

# General Conditions of Contract for the Supply of Goods and Services Under a Purchase Order

## 1. Supply of goods and services

- 1.1. The Contractor must supply the Goods or Services to the Principal in accordance with the Contract.
- 1.2. Unless expressly agreed to in writing by the Principal and referenced in the Contract, to the extent permitted by Law, no other terms or conditions, including the Contractor's own terms and conditions even where they have been provided to the Principal or signed by a representative of the Principal, will apply or have any legal effect in connection with the supply of the Goods, the performance of the Services or the Contract.
- 1.3. Where the Contract relates to Goods or Services the subject of a separate contract between the Contractor and the Principal, the terms of the separate contract also apply to the extent of any inconsistency with the Contract unless the Principal has clearly stated otherwise on the Purchase Order.

## 2. Contractor's obligations

- 2.1. The Contractor must ensure that it and the Contractor's Personnel, in performing the Contractor's Obligations under the Contract:
  - (a) comply with all applicable Laws, any standards and procedures made available by the Principal to the Contractor, and any reasonable instructions given by the Principal;
  - (b) do not interfere with the Principal's activities or the activities of any other person at the Delivery Point or any place the Contractor provides the Services;
  - (c) carry out and perform the Contractor's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
  - (d) unless otherwise set out in the Contract, supply all plant, resources and equipment necessary to perform the Services; and
  - (e) provide all such information and assistance as the Principal reasonably requires.
- 2.2. Subject to the prior written approval from the Principal, where the Contractor engages a third party in relation to the Good and/or Services (with the approval of the Principal), the Contractor remains responsible to the Principal in respect to any Goods Services provided by the third party and the Contractor shall be responsible for all cost associated with the engagement of the third party.

### **3. Receipt, inspection and acceptance of goods and services**

- 3.1. The Contractor must deliver the Goods in full to the Delivery Point and perform the Services at the times stated in the Contract. In this respect, time will be of the essence of the Contract.
- 3.2. Acceptance of the Goods or Services by the Principal does not constitute approval of the Goods or Services or prejudice any claim the Principal may have in connection with the Goods or Services.
- 3.3. Acceptance of the Goods or Services occurs on the earlier of:
  - (a) a representative of the Principal notifying the Contractor in writing that the Goods or Services have been accepted; or
  - (b) the lapse of 14 days after delivery of the Goods to the Delivery Point without the Principal notifying the Contractor in writing that the Goods have been rejected.
- 3.4. The Contractor must allow the Principal or a representative of the Principal, upon 2 Business Days' written notice from the Principal and during standard business hours, to inspect, examine, review and witness tests of the Goods or Services, or the performance of the Goods or Services and to carry out site inspections at the Contractor's premises.

### **4. Title and risk**

- 4.1. Title in the Goods will pass from the Contractor to the Principal upon payment of the Contract Price. The Contractor warrants that title in the Goods will be transferred to the Principal without any encumbrances or liens.
- 4.2. Risk in the Goods will pass to the Principal on acceptance of the Goods in accordance with clause 3.3.

### **5. Variations**

- 5.1. The Contractor must not change the Goods or Services, including an addition, reduction or omission to any part of the Goods or Services except in accordance with a written direction of the Principal in which case the Contractor must comply with that direction and the Contract Price will be adjusted by an amount agreed in writing by the parties.

### **6. Invoicing and Payment**

- 6.1. The Principal must pay the Contract Price to the Contractor for the Goods and the Services.
- 6.2. The Contract Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and, subject to clause 5, no additional amounts will be payable by the Principal.
- 6.3. Subject to clause 6.4, on or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services (as applicable), the Contractor must submit an Invoice to the Principal for the amount due to the Contractor.
- 6.4. If agreed in writing by the Principal, the Contractor may submit an Invoice to the Principal at the end of each month for any Services performed during that or previous

months provided those Services have not already been included in a previous Invoice issued to the Principal.

