

Additional Provisions

Version 002 – dated 1 July 2009



Introduction

In 2006 - 2008, the Department of Public Works undertook a major review of all the procurement terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review also aimed to ensure that these conditions adequately address specific and emerging procurement practices and trends. Industry is very supportive of a single set of terms and conditions across Government as this reduces the costs of the tendering process.

To complement the following documents:

- Conditions of Offer;
- Conditions of Contract;
- Standing Offer Arrangement – Conditions of Offer;
- Standing Offer Arrangement Conditions;
- Information and Communication Technology Standing Offer Arrangement – Conditions of Offer; and
- Information and Communication Technology Standing Offer Arrangement Conditions,

this “**Additional Provisions**” document has been created to assist agencies/departments in developing their Invitation to Offer documents. This Additional Provisions document contains additional precedent / template clauses, schedules and notices which address specific agency/department procurement requirements and which agencies/departments may incorporate into their Invitation to Offer document. If an agency/department identifies particular clauses, schedules and/or notices in these Additional Provisions relevant to its proposed Invitation to Offer, it may cut and paste those into its Invitation to Offer in Part 1, Part 2 (clause 2.2 - Additional Conditions of Offer), Part 5 (clause 5.2 - Additional Conditions of Contract) and Part 6, as applicable. If any agency/department is in doubt about whether to use a certain clause, schedule or notice then it is recommended that legal advice be sought.

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Queensland Government Chief Procurement Officer
Queensland Government Chief Procurement Office
Department of Public Works
GPO Box 123
Brisbane Qld 4001

Further information may be obtained from the Queensland Government Chief Procurement Office's website on www.qgcpo.qld.gov.au

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INVITATION TO OFFER DETAILS – PART 1

NOTE TO PRINCIPAL:

Due to the new Mail Security Screening Provisions which affects major government office buildings within the Brisbane Central Business District and for Emergency Services at Kedron Park, the use of Offer lodgement boxes in public foyers is now prohibited. Agencies who are affected by this new Screening Provision can decide whether they will use the Decipha Tender Box facility or have Offer/s forwarded directly to their own postal or physical address. To allow for both of these scenarios below is appropriate wording which agencies can utilise in their Invitation document.

NOTE TO PRINCIPAL:

Offer Lodgement to Decipha Tender Box Service:

The Principal in choosing to utilise the Decipha Tender Box Service should incorporate the following wording into item 7 of the Invitation to Offer Details.

ITEM	SUMMARY DETAILS
7.	<p>Lodgement of Offer (Clause 8.1) [HARD COPY ONLY]</p> <p>Offers submitted in response to this Invitation will be received by the Principal via Hard Copy:</p> <p>YES: <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If YES:</p> <p>Offerors are required to submit one original and <<insert number of copies required>> copy/s of their Offer.</p> <p>The following information MUST be identified on the front of the sealed package:</p> <ul style="list-style-type: none"> • Invitation No.; • Invitation title; • No. of packages (e.g. 1 of 2 or 2 of 2, etc); • Principal's name; • Contact Officer's name and position title; • Closing Date; • Offeror's name, address & contact details. <p>and addressed to:</p> <p>Queensland Government Tender Box Decipha Pty Ltd 2 Duncan Street, West End Q 4101</p> <p><u>OR</u></p> <p>Queensland Government Tender Box Decipha Pty Ltd GPO Box 2482 BRISBANE Q 4001</p> <p>All packages submitted by the Offeror in relation to this Invitation must be bound together and the entire package should not exceed 615mm wide by 455mm high. If the entire package does exceed the above dimensions then the package must be broken down to comply with these requirements.</p> <p>If NO: please refer to items 8 or 9 of Part 1</p>

OR

NOTE TO PRINCIPAL:**Offer Lodgement to Principal:**

The Principal may, in lieu of using the Decipha Tender Box Services, choose to retain their Offer Box in an area not accessible to the public and direct Offerors to lodge Offers at their postal or physical address, as was the case prior to the introduction of the Mail Security Screening. However, in choosing to do this, responses sent through Australia Post will be subject to Security Screening by Decipha and therefore limited to the package dimensions requirements stated below.

The Principal in choosing to direct Offerors to lodge Offers at their postal or physical address should incorporate the following wording into item 7 of Part 1 - Invitation to Offer Details.

7.	<p>Lodgement of Offer (Clause 8.1) [HARD COPY ONLY]</p> <p>Offers submitted in response to this Invitation will be received by the Principal via Hard Copy:</p> <p>YES: <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If <u>YES</u>:</p> <p>Offerors are required to submit one original and <<insert number of copies required>> copy/s of their Offer.</p> <p>The following information <u>MUST</u> be identified on the front of the sealed package:</p> <ul style="list-style-type: none"> • Invitation to Offer No.; • Invitation to Offer title; • No. of packages (e.g. 1 of 2 or 2 of 2, etc); • Principal's name and address; • Contact Officer's name and position title; and • Closing Date. <p>and addressed to:</p> <p><<insert Principal's postal address of where the Offer is to be submitted>></p> <p><u>OR</u></p> <p><<insert Principal's physical address of where the Offer is to be submitted>></p> <p>All packages submitted by the Offeror in relation to this Invitation must be bound together and the entire package should not exceed 615mm wide by 455mm high. If the entire package does exceed the above dimensions then the package must be broken down to comply with these measurements.</p> <p>Additionally, to accommodate physical delivery of an Offer, Offerors must notify the Contact Officer of the time and date when the Offer package will be delivered to the Principal. A minimum of two (2) days prior written notice is required, unless otherwise agreed between the Parties.</p> <p>If <u>NO</u>: please refer to items 8 or 9 of Part 1</p>
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OR

NOTE TO PRINCIPAL:**Offer Lodgement to Outside the Brisbane Central Business District:**

If due to the Principal's physical location they are not affected by the new Mail Security Screening Provisions then the following wording should be incorporated into item 7 of Part 1 - Invitation to Offer Details.

7.	<p>Lodgement of Offer (Clause 8.1) [HARD COPY ONLY]</p> <p>Offers submitted in response to this Invitation will be received by the Principal via Hard Copy:</p> <p>YES: <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If YES:</p> <p>Offerors are required to submit one original and <<insert number of copies required>> copy/s of their Offer.</p> <p>The following information should be included on the front of the sealed package:</p> <ul style="list-style-type: none"> • Invitation to Offer No.; • Invitation to Offer title; • Principal's name and address; • Contact Officer's name; and • Closing Date. <p>and addressed to:</p> <p><<insert Principal's postal address of where the Offer is to be submitted>></p> <p><u>OR</u></p> <p><<insert Principal's physical address of where the Offer is to be submitted>></p> <p>If NO: please refer to items 8 or 9 of Part 1</p>
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<<insert number>>	<p>Complaint Management (clause <<insert clause number>>)</p> <p><<insert the following details of the Principal's nominated Complaint Manager responsible for this Invitation>></p> <p>Name: <<insert name>></p> <p>Position Title: <<insert position title of the Complaint Manager>></p> <p>Agency: <<insert name of Principal>></p> <p>Email: <<insert email address of the Complaint Manager>></p>
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ADDITIONAL CONDITIONS OF OFFER – PART 2

ADDITIONAL DEFINITIONS FOR CONDITIONS OF OFFER

“Sustainable Procurement” means that when buying goods and services, organisations practicing sustainable procurement will consider:

- strategies to avoid unnecessary consumption and manage demand
- minimising environmental impacts of the goods and services over the whole-of-life of the goods and services
- suppliers’ socially responsible practices including compliance with legislative obligations to employees
- value for money over the whole-of-life of the goods and services, rather than just initial cost

ADDITIONAL CLAUSES FOR CONDITIONS OF OFFER

NOTE TO PRINCIPAL:

- The Principal may select any of the following clauses and include them as Additional Conditions of Offer in the Invitation to Offer template – Part 2.
- Please note that the Principal will be required to amend the clause numbering in the Invitation to Offer template.

1. COMPLAINT MANAGEMENT

- 1.1 If at any time during the Invitation Process an Offeror considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Contact Officer, the Offeror should contact the Principal’s Complaint Manager, specified in item <<insert item number>> of Part 1 and ask for the matter to be dealt with in accordance with the Principal’s complaint management process. Any request should be accompanied by the following:
- (a) dates and details of issue relevant to this dispute;
 - (b) parties involved;
 - (c) issues that require resolution;
 - (d) outcomes the Offeror considers appropriate for resolving any issues; and
 - (e) Offeror’s contact details.

2. CONSORTIUM

- 2.1 Offers submitted on behalf of a consortium must identify:
- (a) one entity as the Offeror and this party will undertake the role of Contractor; and
 - (b) the other members of the consortium as the proposed sub-contractors.
- 2.2 If an Offer is submitted and identifies more than one entity as the Offeror, this will result in the Offer being non-conforming.

3. DISCLOSURE OF INFORMATION

- 3.1 The Principal will publish a summary of the Contract or Standing Offer Arrangement, awarded with a value exceeding \$100,000.00 on the Queensland Government Marketplace website, at the conclusion of this Invitation Process:

4. FINANCIAL, CORPORATE OR OTHER RELEVANT CHECKS

- 4.1 The Principal reserves the right to conduct corporate, financial and/or other relevant checks as necessary on any Offeror/s.

5. FINANCIAL VIABILITY

- 5.1 Offerors must demonstrate a sound financial record highlighting a viable long-term business model. Each Offeror must provide financial information of sufficient volume and quantity and other supporting documentation to enable the Principal to undertake a risk assessment of the financial position of the Offeror, including, but not limited to:
- (a) for public companies, large proprietary limited companies and other companies required to lodge their financial statements with ASIC, a copy of its latest three annual reports;
 - (b) for an Offeror not covered by (a) a copy of the Offeror’s financial statements for the most recent three financial years and copies of any interim accounts (if any) after the latest balance date, certified by the Offeror or an Auditor (and where the Offeror is a company by a director of the company)
 - (c) details of the financial and commercial activities undertaken by the Offeror if not provided in (a) or (b);
 - (d) details of the finance facilities available, the undrawn balances and any conditions on the use of these facilities;

- (e) a graphical representation of the Offeror's group structure, and details of the financial (including credit support arrangements) and other commercial activities and arrangements between the group (if applicable); and
- (f) details of any agreements between the Offeror's group entities to provide the technical, financial, managerial, intellectual property and operational capacity to provide the Goods and/or Services (if applicable).

6. IMPORTED GOODS

- 6.1 To enable Offers to be evaluated on the same level, variations in relation to exchange rate fluctuations should be calculated by the Offeror in its Offer on the following basis:
- (a) the Price offered shall be calculated on the selling exchange rate on <<insert date>>;
 - (b) the Price to be invoiced and paid shall be calculated on the selling exchange rate on the date of arrival at discharge port as established by customs entry; and
 - (c) selling exchange rates for the above calculations shall be as quoted by <<insert name of financial institution>> (Spot Selling).
- 6.2 Alternative proposals for the treatment of exchange rate variations in an Offer may be considered by the Principal.
- 6.3 Information regarding the exchange rate fluctuations must be specified in Response Form <<insert Response Form number>>.
- 6.4 Alternative currency submitted by the Offeror may be considered by the Principal.

NOTE TO PRINCIPAL:

If this clause is to be included in the Additional Conditions of Offer – Part 2 of the Invitation to Offer template, then “Response Form – Conditions Relating to Price Variations” and “Response Form - Cost Breakdown of Price” must also be included in Part 6 of the Invitation.

7. INDUSTRY BRIEFING

- 7.1 An Industry briefing will take place on <<insert day, date and time>> at <<insert details of venue>>.
- 7.2 **Offerors who do not attend this industry briefing will still be eligible to submit an Offer for evaluation.** However, if an Offeror or potential Offeror does not attend the industry briefing the Principal will not be required to provide any information which is delivered during the briefing.
- 7.3 The Industry briefing provides the opportunity for potential Offerors to gain a clearer understanding of particular areas of the Invitation including but not limited to:
- (a) background and Principal's strategy;
 - (b) Overview of the Specifications;
 - (c) Insurance requirements;
 - (d) Delivery requirements;
 - (e) Conditions of Offer;
 - (f) Conditions of Contract; and
 - (g) Submitting an Offer.
- 7.4 Attendance at the Industry Briefing is limited to <<insert number>> representatives from each potential Offeror.
- 7.5 Offerors are to advise details of attendees to this briefing by <<insert day, date and time>>, to <<insert Contact Officer's name and email address>>.
- 7.6 Offerors are advised that the provisions specified in clause 8 of the Conditions of Offer Version 002 – dated 1 July 2009 will apply to any Industry Briefing conducted as a result of this Invitation Process.

