

Information and Communication Technology (ICT) STANDING OFFER ARRANGEMENT CONDITIONS

For the provision of Products and/or Services

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Introduction

The Department of Public Works has undertaken a major review of all the Queensland Government terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review ensured that the 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 and contractual processes.

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ICT STANDING OFFER ARRANGEMENT CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these ICT Standing Offer Arrangement Conditions, unless the context otherwise requires, the following definitions will apply. Other capitalised words and expressions used in these ICT Standing Offer Arrangement Conditions are defined in the Government Information Technology Contracting (GITC) Framework Version 5 Part 2 and Part 3 (as applicable). In the event of any conflict between the definitions contained within these ICT Standing Offer Arrangement Conditions and GITC Part 2 and Part 3 (as applicable) then the definitions contained within these ICT Standing Offer Arrangement Conditions will prevail.

"Additional Provisions" means:

- (a) **GITC Agreement:** any terms and conditions, that are agreed between the Contract Authority and the Contractor and where included in Schedule A2(A) of GITC Part 1, these terms and conditions reflect variations to the standard provisions of the Agreement and shall be incorporated into the ICT Arrangement and each Customer Contract. These terms and conditions must not be further amended by the Principal, the Customer and the Contractor prior to being incorporated into the ICT Arrangement or a Customer Contract, without the consent of the Contract Authority; and
- (b) **ICT Arrangement:** the departures from and additions to the Specifications or ICT Standing Offer Arrangement Conditions and/or any additional terms and conditions that are:
 - (i) specified in Section 5 of the ICT Invitation; or
 - (ii) agreed between the Principal and the Contractor as specified in Schedule 3 of the Deed of Agreement;
 These terms and conditions must not be further amended by the Customer and the Contractor prior to being incorporated into a Customer Contract, without the consent of the Principal;

"Approved Expenses" means the Contractor's expenses (if any) which have been agreed between the Principal and Contractor, as specified in Schedule 2, and approved by the Customer prior to any expenditure being incurred, as specified in item 10 of Schedule A;

"Business Day" means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday, in relation to the:

- (a) ICT Arrangement – at the Principal's address; or
- (b) Customer Contract – at the Customer's address;

"Confidential Information" means information of, or supplied by, the Principal or Customer that:

- (a) is by its nature confidential;
- (b) is designated as confidential, including the information specified in item 5 of Section 1 of the ICT Invitation (if applicable); or
- (c) the Contractor knows or ought to know is confidential;

and includes information:

- (d) comprised in or relating to any Intellectual Property Rights of the Principal or Customer;
- (e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Principal or Customer;
- (f) that is of actual or potential commercial value to the Principal or Customer; and
- (g) relating to the clients or suppliers of the Principal or Customer;

but does not include information that:

- (h) was already in the possession of the Contractor and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Contractor; or is public knowledge other than through a breach of an obligation of confidentiality;

"Conflict of Interest" means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the ICT Arrangement or a Customer Contract fairly and objectively;

"Contractor" means in relation to the:

- (a) ICT Arrangement - the entity specified in item 5 of Schedule 1; and
- (b) Customer Contract - the entity specified in item 6 of Schedule A;

"Customer" means in relation to the:

- (a) ICT Arrangement - the State of Queensland and the entities referred to in clause 16.1, unless otherwise specified in item 6 of Schedule 1; and
- (b) Customer Contract - as defined in clause 1.1 of GITC Part 2, and the State of Queensland or other entity specified in item 3 of Schedule A;

"Customer Contract" means a legally binding contract as agreed between a Customer and the Contractor in accordance with the ICT Arrangement, the terms of which are set out in the Documents specified in clause 33.2;

"Deed of Agreement" or **"Deed"** means the deed entered into between the Principal and Contractor including the Schedules 1, 2 and 3 as completed by the Principal, and any other attached schedules under which the ICT Arrangement is established;

"Deliverables" means in relation to the:

- (a) ICT Arrangement - the Products and/or Services specified in Schedule 2; and
- (b) Customer Contract – as defined in clause 1.1 of GITC Part 2;

“**Delivery Period**” means the period specified in item 19 of Schedule 1, in which the Products will be supplied and/or the Services will be performed by the Contractor to a Customer;

“**Document**” includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; or
- (d) a document in electronic form;

“**Eligible non-Government Body**” or “**Non-Government Organisation**” means a body (including a private school), other than a Queensland Government department, agency or Queensland Government Body, which is:

- (a) directly or indirectly, partially or entirely funded by the State of Queensland;
- (b) a community based non-profit making organisation performing community services; and/or
- (c) another entity;

from time to time approved by the State of Queensland acting through the Department of Public Works - Queensland Government Chief Procurement Office to procure Products and/or Services pursuant to a Customer Contract in accordance with the ICT Arrangement;

“**Financial Security**” means the unconditional financial security, for the:

- (a) ICT Arrangement in a form set out in the ‘ICT *Standing Offer Arrangement Supplementary Provisions*’ document – ‘*Financial Security*’ which is available from the Queensland Government Chief Procurement Office website: www.qgcpcpo.qld.gov.au under ‘*Government terms and conditions*’; or
- (b) Customer Contract in a form set out in GITC ‘*Part 4 - Customer Contract Schedules*’ document – ‘*S4 Financial Security*’ which is available from the Queensland Government Chief Procurement website: www.qgcpcpo.qld.gov.au under ‘*GITC Services*’,

or other form of unconditional financial security in a form acceptable to the Principal as specified in item 16 of Schedule 1;

“**General Order**” means an order:

- (a) substantially in the form of Schedule A; or
- (b) in another form of Document which is acceptable to the Customer and contains substantially the same information as Schedule A;

by which the Customer accepts the ICT Standing Offer and creates a Customer Contract between the Customer and Contractor to supply the Products and/or Services specified in the General Order;

“**GITC**” means the Government Information Technology Contracting Framework Version 5.02 which can be located from the Queensland Government Chief Procurement Office website: <http://www.qgcpcpo.qld.gov.au/gitc/index.htm> under ‘GITC V5 Framework’ or by emailing the Contact Officer;

“**GITC Agreement**” means the Agreement between the Contract Authority and the Contractor as defined in GITC – Part 2;

“**GST**” means a goods and services tax imposed by or through the GST Legislation;

“**GST Amount**” means the amount of GST payable in respect of any taxable supply under the Customer Contract, calculated at the rate of GST applicable at the time;

“**GST Legislation**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such laws;

“**ICT Arrangement**” refer to definition of “ICT Standing Offer Arrangement”;

“**ICT Arrangement Commencement Date**” means:

- (a) the date specified in item 7 of Schedule 1;
- (b) the date otherwise agreed in writing between the Parties; or
- (c) if neither (a) or (b) apply, the date of execution of the Deed of Agreement, and if the Deed of Agreement is executed by the Parties on different dates, the date the last Party to the Deed of Agreement gives Notice to the other Party that it has executed the Deed of Agreement;

“**ICT Arrangement Completion Date**” means the expiry date specified in item 8 of Schedule 1, or as otherwise agreed in writing between the Parties, and includes an extension of that date in accordance with clause 24;

“**ICT Arrangement Term**” means the term of the ICT Arrangement, as specified in item 9 of Schedule 1;

“**ICT Conditions of Customer Contract**” means the terms and conditions of a Customer Contract as specified in Division B of these ICT Standing Offer Arrangement Conditions and any Additional Provisions – ICT Arrangement;

“ICT Invitation to Offer” or **“ICT Invitation”** means the documentation issued by the Principal, inviting Offers for the provision of the Products and/or Services (if applicable);

“ICT Standing Offer” means the Contractor’s standing offer to supply the Products and/or Services in accordance with the ICT Arrangement for the ICT Arrangement Term;

“ICT Standing Offer Arrangement” or **“ICT Arrangement”** means an arrangement (including without limitation a standing offer arrangement, a register of pre-qualified suppliers, panel arrangement or preferred supplier arrangement), entered into by the Principal and Contractor by executing a Deed of Agreement which comprise the documents specified in clause 5.2;

“ICT Standing Offer Arrangement Conditions” or **“ICT Arrangement Conditions”** means these terms and conditions of the ICT Arrangement (Divisions A and B) and any Additional Provisions – ICT Arrangement;

“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 as protected by legislation from time to time, whether created before, on or after the Customer Contract Commencement Date, but excludes Moral Rights;

“Machinery of Government Change” means a transfer of responsibility, function or operations in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body;

“Module Order” means an order substantially in the form of Schedule MO1 to MO14 of GITC Part 3 and such other Module Orders as incorporated into the Agreement by the Contract Authority from time to time, which contains the agreed terms and conditions for the supply of a Deliverable by the Contractor to the Customer and which is set out in Schedule B;

“Non-Government Organisation” refer to definition of “Eligible non-Government Body”;

“Notice” means a notice in writing under or in connection with the ICT Arrangement and/or Customer Contract from on Party to the other Party;

“Occurrence” means either a single occurrence, or a series of occurrences which arise out of or in connection with the same circumstances;

“Offer” means the offer submitted by the Contractor in response to the ICT Invitation if an Invitation was issued;

“Parties” means in relation to the:

- (a) ICT Arrangement – the Principal and the Contractor; and
- (b) Customer Contract – the Customer and Contractor;

“Performance Guarantee” means the performance guarantee, for the:

- (a) ICT Arrangement in a form set out in the ‘ICT *Standing Offer Arrangement Supplementary Provisions*’ document – ‘*Performance Guarantee*’ which is available from the Queensland Government Chief Procurement Office website: www.ggcpo.qld.gov.au under ‘*Government terms and conditions*’; or
- (b) Customer Contract in a form set out in GITC ‘*Part 4 - Customer Contract Schedules*’ document - ‘*Schedule S5 Performance Guarantee*’ which is available from the Queensland Government Chief Procurement website: www.ggcpo.qld.gov.au under ‘GITC Services’,

or other form of performance guarantee in a form acceptable to the Principal as specified in item 15 of Schedule 1;

“Personal Information” is 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;

“Price” and **“Pricing”** means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Customer for a Deliverable, as specified in Schedule 2 and in item 10 of Schedule A, and (unless otherwise specified in Schedule 2 or Schedule B) is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

“Principal” means the State of Queensland or other entity specified in item 4 of Schedule 1;

“Principal’s Authorised Officer” means the person specified in item 10 of Schedule 1, who is the Principal’s representative and point of contact for the ICT Arrangement;

“Products” means the material, plant, item or equipment as specified in the:

- (a) ICT Arrangement – Schedule 2; and
- (b) Customer Contract - Schedule B;

“Project Manager” means the person nominated by the:

- (a) Principal to oversee and supervise the technical requirements of the Specifications under the ICT Arrangement, as specified in item 11 of Schedule 1, or other person nominated from time to time by the Principal as the Project Manager; and/or
- (b) Customer to oversee and supervise the technical requirements of the Specifications relating to the Customer Contract, as specified in item 4 of Schedule A, or other person nominated from time to time by the Customer as the Project Manager;

"Queensland Government Body" means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated company over which the State of Queensland exercises control;

"Records" means all material including but not limited to books, Documents, information computer software, equipment and data stored by any means disclosed, or made available, by the Principal and/or Customer to the Contractor in connection with the performance of the ICT Arrangement and/or any Customer Contract and includes a copy of such material;

"Schedule" means the schedules which are part of the ICT Arrangement and/or a Customer Contract;

"Services" means the services as specified in the:

- (a) ICT Arrangement - Schedule 2; and
- (b) Customer Contract - Schedule B;

"Specifications" means the detailed description of the Principal's requirements:

- (a) as specified in Section 3 of the ICT Invitation (if applicable); or
- (b) as specified, attached or referenced in the Deed of Agreement;

1.2 Interpretation

1.2.1 In these ICT Standing Offer Arrangement Conditions the index and clause headings and explanatory notes have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these ICT Standing Offer Arrangement Conditions.

1.2.2 The following rules apply in interpreting these ICT Standing Offer Arrangement Conditions 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, attachment or annexure is a reference to a clause, attachment or annexure to these ICT Standing Offer Arrangement Conditions;
- (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 reference to a clause is a reference to all of its sub-clauses;
- (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; and
- (n) a Schedule forms part of the document to which it is attached.

DIVISION A – ICT ARRANGEMENT

Explanatory Note:

The terms and conditions in Division A of these ICT Standing Offer Arrangement Conditions establish the ICT Standing Offer Arrangement. The Contractor commits to provide Products and/or Services to Customers who place orders under this ICT Standing Offer Arrangement. The Contractor will enter into GITC Customer Contracts with such Customer on the terms established under this ICT Standing Offer Arrangement.

2. PRINCIPAL

- 2.1 The Principal is responsible for the administration of the ICT Arrangement on behalf of the State of Queensland and has authority to act on behalf of the State of Queensland in this respect.
- 2.2 The Principal will be entitled to suspend, in accordance with clause 25, or terminate, in accordance with clause 27, the ICT Arrangement.

3. NATURE OF THE ICT ARRANGEMENT BETWEEN THE PRINCIPAL AND THE CONTRACTOR

- 3.1 A Customer may accept the ICT Standing Offer by placing a General Order with the Contractor.
- 3.2 A Customer Contract is formed whenever a Customer places a General Order with the Contractor for the supply of the Products and/or Services, and the Contractor must supply the Products and/or Services in accordance with the ICT Arrangement and the Customer Contract.
- 3.3 Nothing in the ICT Arrangement creates any obligation on the Contractor to provide Products and/or Services to the Principal.
- 3.4 Where the Principal and the Customer are the same legal entity, clause 3.3 only applies to the Principal in its capacity as Principal.
- 3.5 The Principal may enter into an agreement with other contractors to provide the Products and/or Services which are identical or similar to the Products and/or Services.

4. CUSTOMER MAY ENFORCE THE ICT ARRANGEMENT

- 4.1 Any Customer, although not a party to the ICT Arrangement, may take the benefit of, and seek to enforce, the ICT Arrangement to the extent that such enforcement is required to enable the Customer to obtain the benefit of a Customer Contract with the Contractor.