6.5. An Invoice must include:

- (a) the Purchase Order number;
- (b) a description of the Goods delivered, including the quantity of Goods and the Date of Delivery; or
- (c) a description of the Services performed;
- (d) the amount being claimed for the Goods and the Services;
- (e) the amount of any applicable GST; and
- (f) any further information reasonably requested by the Principal.

6.6. If an invoice does not contain the information required in clause 6.5, the Principal may, at its option, complete the missing details or return the incomplete Invoice to the Contactor in which case the Contractor shall submit a replacement Invoice compliant with clause 6.5.

6.7. Subject to the Contractor submitting an Invoice in accordance with clause 6.5 or a compliant Invoice in accordance with clause 6.6, the Principal must pay the amount payable within 30 days or as otherwise agreed by the Parties.

6.8. Payment under this clause 6 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the Principal, but will be taken to be payment on account only.

6.9. The Contractor agrees that the Principal may:

- (a) deduct from moneys due to the Contractor any money due or which may become due from the Contractor to the Principal under, or in connection with, the Contract; and
- (b) withhold payment of any amounts payable under the Contract pending resolution of any dispute.

## **7. Goods and services tax**

7.1. If GST is imposed on any supply made by the Contractor in connection with the Contract, the Contractor may recover from the Principal, in addition to the Contract Price, an amount equal to the GST payable in respect of that supply.

7.2. The Contractor must first provide the Principal with an Invoice before the Principal will pay the GST amount to the Contractor.

## **8. Quality of goods and services**

8.1. The Contractor must ensure that:

- (a) all Goods or Services conform to the description of the Goods or Services set out in the Contract;
- (b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;

- (c) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principal issues the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be); and
  - (d) any Goods are new and of merchantable quality.
- 8.2. The Contractor warrants that the Contractor's Personnel engaged to perform the Services have all the necessary skills, training and qualifications to carry out the Services in accordance with the Contract.
- 8.3. The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf).

## **9. Defects**

- 9.1. At any time prior to the expiry of the Defects Liability Period, the Contractor must, at its cost and at the Principal's direction, promptly rectify all Defects other than a Defect caused by the negligence of the Principal.
- 9.2. Nothing in this clause 9 prejudices any other right that the Principal may have against the Contractor arising out of the failure of the Contractor to supply the Goods or perform the Services in accordance with the Contract.
- 9.3. If the Principal directs the Contractor to rectify a Defect and the Contractor fails to rectify that Defect within a reasonable time specified by the Principal:
  - (a) the Principal may, without prejudice to any other rights the Principal may have against the Contractor, rectify the Defect itself; and
  - (b) the rectification costs incurred by the Principal will be a debt due and payable on demand from the Contractor to the Principal.
- 9.4. Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

## **10. Confidential information**

- 10.1. The Contractor must keep confidential and not use any Confidential Information or disclose any Confidential Information other than to any of the Contractor's Personnel who need the information to perform the Services or deliver the Goods, to the Contractor's legal advisers or where required by Law.
- 10.2. The Contractor must return to the Principal or destroy or delete as directed by the Principal all Principal Data and Confidential Information that is in the Contractor's possession, custody or control (including but not limited to electronic form) immediately on demand by the Principal or on termination of the Contract, whichever is earlier.
- 10.3. The Contractor acknowledges that the Principal may be subject to the FOI Act and any document relating to the Contract (including the Contract itself) or the provision of Goods or Services may become subject to an application under the FOI Act and where access to the documents are given to third parties pursuant to the FOI Act, the Principal

has no liability to the Contractor whatsoever for providing access to the documents in accordance with the FOI Act.

- 10.4. The Contractor acknowledges that the Principal is subject to the LG Act and information relating to the Contract or the provision of Goods or Services may become publicly available and where information relating to the Contract becomes publicly known, the Principal has no liability to the Contractor whatsoever for making information relating to the Contract publicly available in accordance with the LG Act.