8. INSPECTION OF OFFEROR'S PREMISES

- 8.1 During the Invitation Process, the Principal may wish to conduct a site inspection of the Offeror's facilities to ensure that the premises meet the requirements described in the Specifications. Any inspection by the Principal under this clause does not operate as a representation or warranty by the Principal that the premises meet the requirements described in the Specifications or relieve the Successful Offeror of its obligations to ensure the premises meet the requirements described in the Specifications.

9. PACKAGING AND DELIVERY

- 9.1 Goods must be supplied in the pack sizes as specified in the Specifications. The Offeror may submit alternative pack sizes where, in the opinion of the Offeror it is more economical in production and/or delivery.
- 9.2 Outer packaging shall be of sufficient quality to withstand the rigours of storage and transit and shall be in accordance with the requirements specified within the Specifications.
- 9.3 Delivery shall be on the basis of free into store.

10. PAYMENT IN AREARS

- 10.1 The Principal will only consider Offers which incorporate payment in arrears for Goods and/or Services already provided. The Principal reserves the right to negotiate payment terms with any or all Offerors at the discretion of the Principal. Where deemed necessary, the Principal may require the Successful Offeror to provide a Security in accordance with clause 14 of the Conditions of Contract Version 002 – dated 1 July 2009.

11. PRESENTATION/DEMONSTRATION

- 11.1 The Principal reserves the right to request the Offeror to conduct a presentation and/or demonstration of the offered Goods within <<insert number of days>> Business Days, or such other period as agreed between the Parties, from receipt of notice. Failure to comply with all or any of these requirements may result in an Offer being considered non-conforming.

12. QUALITY ASSURANCE (High Risk)

- 12.1 In accordance with the Queensland Government's Quality Assurance Policy (www.qgm.qld.gov.au/08_qa/index.htm), the Principal has assessed the level of risk for the Deliverable as being **high** and as a result a certified Quality Management System or a certificated system developed from approved industry/professional systems or standards is required. The Successful Offeror shall have in place an approved Quality Management System, explicitly defined through a policy statement, procedures and where applicable, work instructions satisfying the requirements of the Australian/New Zealand Standard AS/NZS ISO 9001:2000 or the approved industry/professional systems or standards.
- 12.2 The system should define the organizational structure, levels of authority and interface arrangements of personnel involved, and also identify the procedures necessary to ensure effective implementation of the various activities of the Offeror associated with the quality system to ensure that the Goods and/or Services consistently comply with the Specifications and/or Conditions of Contract Version 002 – dated 1 July 2009.

NOTE TO PRINCIPAL:

If this clause is to be included in the Additional Conditions of Offer – Part 2 of the Invitation to Offer template, then "Response Form – Quality Assurance" must also be included in Part 6 of the Invitation.

13. QUALITY ASSURANCE (Moderate Risk)

- 13.1 In accordance with the Queensland Government's Quality Assurance Policy (www.qgm.qld.gov.au/08_qa/index.htm), the Principal has assessed the level of risk for the Deliverable as being **moderate**. As a result selected elements of the AS/NZS ISO 9001:2000 Standard or approved industry/professional system or standards are required to be addressed and successfully evaluated by Queensland Government Evaluators or Auditors.
- 13.2 The associated elements of the AS/NZS ISO 9001:2000 Standard relevant to the Deliverable are <<insert relevant elements>>.

NOTE TO PRINCIPAL:

If this clause is to be included in the Additional Conditions of Offer – Part 2 of the Invitation to Offer template, then "Response Form – Quality Assurance" must also be included in Part 6 of the Invitation.

14. QUALITY ASSURANCE (Low Risk)

- 14.1 In accordance with the Queensland Government's Quality Assurance Policy (www.qgm.qld.gov.au/08_qa/index.htm), the Principal has assessed the level of risk for the Deliverable as being **low** and as a result a formalised Quality Management System is not required. Formal Quality Assurance recognition is however well regarded and Offerors are encouraged to submit appropriate details if applicable.

15. REFERENCE REPORTS

- 15.1 Offerors are required to provide details of <<insert number>> major corporate and/or Government clients of the Offeror including contact names, telephone number and positions held as specified in Response Form <<insert Response Form number>>. The Principal reserves the right to contact these clients during the evaluation process to obtain independent testimony on the Offeror's previous performance.

16. SAMPLES

- 16.1 A sample of the Goods offered must be submitted with the Offer. The sample/s may, if specified by the Principal in the Specifications, be submitted under separate cover, suitably packed and clearly identified with the Offeror's name and clearly marked with the Invitation Number or included with the Offer. Delivery arrangements can be made with the Contact Officer. The Principal reserves the right not to consider any Offer not accompanied by such sample/s.
- 16.2 The Principal reserves the right to retain samples provided by Offerors for a period of approximately <<insert number of months>> months following the announcement of the outcome of the Invitation.
- 16.3 The Principal will retain the successful Offeror's sample for the duration of the <<insert either Arrangement or Contract>>.

17. SITE VISITS

- 17.1 The Principal invites Offerors to attend a site visit at <<insert site details>> on <<insert date>> from <<insert time>> to view <<insert description>>. Offerors are requested to provide written confirmation of their intention to attend a site visit to the Contact Officer or their nominated representative, within <<insert number of days>> Business Days of the site visit. A maximum of <<insert number of representatives>> representatives of an Offeror may attend a site visit.
- 17.2 It is the responsibility of each Offeror to:
- (a) satisfy itself as to the condition of the site or anything located at the site; and
 - (b) pay its own costs of investigating, preparing and lodging an Offer.
- 17.3 The Principal does not give any warranty as to the condition of the site or anything located at the site.

18. SUPPORT AND MAINTENANCE

- 18.1 The Principal requires Offerors to include a copy of their proposed support and maintenance agreement with their Offer. The Principal reserves the right to negotiate the terms and conditions of the support and maintenance agreement for the Goods as outlined in the Specifications.

NOTE TO PRINCIPAL:

This clause must be inserted into the Additional Conditions of Offer where the Support and Maintenance forms part of the Deliverable.

19. SUSTAINABILITY

- 19.1 Offerors are required to provide details in item Response Form <<insert number>> , on the Goods and/or Services offered with regards to Sustainable Procurement. Preference may be given to socially and ethically responsible Offerors where the Goods and/or Services have less impact on the environment and human health compared with competing Goods and/or Services that serve the same purpose. Sustainability impacts and issues which could be considered may include, but are not limited to energy efficiency; water efficiency, packaging; recycled content; recycle-ability; re-usability or options for extending life; hazardous substances content; emissions of pollutants; disposal impacts; eco-design and the sustainability commitment and performance of the supplier.

NOTE TO PRINCIPAL:

If this clause is to be included in the Additional Conditions of Offer – Part 2 of the Invitation to Offer template, then a definition for “Sustainable Procurement” must also be included. This definition is located on page 7 of this Additional Provisions document. .

In Part 6 of the Invitation to Offer template, please include “Response Form – Sustainability”

ADDITIONAL CONDITIONS OF CONTRACT – PART 5

ADDITIONAL DEFINITIONS FOR CONDITIONS OF CONTRACT

“**Customer Supplied Items**” or “**CSI**” means the items supplied by the Customer under the Contract and specified in item <<insert item number>> of Schedule A;

“**Liquidated Damages**” means an amount, as agreed between the Parties, as a genuine pre-estimate of damages to be recoverable by the Customer should the Contractor be in breach of the Contract;

“**Transition-Out Plan**” means the transition-out plan prepared by the Contractor which meets the Customer’s requirements.

ADDITIONAL CLAUSES FOR CONDITIONS OF CONTRACT

NOTE TO CUSTOMER:

- The Customer may select any of the following clauses and include them as Additional Conditions of Contract in the Invitation.
- Please note that the Customer will be required to amend the clause numbering in the Invitation to Offer template.

1. Customer Supplied Items (CSI)

- 1.1 The Customer shall provide the CSI specified in item <<insert item number >> of Schedule A and the CSI shall comply with the Contract.
- 1.2 CSI, which include premises or equipment, must be safe for the purposes for which they are being used, provided those premises and that equipment are used in accordance with the Contractor’s obligations under the Contract.
- 1.3 CSI remains the property of the Customer. If no longer required for the purposes of the Contract, or at the conclusion or termination of the Contract, the CSI must be returned to the Customer as soon as practicable, unless otherwise specified by the Customer.
- 1.4 The Contractor must:
 - (a) take all reasonable care of all CSI including accounting for, preserving, installing or handling of CSI;
 - (b) pay the costs, if any, set out in the Contract, in connection with the CSI;
 - (c) promptly inform the Customer of any loss, destruction or damage to any CSI;
 - (d) comply with any instruction of the Customer for preserving, forwarding or disposing of any damaged CSI at its own cost;
 - (e) indemnify the Customer for any loss or destruction of, or damage to any CSI caused by any act or omission of the Contractor, its officers, employees or subcontractors;
 - (f) not use or allow others to use any CSI other than for the purposes of the Contract without the prior written approval of the Customer;
 - (g) not part with possession of any CSI unless the Customer has provided its consent;
 - (h) not create or allow the creation of any lien, charge or mortgage over any CSI; and
 - (i) not substantially modify any CSI without the prior written approval of the Customer;
- 1.5 Provided the Contractor complies with its obligations under 1.4(c), the Customer shall repair or replace the CSI within a reasonable time of becoming aware that the CSI no longer complies with the Contract.
- 1.6 The Customer shall provide the CSI in a timely manner and in accordance with any reasonable requirements as specified in the Contract.

NOTE TO CUSTOMER:

- If this clause is to be included in the Additional Conditions of Contract – Part 5 of the Invitation to Offer template, then a definition for “Customer Supplied Items” or CSI” must also be included. This definition is located in the definitions contained within “Additional Conditions of Contract – Part 5” of this document. .

2. CONTRACTOR’S REPRESENTATION

- 2.1 The Contractor has represented itself and acknowledges itself as being a skilled and competent professional in the particular fields relevant to the Services. The Contractor agrees that it will perform the Services to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular fields relevant to the Services.

2.2 The Contractor acknowledges that the Customer has entered into the Contract on reliance upon the foregoing representation.

OR

2.1(#) The Contractor has represented itself and acknowledges itself as being a specialist or expert in the particular fields relevant to the Services. The Contractor agrees that it will perform the Services to the standard of skill, care and diligence expected of a specialist or expert in the particular fields.

2.2(#) The Contractor acknowledges that the Customer has entered into the Contract on reliance upon the foregoing representation.

NOTE TO CUSTOMER:

- This clause relates to a “*professional contractor*” which was previously termed “*consultant*”.
 - For a Contractor to be classed as a “*professional contractor*” all the elements contained within the “**Revised definition for Consultants and Contractor**” must be present. This revised definition is available on Queensland Government Chief Procurement Office’s website (http://www.gccpo.qld.gov.au/02_policy/better_purch.htm). Other reference material is the Better Procurement Guide for “Engaging and Managing Consultants”.
 - The Customer must consider whether the Contractor should have *Professional Indemnity or Errors and Omissions Insurance* for the applicable Contract/Arrangement.
- (#) The **clauses** prefixed with this asterisk relates to a Contractor who is a specialist or expert in the particular field relevant to the Services.

17. INTELLECTUAL PROPERTY RIGHTS – NON-CONSULTATIVE CO-OWNERSHIP

- 17.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest jointly in the Customer and the Contractor as specified in item 17 of Schedule A.
- 17.2 If item 17 of Schedule A is blank, title to, and Intellectual Property Rights in, New Contract Material vests in the Customer.
- 17.3 If item 17 of Schedule A specifies that this clause 17.3 applies title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest jointly in the Customer and Contractor. Each Party is entitled to:
- (a) use,
 - (b) exploit (whether commercially or otherwise) for any purpose, and/or
 - (c) otherwise exercise all rights comprised in the copyright in relation to, the New Contract Material without the further consent of the other Party.
- 17.4 Neither Party is required to account to the other in relation to any of the proceeds derived in any way from the exercise of rights granted under clause 17.3.
- 17.5 This Contract does not affect the Intellectual Property Rights in Existing Contract Material but the Contractor grants, and will ensure that relevant third parties grant to the Customer, a paid up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence), in respect of the Existing Contract Material but only as part of the Contract Material (and any future development of the Contract Material), without additional costs to the Customer to:
- (a) use,
 - (b) exploit (whether commercially or otherwise) for any purpose, and/or
 - (c) otherwise exercise all rights comprised in the copyright in relation to, the Existing Contract Material but only as part of the Contract Material (and of any future development of that material).
- 17.6 Intellectual Property Rights in Records will remain vested in the Customer.
- 17.7 If the Contractor is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the individual’s Moral Rights and without limiting this, the individual consents to:
- (a) the Customer determining in its sole discretion whether or not the individual will be attributed as author of the Contract Material comprised in a Deliverable and if the individual will be attributed, that attribution will occur in a manner acceptable to the Customer;
 - (b) any amendments, delegations/destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the discretion of the Customer;
 - (c) the publication or communication of the Contract Material or any part thereof; and
 - (d) any other acts or omissions as specified in item 17 of Schedule A.
- 17.8 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:

- (a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under this Contract in full, without impediment or cost to the Customer; and
- (b) without limiting clause 17.8(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the person's Moral Rights, including a consent to the acts or omissions specified in clause 17.7(a) to (d).