5. FORMATION OF THE ICT ARRANGEMENT

- 5.1 The ICT Arrangement is formed upon the execution of the Deed of Agreement by the Principal and the Contractor.
- 5.2 The following Documents constitute the entire ICT Arrangement between the Principal and the Contractor:
 - (a) the Deed of Agreement including Additional Provisions – ICT Arrangement;
 - (b) these ICT Standing Offer Arrangement Conditions;
 - (c) Contractor's GITC Agreement with the Contract Authority including Additional Provisions – GITC Agreement;
 - (d) Specifications;
 - (e) Offer (to the extent accepted under the Deed of Agreement); and
 - (f) any other Document, in whole or in part, forming part of the ICT Arrangement, as agreed in writing and executed by the Principal and Contractor.
- 5.3 Subject to clause 5.4 and 5.5, In the event of any conflict between the Documents specified in clause 5.2, the order of precedence to resolve the conflict will be in the above order.
- 5.4 Any Additional Provisions – ICT Arrangement which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under clause 30.11 are null and void.
- 5.5 It is a condition of the ICT Arrangement that the Additional Provisions – ICT Arrangement must not, either expressly or by implication, cause a Customer Contract to derogate from the terms and conditions of the Contractor's GITC Agreement with the Contract Authority, the Customer Contract Provisions or the applicable Modules. Those Additional Provisions - ICT Arrangement will be deemed not to derogate if the Principal has obtained the consent of the Contract Authority that the Additional Provisions – ICT Arrangement do not derogate.
- 5.6 The ICT Arrangement supersedes all prior representations, agreements, statements and undertakings between the Principal and Contractor, whether oral or in writing relating to the subject matter of the ICT Arrangement.

6. ICT ARRANGEMENT TERM

- 6.1 The ICT Arrangement Term will commence on the ICT Arrangement Commencement Date and, unless terminated sooner in accordance with clause 27, will continue until the ICT Arrangement Completion Date.
- 6.2 The ICT Arrangement Term may be extended at the entire discretion of the Principal, for a further period as specified in item 9 of Schedule 1, by Notice given by the Principal to the Contractor. Any extended ICT Arrangement Term will be governed by the same terms and conditions as the ICT Arrangement, unless otherwise agreed between the Parties.

7. TRANSFERABILITY / PORTABILITY OF THE ICT ARRANGEMENT

- 7.1 Notwithstanding any provision of the ICT Arrangement, the Principal is entitled, by the giving of a Notice to the Contractor, to freely transfer its rights and responsibilities under the ICT Arrangement either in whole or in part, to a Queensland Government department or agency that is part of the same legal entity as the Principal.
- 7.2 Notwithstanding any provision of the ICT Arrangement, the Principal may freely transfer its rights and responsibilities under the ICT Arrangement, either in whole or in part, to a Queensland Government department or agency or Queensland Government Body that is not part of the same legal entity as the Principal, but only as a consequence of a Machinery of Government Change.
- 7.3 If clause 7.2 applies, the Contractor must execute a deed of novation in a form as set out in the *'Supplementary Provisions - ICT Standing Offer Arrangement'* document, available from the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under *'Government terms and conditions'* or by contacting the Principal's Authorised Officer. The Contractor must execute and return this deed of novation to the Principal within five (5) Business Days from receipt of a Notice from the Principal advising of the transfer and requiring the Contractor to execute the deed of novation.

8. ROLE OF THE PRINCIPAL'S AUTHORISED OFFICER AND PROJECT MANAGER

- 8.1 The Principal's Authorised Officer will be the primary liaison and point of contact between the Principal and the Contractor in relation to the management of the ICT Arrangement, any variations to the Products and/or Services, or any matters affecting the terms and conditions of the ICT Arrangement.
- 8.2 The Contractor must:
- liaise with and report to the Principal's Authorised Officer about the performance of the ICT Arrangement;
 - attend meetings with, or provide briefings to the Principal's Authorised Officer, as required from time to time; and
 - promptly comply with any request or direction given by the Principal's Authorised Officer, in accordance with the ICT Arrangement, in relation to the performance of the ICT Arrangement.
- 8.3 The Project Manager is the Principal's technical representative responsible for the detail and accuracy of the Specifications in the ICT Arrangement. The Project Manager is not authorised either apparently or ostensibly to amend the ICT Arrangement or enter into any Customer Contract, on behalf of the Principal.
- 8.4 The Contractor must:
- liaise with and report to the Project Manager about the supply of the Products and/or performance of the Services;
 - attend meetings with, or provide briefings to the Project Manager, as required from time to time; and
 - promptly comply with any request or direction given by the Project Manager, in accordance with the ICT Arrangement, about the supply of the Products and/or performance of the Services.