## **11. Data security**

### **11.1. The Contractor must:**

- (a) do all things that a reasonable and prudent person or entity would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person; and
- (b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and

### **11.2. Where Computing Due Diligence Checklist has been completed by the Contractor and mutually agreed by the Principal and Contractor, the Contractor**

- (a) acknowledges that the Principal has entered into the Contract on reliance of the information provided in the Computing Due Diligence Checklist;
- (b) warrants that the information provided in the Computing Due Diligence Checklist provided true and correct; and
- (c) agrees and confirms that that the Computing Due Diligence Checklist forms part of the Contract and where there is any inconsistency between the terms in the Computing Due Diligence Checklist and the terms in Conditions of Contract, the terms in the Computing Due Diligence Checklist shall prevail to the extent of the inconsistency.

### **11.3. If requested by the Principal, acting reasonably, the Contractor must take out and maintain insurance, to the Principal's reasonable satisfaction, to protect against the risks of a Cyber Incident, requires specified in Clause 13 shall apply to this insurance with any necessary modifications.**

## **12. Intellectual property**

### **12.1. Subject to clause 12.4, the Contractor IP remains vested in the Contractor and the Principal IP remains vested in the Principal.**

### **12.2. The Principal will own all Created IP.**

### **12.3. For avoidance of doubt, the Contractor confirms and agrees that the Principal as the owner of all the Created IP is at liberty to:**

- (a) reproduce, amend, crop, alter the Created IP in part or in full at its sole and absolute discretion;

- (b) allow others, either in its own right or as agent for the Principal to use, reproduce, amend, crop or alter the Created IP in full or in part; and
- (c) assign, transfer or grant a licence to others the legal rights in the Created IP whether for a consideration or not.

12.4. The Contractor grants to the Principal a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licenseable licence (with the right to grant sub-licenses on the same terms) to use the Contractor IP to the extent necessary to use the Goods and the Services.

## **13. Insurance**

- 13.1. Where the Contract is for Goods, the Contractor must effect and maintain with a reputable insurer goods insurance covering insurance of the Goods against all risks to the point of delivery at the Delivery Point and, if the Goods are rejected by the Principal, from the time the Contractor collects the Goods from the Principal, for an amount not less than the full replacement costs of the Goods.
- 13.2. Where the Contract is for Services, the Contractor must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:
- (a) public and products liability insurance covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less than \$20 million in respect of each and every claim, unlimited as to the number of occurrences for public liability;
  - (b) workers compensation insurance as required by Law, including cover for common law liability for an amount of not less than \$50 million for any one occurrence;
  - (c) motor vehicle insurance covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third-party liability of not less than \$20 million in respect of each and every claim;
  - (d) insurance covering the Contractor's own property, goods, materials owned, hired, leased or used by the Contractor, for an amount not less than the market value of those insured items; and
  - (e) any additional insurance required by an applicable Law or reasonably requested by the Principal; and
  - (f) where the Contractor is providing professional services, professional indemnity insurance of not less than \$2 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Contractor for any professional services provided by the Contractor and the Contractor's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the Completion Date or the earlier termination of the Contract.
- 13.3. The Contractor must provide to the Principal, within 3 business days of a written request, certificates of currency for each of the insurance policies required under clauses 13.1 and/or 13.2 and/or 11 (as applicable).

13.4. Subject to clause 19.6, if the Contractor subcontracts any part of the Contractor's Obligations, then the Contractor must ensure that every subcontractor effects and maintains all of the insurances required under clause 13.1 and/or 13.2 and/or 11 (or both, as applicable), as appropriate for the work being performed by that subcontractor, before the subcontractor commences any of the Contractor's Obligations.

## **14. Indemnity and limits of liability**

14.1. The Contractor indemnifies the Principal and the Principal's officers, employees, agents and contractors for and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any wrongful act or omission of the Contractor or any of the Contractor's Personnel. This indemnity will be reduced to the extent that the claim or loss is caused by the negligence of the Principal or the Principal's personnel.

14.2. Neither party is liable to the other for Consequential Loss.

## **15. Termination**

15.1. The Principal may terminate the Contract by notice to the Contractor:

- (a) at any time and in its absolute discretion by giving 7 days' notice to the Contractor;
- (b) if the Contractor commits a breach of the Contract and fails to remedy that default within 14 days of the Principal giving notice of the breach;
- (c) immediately if an Insolvency Event occurs; or
- (d) immediately if the Contractor (or its key personnel) could be convicted of a Serious Offence.