NOTE TO CUSTOMER:

- This clause has been numbered to correspond with clause 17 of the Conditions of Contract – Version 002 – dated 1 July 2009 or will need to be renumbered to clause 22 to correspond with the Standing Offer Arrangement Conditions – Version 002 – dated 1 July 2009. This clause if required, will replace the current clause/s contained within the above documents.
- As joint ownership in Intellectual Property Rights is very complex, **legal advice should be sought** prior to, the commencement of negotiations, or establishing the Contract/Arrangement, to ensure that the correct distribution of ownership and other related issues are adequately addressed.

4. LIQUIDATED DAMAGES

- 4.1 Subject to clause <<insert clause number>>.4 the Contractor must, if specified in item <<insert item number>> of Schedule A, pay Liquidated Damages for a delay in delivering the Goods and/or providing the Services, to the extent the delay was caused or contributed to by the Contractor.
- 4.2 Each Party acknowledges that the Liquidated Damages amount is a genuine and realistic pre-estimate of the loss and damage the Customer will suffer as a result of a delay.
- 4.3 Subject to clause <<insert clause number xxx>>.1, Liquidated Damages are payable by the Contractor until the earliest of the following:
 - (a) completion of the Deliverable by the Contractor, which is the subject of the delay;
 - (b) a period of ninety (90) days, or as otherwise specified in item <<insert item number>> of Schedule A, has expired; or
 - (c) some other period as otherwise agreed in writing between the Customer and the Contractor.
- 4.4 Where the Customer has granted an extension of time, no Liquidated Damages are payable for the period of extension. However, if the Contractor has paid Liquidated Damages prior to the extension of time being granted, then the Customer must repay the Contractor any Liquidated Damages for the period during which the extension has been granted.
- 4.5 During any period where Liquidated Damages are payable, the Liquidated Damages shall be the sole measure of the Principal's loss and damage for the Contractor's delay in performing or completing the Deliverable.
- 4.6 Exercise of rights pursuant to this clause <<insert this clause number>> shall be without prejudice to any other right of action or remedy, which has accrued or may accrue to the Customer.

NOTE TO CUSTOMER:

- If this clause is to be included in the Additional Conditions of Contract – Part 5 of the Invitation to Offer template, then a definition for "Liquidated Damages" must also be included. This definition is located in the definitions contained within "Additional Conditions of Contract – Part 5" of this document. .
- As liquidated damages is very complex, **legal advice should be sought** prior to, the commencement of negotiations, or establishing the Contract/Arrangement, to ensure that the process is followed.

5. PERFORMANCE EVALUATION

- 5.1 The Contractor shall attend contract performance evaluation meetings and provide such documentation and data as specified in the Schedule <<insert Schedule number>>.

6. TRANSITION OUT PLAN

- 6.1 The Contractor shall develop to the Customer's reasonable satisfaction a comprehensive Transition-Out Plan for the Customer's equipment or system. The Parties shall annually, or upon such other period as deemed appropriate by the Customer, review the Transition-Out Plan and the Contractor shall implement any agreed changes.
- 6.2 On termination or expiry of the Contract, in whole or in part, the Contractor shall, unless other specified in writing by the Customer, provide such assistance as is reasonably necessary to facilitate an orderly prompt and efficient transition of the Customer's data to an alternative service provided or to the Customer, at the Customer's discretion.

NOTE TO CUSTOMER:

- If this clause is to be included in the "Additional Conditions of Contract – Part 5" of the Invitation to Offer template, then a definition for "Transition-Out Plan" must also be included. This definition is located in the definitions contained within "Additional Conditions of Contract – Part 5" of this document. .

ADDITIONAL RESPONSE FORMS – PART 6

Response Form 6.2 - Goods and/or Services including Price

The Goods and/or Services to be provided by the Contractor are as follows:

Description	Unit Price (Excl. GST)	Price (GST component only)	Total Price (Incl. GST)
List any delivery and installation details and charges applicable to this Offer.			
List any taxes, duties or other charges and their details associated with each Good and/or Service applicable to this Offer.			
List any 'other pricing' and their details associated with each Goods and/or Services applicable to this Offer.			
TOTAL OFFER PRICE			\$

Other Pricing Issues:

Description	Response
Offerors must specify each and every condition that may affect the pricing offered in this Response Form.	
Please specify any other price that may be charged to the Eligible Customer, for the supply of the Goods and/or Services, <u>under this Invitation</u> . For each price, please specify: <ul style="list-style-type: none"> • nature of the pricing; • the circumstances under which it will be incurred; and • total price (including GST) 	

Response Form 6.2 -Goods and/or Services including Price (continued)

<p>Specify if the Prices offered are either:</p> <p>"Firm" - that is the price does not change for the duration of the Contract, unless the scope of the work changes;</p> <p>OR</p> <p>"Fixed" - that is the price is firm in time and is subject to fluctuations only in economic circumstances (such as exchange rates or consumer price index) and which must be specified in this Response Form.</p> <p>If 'Yes', to "Fixed", please specify the period from the Contract commencement date or date, within which the proposed pricing will remain firm prior to the applicable of the variables.</p> <p>Please specify whether the 'Fixed' Pricing is subject to:</p> <ul style="list-style-type: none"> • Exchange Rate fluctuations; • Consumer Price Index - variations during the previous year; or • Other (please provide comprehensive details and how this will impact on the specified Pricing). <p><i>Please note any 'Fixed' Pricing movements will be in accordance with clause 10 of the Conditions of Contract.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>OR</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Period:..... or Date:.....</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If "Yes", please specify full details</p>
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Discount and Rebate:

Offerors are required to provide details of any proposed discount or rebate arrangements. Please complete the following table with sufficient detail, including situations where the discount/rebate offered will not apply.

Description	Response
<p>Discount:</p> <p>Payment shall be nett thirty (30) days unless an early settlement discount is offered.</p>	<p>TRADE _____ %</p> <p>SETTLEMENT _____ % _____ DAYS</p>
<p>Specify the quantity break of discounts offered.</p>	
<p>Specify the circumstances under which a discount becomes payable.</p>	
<p>Provide a detailed description of how the discount arrangement will operate.</p>	
<p>Rebates:</p> <p>Specify the quantity of rebate offered (e.g. rebate offered as additional services at no charge).</p>	
<p>Specify the circumstances under which a rebate becomes payable.</p>	
<p>Provide a detailed description of how the rebate arrangement will operate.</p>	

Response Form 6.2 - Goods and/or Services including Price (continued)

Proposed Project Implementation and Payment Plan

Milestone/Date	Description of Work to be Undertaken	Pricing (Incl. GST)

Offeror's Name:	
Date:	

Response Form 6.4 - Schedule for Conditions of Contract

NOTE TO PRINCIPAL:

- The Principal may select the following items and to be included in Schedule A of the Invitation to Offer template, where applicable.
- Please note the Principal must complete those items shaded in grey
- Please note that the Principal will be required to amend the item numbering within Schedule A of the Invitation to Offer (template).

SCHEDULE A - CONTRACT PARTICULARS

ITEM	INFORMATION	DETAILS
1.	<p>Customer Supplied Items (clause <<insert clause number>> of Part 5 of the Invitation)</p> <p>[Specify the CSI which the Principal shall provide to the Contractor.]</p>	
2.	<p>Imported Goods (clause <<insert clause number>> of Part 5 of the Invitation)</p> <p>Are the Goods manufactured in</p> <p>(a) Australia? If "YES" to being manufactured in Australia, please specify the City/Town and State; or</p> <p>(b) Overseas? If "YES" to being manufactured overseas:</p> <p>(i) please specify the country of manufacture;</p> <p>(ii) please complete the following Response Form</p> <ul style="list-style-type: none"> • <<insert Response Form number>> – Conditions Relating to Price Variations; and • <<insert Response Form number>> - Cost Breakdown of Price <p>Is the offered Pricing other than in Australian currency?]</p> <p>If "YES" to alternative currency, please specify the currency and Country of origin.</p>	<p>YES: <input type="checkbox"/> NO: <input type="checkbox"/></p> <p>YES: <input type="checkbox"/> NO: <input type="checkbox"/></p> <p>YES: <input type="checkbox"/> NO: <input type="checkbox"/></p> <p>..... currency Country</p>
17. (#)	<p>Intellectual Property Rights (clause 17 - Conditions of Contract):</p> <p>New Contract Material vests jointly in the Customer and Contractor.</p> <p>Moral Rights (clause 17 – Conditions of Contract)</p> <p>17.6(d) [List any specific acts or omissions in relation to Moral Rights in addition to those specified in clause 17.6(a) – (c) that are being consented to.</p> <p>[If no additional acts or omissions are to be specified insert 'NIL' or 'Not Applicable'].</p>	<p>YES: <input type="checkbox"/> NO: <input type="checkbox"/></p>

Response Form 6.4 - Schedule for Conditions of Contract

4.	<p>Liquidated Damages (clause <<insert clause number>> of Part 5 of the Invitation)</p> <p>[Specify the genuine pre-estimated amount, payable by the Contractor to the Customer.]</p> <p>[Specify if the Liquidated Damages apply to a milestone/stage.] If YES, specify the relevant milestone/stages.</p> <p>[Specify the period of days, if other than 90 days, for which the Liquidated Damages are to apply.]</p>	<p>YES: <input type="checkbox"/> NO: <input type="checkbox"/></p> <p>..... days</p>
5.	<p>Performance Evaluation (clause <<insert clause number>> of Part 5 of the Invitation)</p> <p>[Specify the frequency of the performance evaluation meetings].</p> <p>[Specify the documentation and data which the Contractor is to provide at these meetings].</p>	
6.	<p>Support and Maintenance (clause <<insert clause number>> of Part 5 of the Invitation)</p> <p>[Specify the following:</p> <ul style="list-style-type: none"> (a) response times and procedures; (b) escalation procedures and paths; and (c) service support details, <p>relevant to the Support and Maintenance agreement]</p> <p>[Specify the contact person and their details relevant to the support and maintenance enquiries.]</p>	

NOTE TO PRINCIPAL:

(#) *Item 17 – relates to item 17 in Schedule A of the Conditions of Contract Version 002 – dated 1 July 2009 and Invitation to Offer (template) document. This item if inserted into the Invitation to Offer (template) will replace the current item 17 of Schedule A.*

Response Form 6.<<insert number>> - Consortium Details

If the Offer is from a consortium, complete the following details for the entity that will take the role of Contractor and each other entity who will be sub-contractors (add extra consortium details as required).	
CONTRACTOR DETAILS	
Name of Contractor:	
<ul style="list-style-type: none"> • if Contractor is a company – specify the full company name; • if Contractor is a trust – specify the names of each trustee of the trust; • if Offeror trades under a business name, specify the registered business name; or • if Offeror is an individual or partnership, specify the full name of each individual or partner. 	
Contractor's Address:	
Contractor's ACN (if applicable)	
Contractor's ABN:	
Relevant Experience:	
Details of Involvement:	
Additional Comments:	

CONSORTIUM MEMBER DETAILS – PROPOSED SUB-CONTRACTOR	
Name of sub-contractor	
<ul style="list-style-type: none"> • if Contractor is a company – specify the full company name; • if Contractor is a trust – specify the names of each trustee of the trust; • if Offeror trades under a business name, specify the registered business name; or • if Offeror is an individual or partnership, specify the full name of each individual or partner. 	
Sub-contractor's Address:	
Sub-contractor's ACN:	
Sub-contractor's ABN:	
Relevant Experience:	
Details of Involvement:	
Additional Comments:	

Response Form 6.<<insert number>> - Consortium Details (continued)

CONSORTIUM MEMBER DETAILS – PROPOSED SUB-CONTRACTOR Name of Business / Corporation / Person: (Businesses list all proprietors) <ul style="list-style-type: none">• if Contractor is a company – specify the full company name;• if Contractor is a trust – specify the names of each trustee of the trust;• if Offeror trades under a business name, specify the registered business name; or• if Offeror is an individual or partnership, specify the full name of each individual or partner.	
Sub-contractor's Address:	
Sub-contractor's ACN:	
Sub-contractor's ABN:	
Relevant Experience:	
Details of Involvement:	
Additional Comments:	

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> - Offeror's Nominated Reference Sites

In this Response Schedule, Offerors must provide details of at least three clients for whom similar work has been previously undertaken. Offerors must ensure persons nominated below are agreeable to being contacted with regards to this Offer. It is preferred that at least one of the references be from a Government jurisdiction.