9. INSURANCE

- 9.1 The Contractor warrants that it will hold and maintain for the ICT Arrangement Term the following insurances to cover its obligations under the ICT Arrangement and each Customer Contract:
- Workers' Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
 - Public Liability insurance for the amount specified in item 12 of Schedule 1;
 - Professional Indemnity insurance if specified in item 13 of Schedule 1 for the amount specified in that Schedule in respect of each claim, and which must be maintained by the Contractor for a continuous period of four years, after the latter of the last Customer Contract Completion Date or termination of the last Customer Contract, unless otherwise specified in item 13 of Schedule 1; and
 - any other insurances specified in item 14 of Schedule 1.
- 9.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 9.3 The Contractor warrants if it is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld) that it will hold and maintain the minimum level of insurance as specified in item 13 of Schedule 1.
- 9.4 The Contractor must, if requested by the Principal, promptly provide a certificate of currency for each insurance policy.

9.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause 9, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Customer's rights under a Customer Contract.

9.6 The Contractor must immediately advise the Principal if any insurance policy, as required by this clause 9, is materially modified.

10. PERFORMANCE GUARANTEE

10.1 The Contractor must, if specified in item 15 of Schedule 1, or if requested by the Principal during the ICT Arrangement Term, arrange within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, for a guarantor, approved by the Principal, to execute a Performance Guarantee in a form acceptable to the Principal.

10.2 If the Contractor has in place a Performance Guarantee at the request of the GITC Contract Authority, the Principal may call upon that Performance Guarantee on behalf of a Customer under a Customer Contract established as a result of the ICT Arrangement.

10.3 The Performance Guarantee will be held as security for the due and proper performance of all obligations of the Contractor under any Customer Contract established as a result of the ICT Arrangement.

10.4 All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this clause 10 must be met by the Contractor.

10.5 A Customer is entitled to rely upon the Performance Guarantee, which has been put in place by the Contractor at the request of the Principal or GITC Contract Authority.

10.6 A claim by the Principal against the Contractor's Performance Guarantee in relation to one or more Customer Contracts, must not have the effect of extinguishing the Performance Guarantee in relation to all other Customer Contracts, nor will it release the Contractor from its obligations in accordance with this clause 10.

10.7 The Principal and Contractor may agree to release the Performance Guarantee on terms acceptable to the Principal.

10.8 Notwithstanding clause 10.7, upon termination of the ICT Arrangement in accordance with clause 27, the Principal will release the Performance Guarantee to the Contractor where the Contractor has fully performed and discharged all of its obligations under the ICT Arrangement (other than the obligations as specified in clause 31, which will survive the termination of the ICT Arrangement) and all Customer Contracts.

11 FINANCIAL SECURITY

11.1 The Contractor must, if specified in item 16 of Schedule 1, or if requested by the Principal during the ICT Arrangement Term, provide within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, a Financial Security in a form acceptable to the Principal.

11.2 If the Contractor has in place a Financial Security at the request of the GITC Contract Authority, the Principal may call upon that Financial Security on behalf of a Customer (excluding a Queensland Government Body or Non-Government Organisation), in accordance with the Customer Contract.

11.3 Notwithstanding this clause 11, any Financial Security which the Contractor has in place at the request of the Principal will not be available to a Customer which is a Queensland Government Body or Non-Government Organisation.

11.4 A Customer which is a Queensland Government Body or Non-Government Organisation is entitled to request its own Financial Security from the Contractor.

11.5 Where the Contractor has a Financial Security in place pursuant to a request by either the:

(a) Principal; or

(b) GITC Contract Authority,

subject to clause 11.6, a Customer is entitled to rely on this Financial Security.

11.6 Except where clause 11.4 applies, only the Principal or GITC Contract Authority, depending upon who requested the Financial Security, may enforce the Financial Security. A Customer seeking to rely on such Financial Security must request the Principal or GITC Contract Authority to make a claim on its behalf.

11.7 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution acceptable to the Principal in its entire discretion.

11.8 The Financial Security is to be held as security for the due and proper performance of all the obligations of the Contractor under any Customer Contract established as a result of the ICT Arrangement.

11.9 If the Contractor fails to properly perform its obligations under a Customer Contract and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer will be entitled (subject to clause 11.6) to make a claim and to receive payment for any or all such loss or damage (as ascertained and certified by the Customer, but subject to any limitation in clause 7.1 of GITC Part 2) from the Financial Security. If the Financial Security is not sufficient to meet such payment, the unpaid amount may be recovered from the Contractor by the Customer in any appropriate court.