15.2. On termination of the Contract, the Contractor must promptly return to the Principal any of the Principal's Confidential Information, property and documents which the Principal owns or in which the Principal has an interest.

15.3. If the Contract is terminated under clause 15.1(a):

- (a) the Principal must pay the Contractor that part of the Contract Price for any Contractor's Obligations performed prior to termination that have not already been paid by the Principal; and
- (b) the Contractor is not entitled to, and the Principal is not liable for, any additional amounts whatsoever.

15.4. Subject to clause 15.3, termination of the Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

## **16. Notices**

16.1. Any notice or other communication relating to the Contract must be in writing, signed by the sender or its agent, and either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

## **17. Access to information**



- 17.1. The Contractor must, within 7 days of receiving a written request by the Principal, provide the Principal with immediate access to the following information contained in records held by the Contractor:
- (a) information that relates directly to the performance of the services provided to the Principal by the Contractor pursuant to the Contract;
  - (b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
  - (c) information received by the Contractor from the Principal to enable it to provide the services pursuant to the Contract.
- 17.2. For the purposes clause of sub-clause 17.1, information does not include:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
  - (b) information that the Contractor is prohibited from disclosing to the Principal by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (c) information that, if disclosed to the Principal, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- 17.3. The Contractor will provide copies of any of the information in sub-clause 17.1, as requested by the Principal, at the Contractor's own expense.
- 17.4. Any failure by the Contractor to comply with any request pursuant to sub-clause 17.1 or 17.3 will be considered a breach of an essential term and will allow the Principal to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of the Principal, then the termination will take effect 7 days after receipt of the notice.

## **18. Disputes**

- 18.1. Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 18.
- 18.2. If any dispute arises between the parties in relation to the Contract, either party must give notice of the dispute to the other party.
- 18.3. A senior representative of each of the parties must promptly meet and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 21 days of the notice referred to in clause 18.2, then either party may issue court proceedings.

## **19. General**

- 19.1. The Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understanding and agreements in respect of its subject matter unless stated otherwise.



- 19.2. Where the Purchase Order notes that Special Conditions are attached, this Conditions of Contract is varied or amended, such Special Conditions shall prevail to the extent of its inconsistency with this Conditions of Contract.
- 19.3. Any agreement or reference by the Principal to the Contractor's Document, is solely for the Contractor's convenience in record keeping only, and such reference or acceptance of Goods and/or Services by the Principal shall not be deemed an acknowledgement of or agreement to any terms or conditions associated with the Contractor's Document or in any way be deemed to modify, alter, supersede or supplement this Condition of Contract.
- 19.4. The Contractor confirms that it is an independent contractor and not an agent of the Principal and nothing in the Contract creates a partnership, trust or agency relationship between the Parties.
- 19.5. The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- 19.6. The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Principal.
- 19.7. The Contractor must not, without the prior written consent of the Principal, which consent must not be unreasonably withheld, subcontract any of the Contractor's Obligations.
- 19.8. No term or provision of the Contract will be construed against a party on the basis that the Contract or the term or provision in question was put forward or drafted by that party.
- 19.9. The Contract is a non-exclusive contract for the supply of Goods or Services and it does not prevent the Principal from entering into other contracts for the supply or performance of the same or similar goods or services with other contractors.
- 19.10. Any provision of the Contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions.
- 19.11. If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are novated to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure.
- 19.12. Clauses 4, 6.8, 6.9, 10, 11, 13.2(f), 14, 15.4 and 19 survive the termination or expiry of the Contract.

## 20. Definitions

**Completion Date** means the date on which performance of the Services is completed.

**Computing Due Diligence Checklist** means the Cloud Computing Pre-Purchase Due Diligence Checklist of the Principal in relation to security and privacy, regulatory compliance and risk management of the Contractor and has been completed by the Contractor prior to the

Principal agreeing to engage the Contractor. **Conditions of Contract** means these general conditions of contract for the supply of goods and services under a purchase order.