Reference #1:	
Company Name::	
Contact Name:	
Position Title:	
Contact Address:	
Contact Phone:	
Contact Email:	
Detailed description of a previous project undertaken for this client:	
Approximate timeframe of the above previous project undertaken:	
Approximate contract value of the above previous project:	\$
Additional Comments:	

Reference #2:	
Company Name::	
Contact Name:	
Position Title:	
Contact Address:	
Contact Phone:	
Contact Email:	
Detailed description of a previous project undertaken for this client:	
Approximate timeframe of the above previous project undertaken:	
Approximate contract value of the above previous project:	\$
Additional Comments:	

Response Form 6.<<insert number>> - Offeror's Nominated Reference Sites (continued)

Reference #3:	
Company Name:	
Contact Name:	
Position Title:	
Contact Address:	
Contact Phone:	
Contact Email:	
Detailed description of a previous project undertaken for this client:	
Approximate timeframe of the above previous project undertaken:	
Approximate contract value of the above previous project:	\$
Additional Comments:	

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> - Quality Assurance

1. Do you have the Quality Assurance Certification system as specified in this Invitation?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If "YES" please attach copies of your Quality Assurance Certificate and capability statement and complete Question 5. If "NO", please proceed to Question 2.					
2. Do you have an approved industry/professional system as specified in this Invitation?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If "YES", please attach evidence of compliance (e.g. Certificate/Letter of Recognition/Letter of Compliance) and capability statement and complete Question 4b. If "NO" please proceed to Question 3.					
3. Do you have a Quality Assurance System recognised by the Queensland Government as self-assessed?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If "YES", please attach a copy of your Letter of Recognition Self-Assessed Quality Assured Supplier" issued by the Queensland Government and complete Question 5. If "NO" please proceed to Question 4a.					
4a Do you have a system for ensuring consistency of Goods and/or Service?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If "YES", please provide details of the system and attach to your Offer. If "NO" please proceed to Question 4b.					
3b Do you have a Certification/Industry Body commissioned to carry out an audit of your system?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If "YES", please indicate: Name of Certification/Industry Body: Date of last External Audit: If "NO", are you prepared to submit to an external audit by the Queensland Government/Industry Body? Yes <input type="checkbox"/> No <input type="checkbox"/>					
5. Quality Assurance Contact Details.					
Name of Offeror's representative:					
Position Title of Offeror's representative:					
Telephone No.:					
Facsimile No.:					
Email Address:					

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> - Offeror's Attributes

In this Schedule, Offerors are required to provide details of their organisational experience and provide details that demonstrate their ability to supply and support the Goods and/or Services outlined in the Specifications.

If the response is from a consortium, then the ability of each proposed sub-contractor forming the consortium will be evaluated on its ability to deliver and implement its component, and this should be fully addressed in the response.

Offerors must address each point below, detailing concisely how they:

(a) will be capable of providing the Eligible Customer with innovative solutions, which will reduce their costs and can be delivered in commercially competitive time frames;

(b) have a proven track record of timely delivery, cost effective and efficient network solutions;

(c) can deliver in a timely manner any proposed (or future), voice and support services;

(d) will be capable of providing quality support service and fault restoration throughout Queensland;

(e) can guarantee the reliability and fitness for purpose of any offered Goods and/or Services;

(f) will sustain the functionality and the long-term viability and future direction of the offered Goods and/or Services;

(g) will provide an ease of migration from the existing services utilised by the Eligible Customer to the offered solution;

(h) can provide the scalability of offered Goods and/or Services;

(i) will implement security to standards that meet the requirements of the Eligible Customer and conform to Information Standard 18 (IS18) – Information Security;

Response Form 6.<<insert number>> - Offeror's Attributes (continued)

(j)	provide training on the use and support of the offered Goods and/or Services;
(k)	will ensure the resilience of any solution offered (taking into account natural disasters, civic unrest, equipment failure, industrial disputes, tampering and vandalism); and
(l)	will continue to offer innovative and commercially competitive solutions.

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> - Conditions Relating to Price Variations

1. Where the Goods that include overseas manufacture are being offered, any variation either up or down in rate of duty and/or foreign exchange shall be to the Offeror's account. For the purpose of calculating whether any amount is due or not, the Offeror shall complete the following (or the Offer may be rejected). The Customer may require documentary evidence to support amounts stated in (h) and (i) below:
(a) Brief description of item.
(b) Customs tariff item number.
(c) Rate of duty.
(d) Amount of duty payable.
(e) Does the Price offered include this duty.
(f) Rate of exchange on which Price offered is based.
(g) Date at which this rate of exchange applied.
(h) FOB Price subject to duty, in the foreign currency concerned.
(i) Total amount of foreign currency upon which Price offered is based, i.e., the Cost Insurance and Freight (CIF) or Cost and Freight (C & F) Price to Australian port.
(j) Can you also offer Goods of Australian and/or New Zealand production? (If you can, submit alternative offer for the Australian manufactured Goods).

Response Form 6.<<insert number>> - Conditions Relating to Price Variations (continued)

2. The Offeror shall provide details of the Variable pricing offered:	
(a)	Shall not be varied either up or down for any other reason except for variations in relation to duty and foreign exchange rate and/or consumer price index.
(b)	Variable Pricing for a period and then subject to above (a) price variations, either up or down.
If 'Yes' to above, state for what period the Pricing shall remain Variable;	

3. Where the Offeror desires to provide for price variations other than variation in rate of duty and foreign exchange or consumer price index, the Offeror shall declare:	
(a)	Each and every other factor where a variation in cost to the Offeror shall cause a variation in the Price offered (no price increases shall be allowed for any factor not declared);
(b)	The method to be used to determine the amount of variation in the Price offered if there is any variation in the cost of any such factor to the Offeror;
(c)	Whether Prices are based solely on a published price list.
(d)	If 'Yes' to above, please state percentage discount offered off that Price list and attach copy of that Price list. Percentage discount offered shall remain the minimum in any variation.

ATTACH ADDITIONAL INFORMATION IF NECESSARY

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> - Sustainability

NOTE TO PRINCIPAL:

- Sustainable Procurement has a broad scope and has many impacts. The following questions cover a broad range of items that have Sustainable Procurement impact. Some or all of these questions may be included in your Invitation. The questions that are included in the invitation will depend upon the particular good/s and its particular sustainability impact.
- Please delete the questions which are not applicable to your Invitation.

Energy Efficiency

Do the offered Goods qualify for Energy Star label? If "YES" please provide details of what the energy rating is under the Energy Star Scheme?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are the offered Goods rated by the Energy Rating Scheme? If "YES" please provide details of the energy rating?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Please specify any energy consumption in the following three modes: <ul style="list-style-type: none"> • "On" (normal / operating use); • "Standby" (sleep); and • "Off". 	
Will the offered Goods be delivered with the Energy Star capability activated?	
What are the time options for the Goods to be move to low power, sleep and off modes?	
Are there any other energy saving features associated with the Goods?	

Hazardous Substances

Has your organisation made any commitments to reduce the hazardous material content of the offered Goods? If "YES" please specify what actions have been taken and their timing?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do the offered Goods comply with comparable industry standards? If "YES" please specify which industry standards are applicable and provide details of each and every aspect of these standards which the Goods comply with.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does your organisation have a program in place that enables your Goods to meet industry standards in the future? If "YES" please specify how this will be achieved.	Yes <input type="checkbox"/> No <input type="checkbox"/>

Response Form 6.<<insert number>> - Sustainability (continued)

Eco-Design and Sustainable Goods Development

Describe any environmentally conscious design considerations are incorporated into your Goods? (e.g. 'design for life', modular design with exchangeable parts, life extension considerations, recycle-ability of the materials in component parts, etc)	
Do the offered Goods contain recycled content ? If "YES", please provide the percentage of recycled content.	Yes <input type="checkbox"/> No <input type="checkbox"/> %
If specified in the Specifications that warranty is applicable to this Invitation, please provide details of the warranty provisions and how they contribute to life extension. Does the above warranty incorporate a warranty for the spare parts. If "YES", please provide details of the additional warranty provisions.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details of other sustainability features of the offered Goods.	

Disposal of Equipment

Does your Offer include a Goods take-back service? If "YES", please provide details of the service and what Goods are covered by the scheme.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are there any special provisions / conditions / exclusions in relation to this scheme? If "YES" please provide details.	Yes <input type="checkbox"/> No <input type="checkbox"/>
What happens to the Goods once they are returned? Describe; - How are the Goods disposed of - Whether the Goods are recycled - Whether there is an auditable process over the treatment of returned Goods Provide details on the dismantling and/or disassembling of the offered Goods	
Does your organisation have a Product Stewardship Program or Extended Product Responsibility (EPR) in place?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does your organisation engage in industry-wide, local, state or national strategies/initiatives that support appropriate waste management/reduction? If "YES" please provide details.	Yes <input type="checkbox"/> No <input type="checkbox"/>

Response Form 6.<<insert number>> - Sustainability (continued)**Offeror's Sustainability Credentials**

These criteria assess the organisational sustainability commitment and performance of suppliers. These criteria are not specific to the sustainability performance of a product and may not be relevant to all contracts.

The questions are grouped into a number of categories of organisational sustainability commitment and performance.

<p>Environmental Management</p> <p>Describe the system, processes and practices that enable your organisation to reduce your environmental impacts, meet your legal environmental requirement and achieve continual improvement of your environmental performance? Criteria that are to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - The existence of an operational environmental management system (EMS). Please indicate whether this meets a recognised standard, such as ISO 14001, European EMAS, U.S. EPA Performance Track or equivalent. Please provide evidence of certification. - The organisation's environmental policy, which commits the organisation to a programme of environmental improvement. Please provide a copy of the policy. - The organisation's environmental strategy, objectives and targets, as well as key performance indicators for these targets. Please provide examples. - How the environmental policy, strategy and targets are communicated to all staff, including any training provided on sustainability. <p>In the last two years has your organisation been subject to any court proceedings related to breaches of environmental legislation? If yes, what was the outcome?</p> <p>Does your organisation maintain records of potential environmental hazards and have mitigation strategies and systems in place to reduce environmental hazards (e.g. carcinogens, irritants)? Please provide examples.</p>	
<p>Employment Practices</p> <p>What does your organisation do to adopt fair employment practices of your workforce employees and sub contractors?</p> <p>Criteria to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Do you have a documented policy for workforce and labour practices aligned to international standards, eg. UN Global Compact International Labour Organisation or are your employment practices certified to SA 8000? - Does your organisation require suppliers to have workplace practices based on ILO core conventions and certified to SA8000 or similar? <p>Has your organisation had any employment related convictions in the past two years? If yes, what was the outcome?</p> <p>Does your organisation offer Fairtrade certified products (e.g. coffee, tea, sugar)? Please provide details of the products certified and provide evidence of certification.</p>	

Response Form 6.<<insert number>> - Sustainability (continued)