- 11.10 If any claims are made against the Financial Security at any time, the Contractor must within a period not exceeding 30 days, of the claim being made, reinstate the Financial Security to the level required by the Principal in accordance with clause 11.1.
- 11.11 The Contractor must not take nor be entitled to take any action or proceeding to obtain an injunction or otherwise prevent a Customer from making a claim (subject to clause 11.6) or receiving a payment under the Financial Security.
- 11.12 The Contractor agrees that the Principal, a Customer or the GITC Contract Authority, whilst exercising its rights in accordance with this clause, will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor.
- 11.13 The Contractor must not take any action or proceeding against the Principal or GITC Contract Authority or attempt to recover from the Principal or GITC Contract Authority, any amount claimed under a Financial Security that has been received by the Principal or GITC Contract Authority, on behalf of a Customer. The Principal or GITC Contract Authority will promptly forward to the Customer any such amounts claimed under a Financial Security that have been received by the Principal or GITC Contract Authority on behalf of a Customer.
- 11.14 The Principal will release the Financial Security requested in accordance with clause 11.1 to the Contractor (or to whom the Contractor directs) where:
- (a) the Contractor has fully performed and discharged all of its obligations under the ICT Arrangement (other than the obligations as specified in clause 31, which survive the termination of the ICT Arrangement) and all Customer Contracts; and
 - (b) in the reasonable opinion of the Principal, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to a Customer.
- 11.15 All charges incurred by the Contractor in obtaining, maintaining and releasing the Financial Security in accordance with this clause 11 must be met by the Contractor.

12. LIST OF PRODUCTS AND/OR SERVICES AND PRICING UNDER THE ICT ARRANGEMENT

- 12.1 The Contractor agrees to provide the Products and/or Services at the Price specified in Schedule 2, to a Customer in accordance with the ICT Arrangement, and any Customer Contract formed in accordance with clause 33.
- 12.2 The Principal is not obliged to purchase any Products and/or Services from the Contractor in accordance with the ICT Arrangement.
- 12.3 Where the Contractor seeks to increase or decrease the Price for the Products and/or Services to take into consideration:
- (a) movements in the relevant exchange rates as it affects the Product, if specified in Schedule 2;
 - (b) movements in the Consumer Price Index Brisbane (All Groups), as published by the Australian Bureau of Statistics, as it affects the Products and/or Services, if specified in Schedule 2;
 - (c) other factors as it affects the Products and/or Services, if specified in Schedule 2; and/or
 - (d) any variation in any tax, duty or charge as it affects the Products and/or Services,
- the Contractor must give Notice to the Principal in accordance with clause 24 and such Notice must include evidence to substantiate the basis of the Price increase or decrease.
- 12.4 If the Contractor's request to increase or decrease the Price for the Products and/or Services is rejected by the Principal, the ICT Arrangement will remain unvaried.

13. REQUIREMENTS FOR PRODUCTS AND/OR SERVICES

- 13.1 All Products and/or Services provided by the Contractor to a Customer under a Customer Contract in accordance with the ICT Arrangement, unless otherwise specified by the Principal, must comply in all aspects with:
- (a) the terms of the ICT Arrangement and any Customer Contract, including but not limited to the Specifications;
 - (b) applicable legislative requirements;
 - (c) any applicable Government code, policy or guideline; and
 - (d) any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO);
- including any that may be introduced or varied during the ICT Arrangement Term, which govern the provision of the Products and/or Services.
- 13.2 All Products supplied by the Contractor to a Customer must be in a new and unused condition and of recent origin, unless otherwise specified in item 24 of Schedule 1.
- 13.3 All Products supplied by the Contractor to a Customer must be suitably packed and otherwise appropriately prepared for transportation.
- 13.4 Risk and title in the Products (free of all encumbrances and interests) will pass to a Customer upon Delivery.

- 13.5 Without limiting the Contractor's obligations, the Contractor must ensure that any manufacturer's or supplier's warranty that applies to the Products will be transferred to a Customer, at no cost to the Customer.
- 13.6 Without limiting any other rights a Customer may have, where any part of the Products are not supplied in accordance with the Customer Contract, a Customer may at its entire discretion, by Notice to the Contractor:
- (a) reject the Products, or part of the Products;
 - (b) require the Contractor to promptly supply or supply again the Products, or part of the Products; and/or
 - (c) require the Contractor to promptly correct any defect or omission.
- 13.7 Where a Customer rejects Products in accordance with clause 13.6:
- (a) a Customer is not required to pay for the rejected Products, and any amounts paid by the Customer in respect of the rejected Products must be refunded by the Contractor within ten (10) Business Days of the Notice given in accordance with clause 13.6; and
 - (b) a Customer may either return any rejected Products to the Contractor or by Notice to the Contractor, require the Contractor to remove the rejected Products within five (5) Business Days of receipt of the Notice by the Contractor.
- 13.8 The Contractor must meet all costs of and incidental to the discharge of its obligations in accordance with clauses 13.6 and 13.7(b), including, but not limited to, any packaging, handling, freight, disassembly and reassembly costs.
- 14. CONTRACTOR'S OBLIGATIONS**
- 14.1 The Contractor will be responsible for the supply and/or performance of all personnel and/or equipment, necessary for the proper supply of the Products and/or performance of the Services.
- 14.2 When supplying the Products and/or performing the Services, the Contractor must:
- (a) take all measures to protect people and property;
 - (b) avoid unnecessary interference with the passage of people and vehicles; and
 - (c) prevent nuisance and unreasonable noise and disturbance.
- 14.3 The Contractor:
- (a) warrants that it has the necessary skills and expertise to complete the Customer Contract; and
 - (b) will ensure that its officers, employees, agents and sub-contractors have the necessary skills and expertise to perform those obligations of the Customer Contract, which are allocated to them by the Contractor.
- 14.4 The Contractor:
- (a) warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Products and/or Services;
 - (b) must if requested by the Principal, provide evidence of compliance with its obligations under this clause to the satisfaction of the Principal.
- 15. TRANSACTING WITH A CUSTOMER**
- 15.1 The Contractor acknowledges that there has been no representation by the Principal (even if the ICT Invitation invited offers for a common use whole-of-government supply strategy) that on the entering into of the ICT Arrangement, the Contractor will necessarily receive any orders from any Customer in accordance with the ICT Arrangement.
- 15.2 A Customer may enter into a Customer Contract with the Contractor by placing a General Order at any time until the ICT Arrangement Completion Date, and the Contractor will be bound by any such General Order, unless the ICT Arrangement:
- (a) is suspended; or
 - (b) has been terminated;
- at the time the General Order is placed.
- 15.3 A General Order will be deemed to be received:
- (a) if posted – two (2) 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 recorded on the device from which the Customer sent the email, unless the Customer receives and automated message that the email has not been delivered,
- except that a delivery by hand, fax or email received after 5:00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.
- 15.4 The ICT Arrangement is not an exclusive arrangement with the Contractor, even if the ICT Invitation invited offers for a common use whole-of-government supply strategy, and the Customer may, at its entire discretion, enter into a contract with other contractors to provide the Products and/or Services.