**Confidential Information** means the Contract and information (regardless of its form) which is disclosed directly or indirectly by the Principal to the Contractor or Contractor's Personnel which is personal, treated or designated as confidential, or which the Contractor or the Contractor's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Contractor's disclosure or breach of the Contract).

**Consequential Loss** means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

**Contract** means the Conditions of Contract and the relevant Purchase Order.

**Contract Price** means the price for the Goods or Services (exclusive of GST) set out in the Purchase Order.

**Contractor** means the contractor specified in the Purchase Order.

**Contractor's Document** means such document of the Contractor which details and/or identifies the extend and engagement between the Principal and the Contractor in relation to the provision of Goods and/or Services to the Principal.

**Contractor IP** means any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which:

- (a) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Contractor makes available, contributes, brings to or uses in connection with the Contract.

**Contractor's Obligations** means all of the Contractor's obligations under the Contract.

**Contractor's Personnel** means the Contractor's officers, employees, agents and subcontractors and their respective employees and agents.

**Created IP** means the Intellectual Property created by the Contractor in the performance of the Services and/or the supply of the Goods.

**Cyber Incident** means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and Confidential Information residing on that system.

**Date of Delivery** means the date on which the Goods are delivered to the Delivery Point. Day means a business day that is not a Saturday, Sunday, a public holiday in Western Australia or 27, 28, 29, 30 or 31 December.

**Defect** means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

**Defects Liability Period** means a period of 12 months commencing:

- (a) in respect of the Goods, on the Date of Delivery; and
  - (b) in respect of the Services, on the Completion Date,
- and, where relevant, any additional period of time specified in accordance with clause 9.4.

**Delivery Point** means the place set out in the Purchase Order for delivery of the Goods or otherwise notified by the Principal in writing.

**FOI Act** means the *Freedom of Information Act 1992 (WA)*.

**Goods** means any goods, materials, supplies, equipment or other items set out in the Purchase Order.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Insolvency Event** means in respect of the Contractor, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

**Intellectual Property** means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

**Invoice** means any document or record treated by the Commissioner of Taxation as an invoice or as a document entitling a recipient to an input tax credit.

**Law** means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

**LG Act** means the *Local Government Act 1995 (WA)*.

**Principal** means the City of Belmont.

**Principal Data** means information and material of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Goods and/or Services or which are accessed, transmitted or stored using the Contractor's information systems or equipment under the Contract.

**Principal IP** means any Intellectual Property of the Principal (or licensed to the Principal by a third party) which the Principal makes available, contributes, brings to or uses in connection with the Contract.

**Purchase Order** means the Principal's purchase order form for the Goods or Services.

**Serious Offence** means an offence for which an offender could be sentenced to:

- (a) imprisonment; and
- (b) pay a fine of or exceeding \$10,000.00.

**Special Conditions** means conditions that the Contractor and the Principal have agreed to that are specified and particular to the Goods and Service described in the Purchase Order and is only applicable if the Purchase Order specifically attached the specific and particular conditions that the Contractor and the Principal have agreed.

**Services** means any services set out in the Purchase Order, including the delivery of any goods and performance of services ancillary to the Services.

**Tax** means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and

includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

## **21. Interpretation**

### **21.1. In the Contract:**

- (a) a reference to "Goods or Services" is to be read as "Goods or Services, or both of them, as applicable";
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to a clause or party of the Contract is a reference to a clause of, and a party to, the Contract;
- (d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (e) the words 'include', 'includes' and 'including' must be construed without limitation as to what else might be included;
- (f) Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract; and
- (g) Unless otherwise required by the context of subject matter, a covenant by a Party not to do or omit to do any act or thing includes:
  - (i) a covenant not to suffer that act or thing to be done or omitted by any agent or employee of the Party; and
  - (ii) a covenant to do everything necessary to ensure that the act or thing is not done or omitted to be done