<p>Corporate Social Responsibility (CSR)</p> <p>Describe the formalised programs or initiatives that the organisation has in place that are directed towards meeting social and ethical responsibilities and objectives.</p> <p>Criteria that are to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Corporate Reporting that describes the organisation's CSR, preferably with such reporting meeting external reporting guidelines, e.g. the Global Reporting Initiative's (GRI) Sustainability Reporting Guidelines (2002) or the U.S. EPA Performance Track and is publicly available. - Any other formal CSR commitments made or CSR initiatives in which the organisation is involved. <p>Awards or nominations that the organisation has received for its CSR activities. Please provide evidence.</p>	
<p>Greenhouse gas emissions</p> <p>What steps does your organisation take to reduce its greenhouse gas emissions?</p> <p>Criteria to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Initiatives that the organisation has undertaken to calculate its GHG emissions, indicating whether these calculations are based on recognised guidelines (eg DOCC), - GHG reduction targets and proposed actions to achieve GHG reductions; - Demonstrated GHG emissions reductions achieved, - Public reporting of GHG emissions, and/or targets and actions for reduction - An endorsed policy with respect to reduction of greenhouse gasses, indicating the management systems and processes in place to support the endorsed policy 	
<p>Organisational commitment to sustainability and demonstrated sustainability improvements</p> <p>Describe any processes and practices that demonstrate your organisation's commitment to sustainability principles and improving the whole of life sustainability performance of your organisation?</p> <p>Criteria that are to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Initiatives that the organisation has undertaken to identify and analyse the sustainability impacts associated with your business, including any waste streams. - Initiatives that have been implemented to achieve improved environmental or sustainability outcomes within the organisation's operations. This could include, as examples; initiatives to reduce or recycle waste, eco-design initiatives, energy saving and energy efficiency initiatives, generation or use of renewable energy, water saving or water reuse/recycling initiatives, waste reducing initiatives or use of eco-labelled products (products with AELA or other 	

certification).	
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Response Form 6.<<insert number>> - Sustainability (continued)

<p>Organisational commitment to sustainability and demonstrated sustainability improvements (con't)</p> <ul style="list-style-type: none"> - This also includes having in place audits of energy and/or water usage and waste generation. Please provide sample audits. - Awards or recognition that the organisation has achieved or been nominated for, in relation to its environmental performance. Please provide evidence of award or nomination. - Are you able to demonstrate eco-efficiency improvements in your production/ manufacturing process? - Are you an ecoBiz Partner? If yes, what eco-efficiency actions/projects have you undertaken as part of participating in the ecoBiz program? <p>Describe programs or initiatives that your organisation has implemented across the supply chain that are directed towards becoming aware of, and improving the sustainability performance of its products and services from a whole or life perspective, including ethical sourcing.</p>	
<p>Packaging</p> <p>Describe any initiatives that your organisation has in place to minimise/reduce the amount of packaging used?</p> <p>Criteria that are to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Is the organisation a signatory to the National Packaging Covenant (NPC) - Demonstrated reductions in packaging volumes and targets for packaging reduction and recycling. - Whether the goods can be multi-packed - Whether there is 'take back' of packaging supplied with products, and evidence that the collected packaging is recycled and/or reused. - How packaging is managed after delivery of products and whether the packaging can be recycled locally. 	
<p>Transport and logistics</p> <p>Describe initiatives that the organisation has implemented to reduce the environmental impacts associated with transport of products between the client's premises and your storage facilities.</p> <p>Criteria that are to be commented on in responding to this requirement include:</p> <ul style="list-style-type: none"> - Initiatives in place to improve efficiencies in delivery e.g. reduce travel distances and/or frequency of travel associated with distribution of products, transport logistics software that incorporates sustainability considerations. - Initiatives in place to reduce the environmental impacts of travel, e.g. fuel efficiency, reduced air pollution or reduced carbon emissions. This could be demonstrated, for example, where a vehicle achieves 4 stars or more according to the Australian Government's Green Vehicle Guide. Please provide evidence where possible. 	

Response Form 6.<<insert number>> - Sustainability (continued)

Reporting	<p>Does your organisation offer eco-label ISO 14024 (type 1) certified products? If yes, please provide details of the products certified and provide evidence of certification.</p> <p>Do you have internal criteria that your organisation uses to determine which products will be classified as 'sustainable'? Please provide a copy of the criteria used.</p> <p>Describe what 'continual improvement' mechanisms your organisation has in place to review the criteria used to determine 'sustainable' products?</p> <p>What reporting does your organisation provide to the client to identify/measure % and \$ of 'green' products procured?</p>
------------------	--

NOTE TO OFFEROR:
If any of the above requirements impact on the Pricing of the Goods, this information **must** be specified in Response Form 6.2 – Goods and/or Services including Price.

Offeror's Name:	
Date:	

Response Form 6.<<insert number>> Address Label For Decipha Tender Box

(Please delete whichever address is not applicable)

Delivered:

The Queensland Government Tender Box**c/o Decipha Pty Ltd****2 Duncan Street****West End Q 4101**

or posted to:

The Queensland Government Tender Box**GPO Box 2482****Brisbane Q 4001****Invitation No:** <<insert No.>>**Invitation Title:** <<insert title>>**Agency's Name:** <<insert name>>**Contact Officer:** <<insert name>>

<<insert position title of Contact Officer>>

Closing Date: <<insert date and time>>**Offeror's Details:****Offeror's Name:** <<insert name>>**Address:** <<insert address details>>**Contact Details:** <<insert Offeror's contact person's details>>**PACKAGE**

<<insert No.>>

of

<<insert No.>>

Privacy Statement - The Principal is collecting Personal Information from the Offeror for the purpose of administering this Invitation Process and subsequent Contract. This Personal Information may be shared with Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering this Invitation Process and subsequent Contract. Personal Information will not be disclosed to any other third party without consent of the Contractor, except where authorised or required by law.

Schedule <<insert number>> - Financial Security

CONTRACT for (the "**Contract**")

at the request of (the "**Contractor**")

and in consideration of (the "**Customer**")

accepting this Financial Security in lieu of any other form of Security provided for in the Contract,

(**"the Financial Institution"**) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Customer to a maximum aggregate of \$.....

(.....

This Financial Security is to continue:

- (i) until notification has been received from the Customer that the sum is no longer required by the Customer; or
- (ii) until this Financial Security is returned to the Financial Institution; or
- (iii) until payment to the Customer by the Financial Institution of the whole of the sum.

Should the Financial Institution be notified in writing, purportedly signed by or on behalf of the Customer that the Customer desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make payment or payments to the Customer forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay the same.

Provided always that the Financial Institution may, at any time without being required so to do, pay to the Customer the sum of

\$..... (.....

less any amounts or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Customer and thereupon the liability of the Financial Institution hereunder shall immediately cease.

The Customer shall not assign or transfer its rights under this undertaking.

Dated at day of20.....

SIGNED for and on behalf of (Financial Institution)

By its Attorney(s)

(Name)

Pursuant to Power of Attorney No.

Who hereby warrant that he has/they have not received notification of revocation of his/their appointment.

Attorney

In the presence of:

Witness

Branch of Issue:

Telephone:

Schedule <<insert number>> - Performance Guarantee

DEED OF PERFORMANCE GUARANTEE dated 20.....

Between

..... ACN/ABN
 <<insert name of Customer>> (the "Customer")

And

.....
 <<insert name of the Guarantor>> (the 'Guarantor')

Purpose

..... ACN/ABN
 <<insert name and ACN/ABN of the Contractor>> (the 'Contractor')

..... Date of Contract
 <<insert description of Contract>> <<insert date of Contract>>

The Guarantor has fully informed itself of the obligations and liabilities of the Contractor under the Contract and agrees to provide the guarantees and indemnities stated below in respect of the Contract.

Definitions:

"Business Day" means between 9.00am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday in Brisbane, Queensland;

"Contract" means the contract as described above between the Customer and the Contractor for the provision of the Goods and/or Services, including as amended from time to time by the parties to the contract;

"Deed of Guarantee" means this deed of performance guarantee.

Interpretations:

The following rules shall apply in interpreting this Deed of Guarantee, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) "consent" means prior written consent;
- (h) "in writing" means either by letter, email or facsimile;
- (i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed of Guarantee;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

What is agreed:

The Guarantor irrevocably guarantees to the Customer the due and punctual performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions:

Schedule <<insert number>> - Performance Guarantee (continued)

1. If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its obligations and undertakings under the Contract, the Guarantor shall, if required to do so by the Customer, complete or cause to be completed the obligations and undertakings contained in the Contract.
2. If the Contractor commits any breach of its obligations under the Contract, and the breach is not remedied by the Contractor and the Contract is then terminated for default, the Guarantor shall indemnify the Customer to the full extent of the liability of the Contractor to the Customer under the Contract.
3. Without limiting clauses 1 and 2 hereof, the Guarantor must, from time to time, pay to the Customer on demand any sum which is due and payable by the Contractor to the Customer as a result of a breach of or failure to perform any of the obligations and undertakings of the Contractor under the Contract and which has not been paid by the Contractor to the Customer.
4. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and the Customer may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
5. The Guarantor shall not be discharged, released or excused from this Deed of Guarantee by any arrangement made between the Contractor and the Guarantor with or without the consent of the Customer, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
6. The failure of the Customer to enforce a term of the Deed of Guarantee shall not be interpreted as a waiver of that term.
7. The obligations and liabilities of the Guarantor under this Deed of Guarantee shall not exceed the obligations and liabilities of the Contractor under the Contract.
8. If any part of this Deed of Guarantee is void or voidable, then that part is severed from the Deed of Guarantee but without affecting the continued operation of the remainder of the Deed of Guarantee.
9. This Deed of Guarantee shall be subject to and construed in accordance with the laws in force in the State of Queensland, Australia and the Guarantor agrees to submit to the jurisdiction of a Queensland court in the State of Queensland, Australia.
10. Where the Contractor has failed to perform any obligation under the Contract, the obligations of the Guarantor shall continue even though the Contractor has been dissolved, declared bankrupt, or has been made subject to external administration procedures under the *Corporations Act 2001 (Cth)* or any other law.
11. The rights and obligations under this Deed of Guarantee shall continue until released by the Customer. This release must be in the form of a written notice issued by the Customer.
12. Any notice or other form of communication (a "notice") which may be given to or served on either the Customer or Guarantor under this Deed of Guarantee must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following respective addresses:
Customer:
 Physical address:
 Postal address:
 Phone number:
 Fax number:
 Email address:

Guarantor:
 Physical address:
 Postal address:
 Phone number:
 Fax number:
 Email address:
13. Notwithstanding clause 12, if the Guarantor is a company then the Customer may serve a notice at any time on the Guarantor's registered office.
14. A notice will be deemed to be given:
 - (a) if posted – two Business Days after the date of posting;
 - (b) if delivered by hand during a Business Day – on the date of delivery;
 - (c) if faxed – on the date the sender's facsimile machine notes a complete and successful transmission; or
 - (d) if emailed – on the date of the email;
 except that a fax or email received after 5.00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

Schedule <<insert number>> - Performance Guarantee

Authorisation, Certification and Execution by a Guarantor (individual or partnership (^)) (*)	
Signed for and on behalf of)
.....)
<<insert full name of Guarantor>>)
.....)
<<insert Guarantor's ABN>>)
.....)
this day of 2.....)
by)
.....)
<<insert full name of attorney (if applicable)>>)
.....)
in the presence of)
.....)
<<insert full name of witness>>)
.....)

Where an attorney executes this Deed on behalf of a Guarantor, the form of execution must indicate the source of this authority and a certified copy thereof provided to the Customer.

Privacy Statement - *The Principal/Customer is collecting Personal Information from the Contractor for the purpose of administering this Deed of Performance Guarantee. This Personal Information may be shared with Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering this Deed of Performance Guarantee. Personal Information will not be disclosed to any other third party without consent of the Contractor, except where authorised or required by law*

NOTE TO OFFEROR:

(*) If a Guarantor is an individual or partnership, then the above signature block will be applicable.

(^) If the Guarantor is a partnership, then all partners associated with the partnership must execute the above signature block, unless authorisation has been given to an attorney and such authority is in the form of an enduring power of attorney.

Schedule <<insert number>> - Deed of Confidentiality and Privacy

DEED POLL OF CONFIDENTIALITY AND PRIVACY made by:

..... ACN/ABN
 <<insert name and ACN/ABN (if applicable) of the Confidant>> (the "Confidant")

in favour of:

.....
 <<insert name of the Customer>> (the "Customer")

for the purpose of

..... ACN/ABN
 <<insert name and ACN/ABN of the Contractor>> (the "Contractor")

..... Date of Contract
 <<insert description of Contract>> <<insert date of Contract>>

Recitals:

- A. In the course of the Confidant performing certain Services for and/or delivering certain Goods to the Customer (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Customer that is Confidential Information and/or Personal Information.
- B. Improper use or disclosure of either Confidential Information or Personal Information would severely damage the Customer's ability to perform its governmental/statutory functions.
- C. Any Personal Information held by the Contractor is subject to the *Information Privacy Act 2009*.
- D. The Confidant undertakes that it will comply with the *Information Privacy Act 2009* and gives other undertakings in relation to the collection, use, handling, distribution and disclosure of the Confidential Information and/or Personal Information in accordance with the terms of this Deed.