- 15.5 A Customer is not obliged to request any or a minimum number of Products and/or Services from the Contractor under the ICT Arrangement.
- 16. UTILISATION OF THE ICT ARRANGEMENT BY OTHER ENTITIES**
- 16.1 The Principal reserves the right to allow Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States and/or Territories to purchase the Products and/or Services under the ICT Arrangement.
- 17. CONFLICT OF INTEREST**
- 17.1 The Contractor warrants that, to the best of its knowledge, as at the ICT Arrangement Commencement Date neither the Contractor nor any of its officers, employees, agents or sub-contractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor's obligations under the ICT Arrangement and any Customer Contract.
- 17.2 If a Conflict of Interest or risk of Conflict of Interest arises during the ICT Arrangement Term (without limitation, including work undertaken by the Contractor for any entity other than the Principal), the Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Principal.
- 17.3 The Contractor must:
- (a) take all reasonable measures to ensure that its officers, employees, agents and sub-contractors do not engage in any activity or obtain any interest which is in conflict with the Contractor's ability to fulfil its obligations under the ICT Arrangement to the Principal in good faith and objectively; and
 - (b) immediately give Notice to the Principal of any Conflict of Interest relating to the activities or interests of any of its officers, employees, agents or sub-contractors.
- 17.4 Upon receipt of a Notice in accordance with clause 17.2 or 17.3(b), or upon the Principal otherwise identifying a Conflict of Interest, the Principal may either:
- (a) direct the Contractor as to how to manage the Conflict of Interest and the Contractor must comply with any reasonable direction so given by the Principal;
 - (b) suspend the ICT Arrangement in accordance with clause 25.1; or
 - (c) elect to terminate the ICT Arrangement in accordance with clause 27.5(a).
- 17.5 If clause 17.4(a) or 17.4(b) applies, the Contractor must give Notice to the Principal when the Conflict of Interest or risk of Conflict of Interest is resolved.
- 18. CONFIDENTIALITY**
- 18.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose any Confidential Information without the Principal's consent, other than in accordance with this clause 18.
- 18.2 The Contractor may disclose Confidential Information:
- (a) to its officers, employees, agents and sub-contractors to the extent necessary for the performance of the ICT Arrangement, provided that the Contractor:
 - (i) makes such persons aware that the information is confidential; and
 - (ii) if specified in item 17 of Schedule 1 or directed by the Principal during the ICT Arrangement Term, obtains from such persons a deed of confidentiality in a form acceptable to the Principal;
 - (b) where required by law; and/or
 - (c) where the ICT Arrangement requires disclosure to a third party.
- 18.3 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 18.4 Subject to clause 18.6, upon receipt of a written request by the Principal, either during the ICT Arrangement Term or upon termination or expiration of the ICT Arrangement, the Contractor must deliver to the Principal any Documents and/or Records in the Contractor's power, possession or control.
- 18.5 Subject to clause 18.4, the Contractor must:
- (a) return any Documents and/or Records to the Principal upon the completion of the ICT Arrangement; and/or
 - (b) destroy its files and any copy (but not the original) of any Documents and/or Records held in its file in accordance with usual business practice and any applicable legislative requirements.
- 18.6 If the Contractor wishes to retain a copy of any Documents and/or Records in connection with ICT Arrangement for the purposes of the Contractor's own reasonable internal credit, risk, insurance, legal and professional responsibilities, the Contractor must notify the Principal in writing prior to the termination or expiration of the ICT Arrangement, identifying the Documents and/or Records and the reasons for the request for retention.

