advisable for the Client to effect and maintain all usual and prudent insurance policies in respect of all usual risks including fire and consequential loss and damage.
- (f) The Client must take all reasonable measures to avoid and mitigate any loss and damage which could be sustained in connection with the Premises, the Alarm and this Agreement (or any one or 2 of those).
- (g) Despite anything expressed or implied in this Agreement to the contrary, neither DFES nor the DFES Contractor will be liable in contract, tort (including negligence) or otherwise, for any special, indirect or consequential losses of any nature whatsoever sustained by the Client in respect of the Premises and any fire or other accident, disaster or mishap.

- (h) Each and every expressed or implied release, exclusion or exemption from, or limitation of, liability contained in the preceding provisions of this clause 13, or elsewhere in this Agreement, may be pleaded, and shall operate, as a complete bar to any claim, demand, action, proceeding, lawsuit or the like brought or made against DFES by the Client including any third party proceeding where the Client as a defendant seeks to join DFES as a co-defendant or an alternative defendant.

14. ASSIGNMENT

- 14.1** This Agreement is personal to the Client. The Client may not assign or transfer its rights or obligations under this Agreement without the prior written consent of DFES. Subject to clause 14.2, DFES will not unreasonably withhold such consent.
- 14.2** Before consenting to the assignment or transfer of rights or obligations under this Agreement, DFES will require the proposed assignee or transferee to enter into a contract in a form which in substance is the same as this Agreement.
- 14.3** DFES may, on written notice to the Client, replace the DFES Contractor.

15. GST

- 15.1** In this clause, the expressions “adjustment note”, “consideration”, “recipient”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 15.2** All sums payable, or consideration to be provided, under this Agreement are expressed exclusive of GST.
- 15.3** If GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- 15.4** The amount referred to in clause 15.3 must be paid in addition to, and at the same time as, payment of the consideration for the taxable supply is required to be made under this Agreement, or where no such requirement for payment is made, within 7 days of demand for payment following the making of the taxable supply.
- 15.5** If GST in relation to a supply is charged or adjusted under this Agreement, the supplier must provide the recipient of the supply with a valid tax invoice or adjustment note at or before the time of payment or adjustment.
- 15.6** If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- 15.7** All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the goods and/or services are payable by the Client.

16. NOTICES

16.1 Unless otherwise specified, a notice in connection with this Agreement to be valid and effective:

- (a) Must be in writing;
- (b) Must be:
 - (i) hand delivered to the address of the recipient specified in Schedule 1;
 - (ii) sent by prepaid post to the postal address of the recipient specified in Schedule 1;
 - (iii) sent by facsimile to the facsimile number of the recipient specified in Schedule 1; or
 - (iv) sent by electronic mail to the email address of the recipient specified in Schedule 1.
- (c) Subject to clause 16.1(d), 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 facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
 - (iv) in the case of electronic mail, when the message enters the recipients information system.
- (d) If received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

16.2 The Client and DFES must immediately notify each other in writing of any change to the contact details set out in Schedule 1.

16.3 Contact details for this Agreement can be found in clause 24 of this Agreement.

17. WAIVER

17.1 Any waiver by DFES or the Client must be in writing and signed by the party waiving that right.

17.2 Any waiver by DFES or the Client does not affect its rights in respect of any other breach of this Agreement by the other party

17.3 Subject to clause 17.1, any failure by DFES or the Client to enforce any right under this Agreement will not be construed as a waiver of their respective rights under this Agreement.

18. CERTAIN OBLIGATIONS ENFORCEABLE DIRECTLY BY DFES CONTRACTOR

Each of the Client and DFES acknowledge and agree that clause 13 of this Agreement confers benefits directly upon the DFES Contractor, and may be enforced by the DFES Contractor in its

own name. The Client and DFES intend that this clause be enforceable by reason of section 11(2) of the *Property Law Act 1969*.

19. VARIATIONS

Any variation of or to this Agreement may only be varied in writing and executed by DFES and the Client.

20. GOVERNING LAW

This Agreement is governed by the laws of the State of Western Australia. DFES and the Client irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

21. SCHEDULE

Any provision expressly or impliedly set out in Schedule 1 is hereby deemed to be a provision of this Agreement and therefore enforceable in accordance with its terms.

Furthermore, if there is any change to the information recorded in Schedule 1, the Client must:

- (a) Promptly and correctly fill in Schedule 1 and promptly return the same to DFES; and
- (b) Promptly provide the information expressly or impliedly sought in or by Schedule 1.

All information provided to DFES from the Client must be accurate, complete, and up-to-date and in no way misleading or deceptive. The Client will be legally bound to and by all such information provided.

22. ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, understandings and agreements between DFES and the Client relating to the matters covered by this Agreement, and constitutes the entire agreement between DFES and the Client relating to the matters covered by this Agreement.

23. LIMITATION OF LIABILITY CLAUSE

- (a) The Client enters into this Agreement as custodian and agent of _____, the Responsible Entity of the _____ ("Trust") and in no other capacity.
- (b) The parties other than the Client acknowledge that the Obligations are incurred by the Client solely in its capacity as custodian of the assets of the Trust ("Assets") and as agent of the Responsible Entity and that the Client will cease to have any obligation under this Agreement if the Client ceases for any reason to be the custodian of the Assets.
- (c) The Client will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Responsible Entity or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it.
- (d) The parties other than the Client may enforce their rights against the Client arising from non-performance of the Obligations only to the extent of the Client's indemnity provided above in clause 23(c).

- (e) If any party other than the Client does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Client in its personal capacity; or
 - (ii) applying to have the Client put into administration or wound up or applying to have a receiver or similar person appointed to the Client or proving in the administration or winding up of the Client.
- (f) Except in the case of and to the extent of fraud, gross negligence breach of trust or breach of duty on the part of the Client under its custody agreement with the Responsible Entity (which disentitles it from any indemnity out of the Assets in relation to the relevant liability), the parties other than the Client waive their rights and release the Client from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach of the Client of any of its Obligations; or
 - (B) non-performance by the Client of its Obligations; and
 - (ii) which cannot be paid or satisfied out of the indemnity set out above (clause (c)) in respect of any liability incurred by it.
- (g) The parties other than the Client acknowledge that the whole of this Agreement is subject to this clause and the Client shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this Agreement or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Agreement requires satisfaction out of the Assets under the Client's control and in its possession as and when they are available to the Client to be applied in exoneration for such liability.
- (h) The parties acknowledge that the Responsible Entity of the Trust is responsible under its Constitution for performing a variety of obligations relating to the Trust, including under this Agreement. The parties agree that no act or omission of the Client (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Client for the purposes of clause (f) to the extent to which the act or omission was caused or contributed to by any failure of the Responsible Entity or any other person.
- (i) No attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of the Client in a way which exposes the Client to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Client for the purposes of clause (f).
- (j) Despite anything expressed or implied to the contrary in this clause 23, the Client will be personally liable for any breach of the Obligations by it or any other default by it if and to the extent that any indemnity by the Responsible Entity or indemnity out of or access to the Assets (in favour of the Client) is restricted, removed or denied on account of the Client's fraud, gross negligence, breach of trust or breach of duty under its custody agreement with the Responsible Entity.
- (k) All provisions of this clause 23 (except paragraph (j)) are subject to paragraph (j).

- (l) In this clause 23 *Assets* includes, but not limited to, all assets, property and rights real and personal of any value whatsoever, *Constitution* means the memorandum of association or articles of association of a party or any other constituent document by which a party comes into existence or provides for the governance of a party, the *Obligations* means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Client under or in respect of this Agreement, and *Responsible Entity* means _____ or any replacement trustee and responsible entity of the Trust from time to time.
- (m) The preceding provisions of this clause 23 only apply if the Client enters into this Agreement in its capacity as trustee of a trust.

24. CONTACT DETAILS FOR THIS AGREEMENT

Fire Alarm Monitoring Services – Customer Service & 24/7 Monitoring Centre

Office: 120 Cutler Rd
JANDAKOT WA 6164
Mailing: PO Box 3238 SUCCESS WA 6964
Phone: 1300 793 722 (available 24/7)
Email: au_wacsc@chubbfs.com
Web: www.firealarmmonitoringservices.com.au

Manager Direct Brigade Alarms

Office: Emergency Services Complex
20 Stockton Bend
COCKBURN CENTRAL 6164
Mailing: PO Box P1174 PERTH WA 6844
Phone: (08) 9482 1750
Email: dba@dfes.wa.gov.au

FOR CUSTOMER USE ONLY:

Client to provide separate execution panel (if required)

Name: _____

Position: _____

Signature and date: _____

Witnessed by (Name): _____

Position: _____

Signature and date: _____

**IF CLIENT IS A CORPORATE BODY - PLEASE INSERT APPROPRIATE SEALING CLAUSE
IF SIGNATORY IS A POWER OF ATTORNEY - PLEASE INSERT CERTIFIED COPY**

FOR DFES USE ONLY:

Signed for and on behalf of the State of Western Australia acting through its Department of Fire and
Emergency Services by:

[signature]

[name & position of authorised DFES employee]

as a delegate of the FES Commissioner under section 15(2)(a) of the *Fire and Emergency Services Act 1998*.