Agreed Covenants:

1. Recitals

- 1.1 The Confidant acknowledges the truth and accuracy of the Recitals.

2. Definitions and Interpretation

2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

"**Confidential Information**" means in relation to the Customer, information that is not trivial and:

- (a) is by its nature confidential;
- (b) is communicated by the Customer to the Confidant as confidential; and
- (c) the Confidant knows or ought to know is confidential.

Subject to (a), (b) and (c) above, Confidential Information includes information which is:

- (i) comprised in or relating to any Intellectual Property Rights of the Customer;
- (ii) relating to the internal management and structure of the Customer, or the personnel, policies and strategies of the Customer;
- (iii) of any actual or potential commercial value to the Customer or to the person or corporation which supplied that information;
- (iv) in the case of the Customer, information relating to the policies, strategies, practices and procedures of the State and any information in the Confidant's possession relating to the State; or
- (v) in the Confidant's possession relating to the Customer, and like information,

but does not include information which:

- (vi) was already lawfully disclosed by the Customer prior to the Confidant being required to treat the information as confidential;
- (vii) is lawfully received from a third party which is not bound by a duty of confidentiality;

Schedule <<insert number>> - Deed of Confidentiality and Privacy (continued)

- (viii) has become public knowledge (other than through a breach of an obligation of confidence under this Deed or Contract); and/or
- (ix) was independently developed or released by the Confidant or Contractor without reference to the Confidential Information.

“**Contract**” means the contract as described above between the Customer and the Contractor for the provision of the Goods and/or Services, including as amended from time to time by the parties to the contract;

“**Contractor**” means the entity specified in the Contract, from whom the Goods and/or Services are being procured;

“**Deed**” means this deed poll of confidentiality and privacy;

“**Intellectual Property Rights**” includes all copyright, trade mark, design, patent or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or protected by legislation from time to time, whether created before or on or after the commencement date of the Contract, but excludes Moral Rights;

“**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world whether existing before, on or after the commencement date of the Contract;

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identify is apparent, or can reasonably be ascertained, from the information or opinion;

“**State**” means the State of Queensland.

2.2 Interpretation

2.2.1 In this Deed, the clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Deed.

2.2.2 The following rules shall apply in interpreting this Deed, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) “consent” means prior written consent;
- (h) “in writing” means either by letter, email or facsimile;
- (i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Customer agrees otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

3. Non Disclosure

3.1 The Confidant must not disclose the Confidential Information and/or Personal Information to any person without the consent of the Customer.

3.2 The Customer may grant or withhold its consent in its absolute and unfettered discretion.

3.3 If the Customer grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Customer may require that the Confidant procure the execution of a deed of confidentiality and privacy in these terms by the person to whom the Confidant proposes to disclose the Confidential Information and/or Personal Information.

3.4 If the Customer grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information and/or Personal Information is legally required to be disclosed.

Schedule <<insert number>> - Deed of Confidentiality and Privacy (continued)**4. Restriction on Use**

4.1 The Confidant will use the Confidential Information and/or Personal Information only for the purposes of the Contract.

5. Survival

5.1 This Deed will survive the termination or expiry of the Contract and the termination or expiry of any employment or contract, or other arrangement under which the Confidant has obtained the Confidential Information and/or Personal Information.

6. Powers of the Customer**6.1 Production of Documents**

6.1.1 The Customer may demand (without needing to reduce the demand to writing) the delivery up to the Customer of all documents in the possession or control of the Confidant containing the Confidential Information and/or Personal Information.

6.1.2 The Confidant must immediately comply with a demand under this clause 6.

6.1.3 If the Customer makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information and/or Personal Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information and/or Personal Information, and the identity of the person in whose custody or control they lie.

6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

6.2.1 The Confidant acknowledges that the Customer may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Confidant's Undertaking

7.1 The Confidant undertakes:

- (a) not to access, use, modify, disclose or retain any Confidential Information and/or Personal Information of the Customer that he or she has acquired from the Contractor, except for the purpose for which the Confidential Information and/or Personal Information was acquired; and
- (b) in addition to any direction as to particular measures specified by the Contractor, take all reasonable measures to ensure that any Confidential Information and/or Personal Information held in connection with the Contract is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

8. Acknowledgement by Confidant

8.1 The Confidant undertakes that in signing this Deed:

- (a) he or she understands the Confidant's responsibilities in relation to Confidential Information and/or Personal Information;
- (b) he or she will not access, use, disclose or retain Confidential Information and/or Personal Information except in relation to the purpose for which the Confidential Information and/or Personal Information was acquired; and
- (c) he or she understands the possible consequences of breach of this Deed.

8.2 The Confidant acknowledges that this Deed is made for the benefit of the Customer and may be enforced by the Customer.

9. No Exclusion of Law or Equity

9.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information and/or privacy of the Personal Information.

10. Variation and Waiver

10.1 This Deed shall not be varied either in law or in equity except by agreement in writing signed by the Customer and the Confidant.

10.2 A waiver by the Customer of a breach of a provision of this Deed by the Confidant shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of the Customer to enforce a provision of this Deed shall not be interpreted as a waiver of that provision.

11. Applicable Law

11.1 The laws of the State govern this Deed and the Confidant submits to the non-exclusive jurisdiction of the courts of Queensland

12. Assignment

12.1 The Confidant shall not assign, in whole or in part, or novate this Deed except with the consent of the Customer.

Schedule <<insert number>> - Deed of Confidentiality and Privacy (continued)**13. Severability**

- 13.1 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

14. Remedies Cumulative

- 14.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

15. Notices

- 15.1 Any notice or other form of communication (a "notice") which may be given to or served on the Confidant under this Deed must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following address:

Customer:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Confidant:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

- 15.2 Notwithstanding clause 15.1, if the Confidant is a company then the Customer may serve a notice at any time on the Confidant's registered office.

- 15.3 A notice will be deemed to be given:

- (a) if posted – two Business Days after the date of posting;
- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if faxed – on the date the sender's facsimile machine notes a complete and successful transmission; or
- (d) if emailed – on the date of the email;

except that a fax or email received after 5.00pm (local time of the receiver) will be deemed to be given on the next Business Day.

Schedule <<insert number>> - Deed of Confidentiality and Privacy (continued)

EXECUTED as a deed poll.

Authorisation, Certification and Execution by the Confidant (company)	
Executed for and on behalf of:)
.....)
<<insert full name of Confidant>>)
.....)
<<insert Confidant's ACN>>)
.....)
<<insert Confidant's ABN>>)
<i>in accordance with s.127 of the Corporations Act 2001 (Cth)</i>)
this day of 2.....)
by)
.....)
<<insert full name of Director>>)
Signature of Director)
.....)
<<insert full name of Director/Secretary>>)
Signature of Director/Secretary)

Where an attorney executes this Deed on behalf of a Confidant, the form of execution must indicate the source of this authority and a certified copy thereof provided to the Customer.

OR

Authorisation, Certification and Execution by a Confidant (individual or partnership ^(^) ^(*))	
Signed, sealed and delivered by)
.....)
<<insert full name of Confidant>>)
Signature of Confidant)
.....)
<<insert Confidant's ABN>>)
.....)
this day of 2.....)
by)
.....)
<<insert full name of attorney (if applicable)>>)
Signature of attorney (if applicable))
in the presence of)
.....)
<<insert full name of witness>>)
Signature of witness)

Where an attorney executes this Deed on behalf of a Confidant, the form of execution must indicate the source of this authority and a certified copy thereof provided to the Customer.

Privacy Statement - *The Principal/Customer is collecting Personal Information from the Contractor for the purpose of administering this Deed of Confidentiality and Privacy. This Personal Information may be shared with Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering this Deed of Confidentiality and Privacy. Personal Information will not be disclosed to any other third party without consent of the Contractor, except where authorised or required by law.*

NOTE TO OFFEROR:

- (*) If a Confidant is an individual or partnership, then the above signature block will be applicable.
- (^) If the Confidant is a partnership, then all partners associated with the partnership must execute the above signature block, unless authorisation has been given to an attorney and such authority is in the form of an enduring power of attorney.

Schedule <<insert number>> - Deed of Confidentiality

DEED POLL OF CONFIDENTIALITY made by:

..... ACN/ABN

<<insert name and ACN/ABN (if applicable) of the Confidant>> (the "Confidant")

in favour of

.....

<<insert name of the Customer >> (the "Customer")

for the purpose of

..... ACN/ABN

<<insert name and ACN/ABN of the Contractor>> (the "Contractor")

..... Date of Contract

<<insert description of Contract>> <<insert date of Contract>>

Recitals:

- A. In the course of the Confidant performing certain Services for and/or delivering certain Goods and/or Services to the Customer (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Customer that is confidential.
- B. Improper use or disclosure of that information would severely damage the Customer's ability to perform its governmental/statutory functions.
- C. The Customer requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential and that the Confidant performs those Services and/or delivers those Goods faithfully and without any conflicting interest.

Agreed Covenants:**1. Recitals**

- 2.1 The Confidant acknowledges the truth and accuracy of the Recitals in every particular.

2. Definitions and Interpretation**2.1 Definitions**

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

"**Confidential Information**" means in relation to the Customer, information that is not trivial and:

- (a) is by its nature confidential;
- (b) is communicated by the Customer to the Confidant as confidential; and
- (c) the Confidant knows or ought to know is confidential.

Subject to (a), (b) and (c) above, Confidential Information includes information which is:

- (i) comprised in or relating to any Intellectual Property Rights of the Customer;
 - (ii) relating to the internal management and structure of the Customer, or the personnel, policies and strategies of the Customer;
 - (iii) of any actual or potential commercial value to the Customer or to the person or corporation which supplied that information;
 - (iv) in the case of the Customer, information relating to the policies, strategies, practices and procedures of the State and any information in the Confidant's possession relating to the State; or
 - (v) in the Confidant's possession relating to the Customer, and like information,
- but does not include information which:
- (vi) was already lawfully disclosed by the Customer prior to the Confidant being required to treat the information as confidential;
 - (vii) is lawfully received from a third party which is not bound by a duty of confidentiality;

Schedule <<insert number>> - Deed of Confidentiality (continued)

- (viii) has become public knowledge (other than through a breach of an obligation of confidence under this Deed or Contract); and/or
- (ix) was independently developed or released by the Confidant or Contractor without reference to the Confidential Information.

“**Contract**” means the contract as described above between the Customer and the Contractor for the provision of the Goods and/or Services, including as amended from time to time by the parties to the contract;

“**Contractor**” means the entity specified in the Contract, from whom the Goods and/or Services are being procured;

“**Deed**” means this deed poll of confidentiality;

“**Intellectual Property Rights**” includes all copyright, trade mark, design, patent or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or protected by legislation from time to time, whether created before or on or after the commencement date of the Contract, but excludes Moral Rights;

“**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world whether existing before, on or after the commencement date of the Contract;

“**State**” means the State of Queensland.

2.2 Interpretation

2.2.1 In this Deed, the clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Deed.

2.2.2 The following rules shall apply in interpreting this Deed, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) “consent” means prior written consent;
- (h) “in writing” means either by letter, email or facsimile;
- (i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Customer agrees otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

3. Non Disclosure

3.1 The Confidant must not disclose the Confidential Information to any person without the consent of the Customer.

3.2 The Customer may grant or withhold its consent in its absolute and unfettered discretion.

3.3 If the Customer grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Customer may require that the Confidant procure the execution of a deed of confidentiality in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 If the Customer grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information is legally required to be disclosed.

4. Restriction on Use

4.1 The Confidant will use the Confidential Information only for the purposes of the Contract.

Schedule <<insert number>> - Deed of Confidentiality (continued)**5. Survival**

5.1 This Deed will survive the termination or expiry of the Contract and the termination or expiry of any employment or contract, or other arrangement under which the Confidant has obtained the Confidential Information.

6. Powers of the Customer**6.1 Production of Documents**

6.1.1 The Customer may demand (without needing to reduce the demand to writing) the delivery up to the Customer of all documents in the possession or control of the Confidant containing the Confidential Information.

6.1.2 The Confidant must immediately comply with a demand under this clause 6.

6.1.3 If the Customer makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

6.2.1 The Confidant acknowledges that the Customer may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Confidant's Undertaking

7.1 The Confidant undertakes:

- (a) not to access, use, modify, disclose or retain any Confidential Information of the Customer that he or she has acquired from the Contractor, except for the purpose for which the Confidential Information was acquired; and
- (b) in addition to any direction as to particular measures specified by the Contractor, take all reasonable measures to ensure that any Confidential Information held in connection with the Contract is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

8 Acknowledgement by Confidant

8.1 The Confidant undertakes that in signing this Deed:

- (a) he or she understands the Confidant's responsibilities in relation to Confidential Information;
- (b) he or she will not access, use, disclose or retain Confidential Information except in relation to the purpose for which the Confidential Information was acquired; and
- (c) he or she understands the possible consequences of breach of this Deed.

8.2 The Confidant acknowledges that this Deed is made for the benefit of the Customer and may be enforced by the Customer.

9. No Exclusion of Law or Equity

9.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

10. Variation and Waiver

10.1 This Deed shall not be varied either in law or in equity except by agreement in writing signed by the Customer and the Confidant.

10.2 A waiver by the Customer of a breach of a provision of this Deed by the Confidant shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of the Customer to enforce a provision of this Deed shall not be interpreted as a waiver of that provision.

11. Applicable Law

11.1 The laws of the State govern this Deed and the Confidant submits to the non-exclusive jurisdiction of the courts of Queensland.

12. Assignment

12.1 The Confidant shall not assign, in whole or in part, or novate this Deed except with the consent of the Customer.

Schedule <<insert number>> - Deed of Confidentiality (continued)**13. Severability**

- 13.1 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

14. Remedies Cumulative

- 14.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

15. Notices

- 15.1 Any notice or other form of communication (a "notice") which may be given to or served on the Confidant under this Deed must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following address:

Customer:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Confidant:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

- 15.2 Notwithstanding clause 15.1, if the Confidant is a company then the Customer may serve a notice at any time on the Confidant's registered office.
- 15.3 A notice will be deemed to be given:
- (a) if posted – two Business Days after the date of posting;
 - (b) if delivered by hand during a Business Day – on the date of delivery;
 - (c) if faxed – on the date the sender's facsimile machine notes a complete and successful transmission; or
 - (d) if emailed – on the date of the email;
- except that a fax or email received after 5.00pm (local time of the receiver) will be deemed to be given on the next Business Day.

Schedule <<insert number>> - Deed of Privacy

DEED POLL OF PRIVACY made by:

..... ACN/ABN
 <<insert name and ACN/ABN (if applicable of the Confidant)>> (the 'Confidant')

in favour of:

.....
 <<insert name of the Customer>> (the "Customer")

for the purpose of

..... ACN/ABN
 <<insert name and ACN/ABN of the Contractor>> (the 'Contractor')

..... Date of Contract
 <<insert description of Contract>> <<insert date of Contract>>

Recitals

- A. In the course of the Confidant performing certain Services for and/or delivering certain Goods to the Customer (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Customer that is Personal Information.
- B. Improper use or disclosure of Personal Information would severely damage the Customer's ability to perform its governmental/statutory functions.
- C. Any Personal Information held by the Contractor is subject to the *Information Privacy Act 2009*.
- D. The Confidant undertakes that it will comply with the applicable *Information Privacy Act 2009* and gives other undertakings in relation to the collection, use, handling, distribution and disclosure of the Personal Information in accordance with the terms of this Deed.

1 Definition

- 1.1 In the interpretation of this Deed, unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following means:

"Contract" means the contract as described above between the Customer and the Contractor for the provision of the Goods and/or Services, including as amended from time to time by the parties to the contract;

"Contractor" means the entity specified in the Contract, from whom the Goods and/or Services are being procured;

"Deed" means this deed poll of privacy;

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"State" means the State of Queensland.

2. Interpretations:

- 2.1 In this Deed, the clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Deed.
- 2.2 The following rules shall apply in interpreting this Deed, unless the context otherwise requires:
 - (a) words importing a gender include the other gender;
 - (b) words in the singular include the plural and vice versa;
 - (c) all dollar amounts refer to Australian currency;
 - (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
 - (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
 - (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;

Schedule <<insert number>> - Deed of Privacy (continued)

- (g) "consent" means prior written consent;
- (h) "in writing" means either by letter, email or facsimile;
- (i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Customer agrees otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

3. Non Disclosure

- 3.1 The Confidant must not disclose the Personal Information to any person without the consent of the Customer.
- 3.2 The Customer may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If the Customer grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Customer may require that the Confidant procure the execution of a deed of privacy in these terms by the person to whom the Confidant proposes to disclose the Personal Information.
- 3.4 If the Customer grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Personal Information is legally required to be disclosed.

4. Restrictions on Use

- 4.1 The Confidant will use the Personal Information only for the purposes of the Contract.

5. Survival

- 5.1 This Deed will survive the termination or expiry of the Contract and the termination or expiry of any employment or contract, or other arrangement under which the Confidant has obtained the Personal Information.

6. Powers of the Customer

6.1 Production of Documents

- 6.1.1 The Customer may demand (without needing to reduce the demand to writing) the delivery up to the Customer of all documents in the possession or control of the Confidant containing the Personal Information.
- 6.1.2 The Confidant must immediately comply with a demand under this clause 6.
- 6.1.3 If the Customer makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Personal Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Personal Information, and the identity of the person in whose custody or control they lie.
- 6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

- 6.2.1 The Confidant acknowledges that the Customer may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Confidant's Undertaking

- 7.1 The Confidant undertakes -
 - (a) not to access, use, modify, disclose or retain any Personal Information of the Customer that he or she has acquired from the Contractor, except for the purpose for which the Personal Information was acquired; and
 - (b) in addition to any direction as to particular measures specified by the Contractor, take all reasonable measures to ensure that any Personal Information held in connection with the Contract is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

Schedule <<insert number>> - Deed of Privacy (continued)**8. Acknowledgement by Confidant**

8.1 The Confidant undertakes that in signing this Deed:

- (a) he or she understands the Confidant's responsibilities in relation to information privacy;
- (b) he or she will not access, use, disclose or retain Personal Information except in relation to the purpose for which the Personal Information was acquired; and
- (c) he or she understands the possible consequences of a breach of this undertaking.

8.2 The Confidant acknowledges that this Deed is made for the benefit of the **Customer** and may be enforced by the **Customer**.

9. No Exclusion of Law or Equity

9.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the privacy of Personal Information.

10. Variation and Waiver

10.1 This Deed shall not be varied either in law or in equity except by agreement in writing signed by the **Customer** and Confidant.

10.2 A waiver by the **Customer** of a breach of a provision of this Deed by the Confidant shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of the **Customer** to enforce a provision of this Deed shall not be interpreted as a waiver of that provision.

11. Applicable Law

11.1 The laws of the State govern this Deed and the Confidant submits to the non-exclusive jurisdiction of the courts of Queensland.

12. Assignment

12.1 The Confidant shall not assign, in whole or in part, or novate this Deed except with the consent of the **Customer**.

13. Severability

13.1 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

14. Remedies Cumulative

14.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

15. Notices

15.1 Any notice or other form of communication (a "notice") which may be given to or served on the Confidant under this Deed must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following address:

Customer:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

Confidant:

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

15.2 Notwithstanding clause 15.1, if the Confidant is a company then the **Customer** may serve a notice at any time on the Confidant's registered office.

Schedule <<insert number>> - Deed of Privacy (continued)

15.3 A notice will be deemed to be given:

- (a) if posted – two Business Days after the date of posting;
- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if faxed – on the date the sender’s facsimile machine notes a complete and successful transmission; or
- (d) if emailed – on the date of the email;

except that a fax or email received after 5.00pm (local time of the receiver) will be deemed to be given on the next Business Day.

EXECUTED as a deed poll.

Authorisation, Certification and Execution by a Confidant (company)		
Executed for and on behalf of:)	
.....)	
<<insert full name of Confidant>>)	
.....)	
<<insert Confidant’s ACN>>)	
.....)	
<<insert Confidant’s ABN>>)	
<i>in accordance with s.127 of the Corporations Act 2001 (Cth)</i>)	
this day of 2.....)	
by)	
.....)
<<insert full name of Director>>)	Signature of Director
.....)
<<insert full name of Director/Secretary>>)	Signature of Director/Secretary

Where an attorney executes this Deed on behalf of a Confidant, the form of execution must indicate the source of this authority and a certified copy thereof provided to the [Customer](#).

OR

Authorisation, Certification and Execution by a Confidant (individual or partnership (^) (*)		
Signed, sealed and delivered by:)	
.....)	
<<insert full name of Confidant>>)
.....)	Signature of Confidant
<<insert Confidant’s ABN>>)
this day of 2.....)	
by)	
.....)
<<insert full name of attorney (if applicable)>>)	Signature of attorney (if applicable)
in the presence of)	
.....)
<<insert full name of witness>>)	Signature of witness

Schedule <<insert number>> - Deed of Privacy (continued)

Where an attorney executes this Deed on behalf of a Confidant, the form of execution must indicate the source of this authority and a certified copy thereof provided to the **Customer**.

Privacy Statement - *The Principal/Customer is collecting Personal Information from the Contractor for the purpose of administering this Deed of Privacy. This Personal Information may be shared with Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering this Deed of Privacy. Personal Information will not be disclosed to any other third party without consent of the Contractor, except where authorised or required by law.*

NOTE TO OFFEROR:

- (*) If a Confidant is an individual or partnership, then the above signature block will be applicable.
- (^) If the Confidant is a partnership, then all partners associated with the partnership must execute the above signature block, unless authorisation has been given to an attorney and such authority is in the form of an enduring power of attorney.

Schedule <<insert number>> - Moral Rights Consent Form

..... ACN/ABN
 <<Insert name of Grantor>> (the **Grantor**)

in favour of:

.....
 <<insert name of the Customer>> (the "**Customer**")

Purpose

..... ACN/ABN
 <<insert name and ACN/ABN of the Contractor>> (the '**Contractor**')

..... Date of Contract
 <<insert description of Contract>> <<insert date of Contract>>

Definition:

In this document, unless the contrary intention appears:

"Contract" means the contract as described above between the Customer and the Contractor for the provision of the Goods and/or Services, including as amended from time to time by the parties to the contract;

"Contract Material" means any material forming part of or constituting a Deliverable that the Grantor may create or have created, written or otherwise brought into existence for the Contractor in the course of the Contractor performing the Contract ("New Contract Material") and any such material that exists at the date of this Moral Rights Consent that is incorporated into a Deliverable ("Existing Contract Material");

"Contractor" means the entity specified in the Contract, from whom the Goods and/or Services are being procured;

"Deliverables" means the Goods and/or Services supplied to the Customer by the Contractor in accordance with the Contract

"Moral Rights Consent" means this moral rights consent;

"Moral Rights" means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature of anywhere in the world whether existing before, on or after the commencement of the Contract.

What is agreed:

1. The Grantor acknowledges that it gives its consent to the Customer in relation to the possible infringement of its Moral Rights of attribution of authorship, not to have authorship falsely attributed and integrity of authorship in relation to the use of the Contract Material.
2. In accordance with section 195AWA [195AW(2) for film] of the *Copyright Act 1968 (Cth)* the Grantor consents to the Customer undertaking the following acts or omissions or the following clauses or types of acts or omissions in relation to the Contract Material whether occurring before or after the date of this consent:
 - (a) any amendment, deletion, destruction, relocation, alternation or selection of the Contract Material;
 - (b) the publication and communication of the Contract Material (including as varied in 2(a);

whether in whole or in part, in any context at the discretion of the Customer to ensure the Contract Material meets the business or other needs of the Customer from time to time.
3. The Grantor consents to the Customer determining, in its sole discretion, whether or not it will be attributed as author of the work. If it will be attributed as the author, the Grantor consents to the attribution in the manner and form as determined by the Customer.
4. This consent regarding Moral Rights is genuine and given without duress or undue influence.

Schedule <<insert number>> - Confirmation of Insurances

The Contractor will hold and maintain the following policies (the “Insurance Policies”) for the duration of the Contract.
 The Professional Indemnity or Errors and Omissions Insurance are dealt with separately:

WORKER’S COMPENSATION INSURANCE:

Information Required	Details
Policy Number:	
Name of Insurer:	
Named Insured:	
Expiry Date of the Worker’s Compensation Insurance policy:	
Specify any exclusions and deductibles to the above Insurance Policy.	

PUBLIC LIABILITY INSURANCE:

Information Required	Details
Policy Number:	
Name of Insurer:	
Named Insured:	
Sum Insured:	
Expiry Date of the Public Liability Insurance policy:	
Specify any exclusions and deductibles to the above Insurance Policy.	

Response Form 6.<<insert number>> - Confirmation of Insurances (continued)

PROFESSIONAL INDEMNITY or ERRORS AND OMISSIONS INSURANCE (if applicable) :

Information Required	Details
Policy Number:	
Name of Insurer:	
Named Insured:	
Sum Insured:	
Expiry Date of the Professional Indemnity or Errors and Omissions Insurance policy:	
Specify any exclusions and deductibles to the above Insurance Policy.	

Unless otherwise specified above, the Professional Indemnity or Errors and Omissions Insurance is to be maintained by the Contractor for a period of 4 years after the termination or conclusion of the Contract, whichever is the later.

OTHER INSURANCE/S (if applicable) :

Information Required	Details
Description of Insurance:	
Policy Number:	
Name of Insurer:	
Named Insured:	
Sum Insured:	
Expiry Date of the above Insurance policy:	
Specify any exclusions and deductibles to the above Insurance Policy.	

A Certificate of Currency for the above Insurance Policies **MUST** be provided by the Contractor to the Customer.

Schedule <<insert number>> - Deed of Novation (for an Arrangement)**DEED OF NOVATION** dated..... 20....**Between**

<<insert name of the Principal>> (the 'Principal')

And

<<insert name of New Principal>> (the 'New Principal')

And

..... ACN/ABN (the 'Contractor')

RECITALS

A. The Principal and Contractor are parties to a standing offer arrangement for the provision of goods and/or services entered into pursuant to a Deed of Agreement as detailed in the Appendix (the 'Arrangement').

[ALTERNATIVE A – FOR FULL NOVATION]

B. The Principal desires to be wholly released and discharged from the Arrangement and the New Principal desires to assume these rights and obligations of the Principal under the Arrangement.

C. With effect from the date of this Deed of Novation [the "Effective Date"], the Contractor has agreed to wholly release and discharge the Principal from the Arrangement upon the conditions that the New Principal undertakes to perform the terms and conditions of the Arrangement and to be bound by the terms and conditions of this Deed of Novation.

[ALTERNATIVE B – FOR PARTIAL NOVATION]

B. The Principal desires to be released and discharged from the Relevant Components of the Arrangement as set out in the Appendix and the New Principal desires to assume the rights and obligations of the Principal associated with the Relevant Components under the Arrangement.

C. With effect from the date of this Deed of Novation [the "Effective Date"], the Contractor has agreed to partially release and discharge the Principal from the Arrangement upon the conditions that the New Principal undertakes to perform the terms and conditions of the Arrangement associated with the Relevant Components, and to be bound by the terms and conditions of this Deed of Novation.

NOW THE PARTIES AGREE AS FOLLOWS:*[ALTERNATIVE A – FOR FULL NOVATION]***1. Novation**

1.1 With effect and from the Effective Date:

- (a) the New Principal shall be substituted for the Principal under the Arrangement as if it had originally been a party to the Arrangement instead of the Principal, and all references in the Arrangement to the Principal in any capacity shall be read and construed as if they were references to the New Principal; and
- (b) the New Principal shall comply with the provisions of the Arrangement and shall have all the rights and obligations of the Principal under the Arrangement whether accruing before, on or after the Effective Date.

*[ALTERNATIVE B – FOR PARTIAL NOVATION]***1. Novation**

1.1 In this Deed of Novation, 'Relevant Components' means the components of the Arrangement which are identified in the Appendix and any terms and conditions of the Arrangement which by their nature or context apply to the Relevant Components identified in the Appendix.

1.2 With effect and from the Effective Date:

- (a) the New Principal shall be substituted for the Principal under the Arrangement in relation to the Relevant Components as if it had originally been a party to the Arrangement instead of the Principal, and all references in the Arrangement to

the Principal in any capacity in relation to the Relevant Components shall be read and construed as if they were references to the New Principal;

- (b) the New Principal shall comply with the Relevant Components and shall have all the rights and obligations of the Principal under the Arrangement in relation to the Relevant Components whether accruing before, on or after the Effective Date.

- 1.3 Notwithstanding any provision of this Deed, the Arrangement, except the Relevant Components, will remain in full force and effect between the Principal and the Contractor. To the extent that any terms and conditions of the Arrangement apply to both the Arrangement and the Relevant Components, those terms and conditions shall continue to apply to both the Arrangement and the Relevant Components.

[ALTERNATIVE A – FOR FULL NOVATION]

2. Release and Indemnity

- 2.1 The New Principal agrees with the Contractor to release, indemnify and keep indemnified the Contractor from and against any liability incurred by the Contractor as a result of any action, demand, claim or proceeding against the Contractor by the Principal under or in respect of the Arrangement relating to any act or omission of the Contractor, Principal or New Principal, whether occurring before, on or after the Effective Date.

[ALTERNATIVE B – FOR PARTIAL NOVATION]

2. Release and Indemnity

- 2.1 The New Principal agrees with the Contractor to release, indemnify and keep indemnified the Contractor from and against any liability incurred by the Contractor as a result of any action, demand, claim or proceeding against the Contractor by the Principal under or in respect of the Relevant Components of the Arrangement, relating to any act or omission of the Contractor, Principal or New Principal, whether occurring before, on or after the Effective Date.

[ALTERNATIVE A – FOR FULL NOVATION]

3. Release of Principal

- 3.1 With effect on and from the Effective Date the Contractor releases the Principal from all its obligations under the Arrangement and all actions, claims or proceedings that it may have against the Principal under or in respect of the Arrangement relating to any act or omission of the Principal whether occurring before, on or after the Effective Date.

[ALTERNATIVE B – FOR PARTIAL NOVATION]

3. Release of Principal

- 3.1 With effect on and from the Effective Date the Contractor releases the Principal from all its obligations under the Arrangement in relation to the Relevant Components and all actions, claims or proceedings that it may have against the Principal under or in respect of the Arrangement in relation to the Relevant Components relating to any act or omission of the Principal whether occurring before, on or after the Effective Date.

4. Further Action

- 4.1 Each party will do everything reasonably necessary to give effect to this Deed.

5. Expenses

- 5.1 The Parties shall bear their own costs and expenses of and relating to the preparation, execution and completion of, or the enforcement of, or preservation of any rights under this Deed

6. Stamp Duty

- 6.1 The New Principal shall pay all stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by this Deed.

7. Applicable Law

- 7.1 This Deed shall be governed by and construed in accordance with the laws in force in the State of Queensland, Australia and the Parties agree to submit to the exclusive jurisdiction of the courts in Queensland.

APPENDIX

Description of Deed of Arrangement:

.....
<<insert description of the Arrangement>>

Date of Deed of Arrangement:

.....
<<insert date of the original Deed of Arrangement>>

If partial novation, specify Relevant Components:

Goods and/or Services:

.....
<<insert description of the Goods and/or Services which are to be novated>>

Note to Principal

In most cases, the Relevant Components of a partial novation of an Arrangement will consist of certain goods and/or services which are the subject of the Arrangement.

If the partial novation involves anything other than the transfer of certain goods and/or services, it is recommend that the Deed be settled by a legal adviser to ensure that the relevant provisions of the Arrangement which are the subject of the novation are identified.

Appendix 1 - Notice of Suspension

TO:
 <<Insert name of Contractor and address details>> (the "Contractor")

FROM:
 <<Insert name of Customer and address details>> (the "Customer")

DATE:
 <<Insert date of Notice>>

FOR: The Contract dated <<insert date>>, between the Customer and the Contractor

 <<insert description of the Contract>> (the "Contract")

***For Suspension of the entire Contract:**

Notice is given under sub-clause <<insert either clause 29.1 or 29.3 (*)>> of the Conditions of Contract – Version 002 dated 1 July 2009 that the Customer hereby suspends, with effect on and from <<insert date (^)>>, the entire Contract, for <<insert period of suspension>>

(*) for the following reasons:

.....

 <<insert reasons for suspension, in accordance with clause 29.3>>

During the period of suspension, the Contractor shall comply with the following reasonable directions in relation to subsequent performance of the Contract:

.....

 <<insert details of directions to the Contractor in accordance with clause 29.4>>

OR

***For Suspension of the Contract in part:**

Notice is given under clause <<insert either clause 29.1 or 29.3 (*)>> of the Conditions of Contract – Version 002 – dated 1 July 2009 that the Customer hereby suspends with effect on and from <<insert date (^)>>, for <<insert period of suspension>>, the following parts of the Contract:

.....

 <<describe parts of the Contract that are being suspended>>

(*) for the following reasons:

.....

 <<insert reasons for suspension, in accordance with the clause 29.3>>

NOTE TO CUSTOMER:

(*) If notice is given under clause 29.3, then the following clause should be completed by the Customer. If notice is not given under clause 29.3 then this section can be deleted.

(^*) The date of suspension shall not be earlier than the date on which the notice is received by the Contractor

Appendix 1 - Notice of Suspension (continued)

During the period of suspension, the Contractor shall comply with the following reasonable directions in relation to subsequent performance of the Contract:

.....
.....
<<insert details of directions to the Contractor in accordance with 29.4>>

EXECUTION BY CUSTOMER

Signed for and on behalf of)
.....)
<<insert name of Customer>>))
by)
.....)
<<insert name of Customer's representative>>) Signature of Customer's representative
.....)
this day of 20.....)
.....)
in the presence of:)
.....)
<<insert name of witness>>) Signature of witness

Appendix 2 - Notice to Show Cause

TO:
 <<Insert name of Contractor and address details>> ("the Contractor")

FROM:
 <<Insert name of Customer and address details>> ("the Customer")

DATE:
 <<Insert date of Notice>>

The Customer hereby gives Notice that the Contractor is in substantial breach of the Contract for the reasons specified in the attached Schedule.

This Notice to Show Cause is issued to you in accordance with clause 30.3 of the Conditions of Contract.

The Contractor must show cause, in writing, within <<insert number of Business Days (*)>> days why the Customer should not terminate the Contract.

Without prejudice to any other rights or remedies which the Customer may have, if the Contractor fails to show reasonable cause, in writing, within the time specified in the Notice to Show Cause, the Customer has the right under sub-clause 30.4 of the Conditions of Contract, by notice in writing to the Contractor, to immediately terminate the Contract.

EXECUTION BY CUSTOMER

Signed for and on behalf of the)
)
 <<insert name of Customer>>)
 by)
)
 <<insert name of Customer's representative>>) Signature of Customer's representative
 this day of 20.....)
 In the presence of:)
)
 <<insert name of witness>>) Signature of witness

NOTE TO CUSTOMER:
 (*) The period specified above must be a reasonable period..

DETAILS OF BREACH(ES)

The Contractor is in substantial breach of the Contract referred to in the attached Notice in that:

- (a)
- (b); and
- (c)

Appendix 3 - Notice of Termination (for Cause or Insolvency)

TO:
 <<Insert name of Contractor and address details>> (the "Contractor")

FROM:
 <<Insert name of Customer and address details>> (the "Customer")

DATE:
 <<Insert date of Notice>>

FOR: The Contract dated <<insert date>>, between the Customer and the Contractor

 <<insert description of the Contract>>. (the "Contract")

Termination of the entire Contract:

Notice is given under clause <<insert either clause 30.4 or 30.5>> of the Conditions of Contract – Version 002 - dated 1 July 2009 that the Customer hereby terminates, the entire Contract, for the following reasons:

.....

 <<insert reasons for termination>>

The termination of this Contract will be effective <<insert either "immediately" or "from <insert date>>>.

EXECUTION BY CUSTOMER

Signed for and on behalf of)	
.....)	
<<inset name of Customer>>)	
by)	
.....)	
<<insert name of Customer's representative>>)	Signature of Customer's representative
)	
this day of 20.....)	
)	
In the presence of:)	
.....)	
<<insert name of witness>>)	Signature of witness

Appendix 4 - Notice of Termination (for Convenience)

TO:
<<Insert name of Contractor and address details>> (the "Contractor")

FROM:
<<Insert name of Customer and address details>> (the "Customer")

DATE:
<<Insert date of Notice>>

FOR: The Contract dated <<insert date>>, between the Customer and the Contractor
.....
<<insert description of the Contract>>. (the "Contract")

Termination of the entire Contract:

Notice is given under clause 30.1 of the Conditions of Contract – Version 002 – dated 1 July 2009 that the Customer hereby terminates the entire Contract for convenience:

The effective date of this termination is <<insert 30 days after the date of this Notice, or some other reasonable period>>.

EXECUTION BY CUSTOMER

Signed for and on behalf of)
.....)
<<inset name of Customer>>)
by)
.....)
<<insert name of Customer's representative>>) Signature of Customer's representative
this day of 20.....)
In the presence of:)
.....)
<<insert name of witness>>) Signature of witness