- 18.7 Any consent granted by the Principal may require the Contractor to return the copies to the Principal at the end of 7 years after the termination or expiration of the ICT Arrangement. If the Principal does not make such a request, the Contractor must destroy each copy of the Documents and/or Records at the end of the 7 years after the termination or expiration of the ICT Arrangement.
- 18.8 Regardless of the terms of the Principal's consent, the Contractor must maintain confidentiality and otherwise comply with the terms of the ICT Arrangement in relation to the Documents and/or Records during the period in which it retains a copy of the Documents and/or Records.

19. PRIVACY AND PERSONAL INFORMATION

- 19.1 If the Contractor collects or has access to Personal Information as a result of the ICT Arrangement, the Contractor must:
- (a) if the Principal is an "agency" other than the health department within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the ICT Arrangement, as if the Contractor was the Principal;
 - (b) if the Principal is the "health department" within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the ICT Arrangement, as if the Contractor was the Principal;
 - (c) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (d) not use Personal Information other than for the purposes of performing the ICT Arrangement, unless required or authorised by law;
 - (e) not disclose Personal Information without the consent of the Principal, unless required or authorised by law;
 - (f) not transfer Personal Information outside of Australia without the consent of the Principal;
 - (g) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under the ICT Arrangement;
 - (h) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under the ICT Arrangement;
 - (i) ensure that its sub-contractors and agents who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause 19;
 - (j) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (k) comply with such other privacy and security measures as the Principal reasonably advises the Contractor in writing from time to time.
- 19.2 The Contractor must, if specified in item 18 of Schedule 1, or if requested by the Principal during the ICT Arrangement Term, obtain from its officers, employees, agents or sub-contractors engaged for the purposes of the ICT Arrangement, an executed deed of privacy in a form acceptable to the Principal.
- 19.3 The Contractor must immediately notify the Principal on becoming aware of any breach of clause 19.1.

20. LIABILITY

- 20.1 The liability of a Party to the other Party under the ICT Arrangement for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the ICT Arrangement or otherwise at law.
- 20.2 Unless otherwise agreed in writing between the Parties, the liability of a Party arising under and/or in connection with the ICT Arrangement, will exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 20.3 The liability of a Party arising under and/or in connection with the ICT Arrangement, will, except in relation to liability:
- (a) for personal injury (including sickness, injury, death);
 - (b) for loss of, or damage to, tangible property;
 - (c) for a breach of the Intellectual Property Rights and Moral Rights in accordance with clause 6 of GITC Part 2; or
 - (d) under an indemnity provided by the Contractor in accordance with clause 21,
- be limited to the per Occurrence amount specified in item 32 of Schedule 1.
- 20.4 If no amount, "nil" or an indication of \$0 is specified in item 32 of Schedule 1, then the liability of a Party will be unlimited.
- 20.5 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of the ICT Arrangement, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the ICT Arrangement.

20.6 Despite any other provision of the ICT Arrangement, the Contractor's liability under the ICT Arrangement (including but not limited to any liability under this clause 20 and any liability to indemnify in accordance with clause 21) is limited to the extent necessary to comply with a scheme that is in force and applies to the Contractor under the *Professional Standards Act 2004* (Qld).

21. INDEMNITY

21.1 In this clause 21:

"claim" includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement.

21.2 The Contractor releases, discharges and indemnifies the Principal and each of its officers and employees ("the Indemnified Persons") from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:

- (a) negligent or unlawful act or omission of the Contractor, its officers, employees, agents or sub-contractors;
- (b) breach of the ICT Arrangement by the Contractor;
- (c) contravention of any legislative requirement by the Contractor, its officers, employees, agents or sub-contractors; or
- (d) infringement by the Contractor, its officers, employees, agents or sub-contractors of the Intellectual Property Rights or Moral Rights of any third party,

except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

22. DELIVERY PERIOD

22.1 The Contractor agrees to supply the Products and/or perform the Services in the Delivery Period specified in item 19 of Schedule 1, to a Customer in accordance with the ICT Arrangement and any Customer Contract.

23. PERFORMANCE REVIEW

23.1 A periodic review of the Contractor's performance in respect of the ICT Arrangement and any Customer Contract will be undertaken by the Principal to assess the Contractor's performance and its eligibility to continue to be a participant in the ICT Arrangement. The extent of the Products and/or Services covered by the performance review will be based on the Contractor's performance under the ICT Arrangement and the performance review criteria (e.g. key performance indicators or performance standards) as specified in item 20 of Schedule 1.

23.2 The Contractor must also attend any ICT Arrangement performance evaluation meetings and provide such documentation, reports and data as specified in item 20 of Schedule 1, as and when required by the Principal.

23.3 The Principal will monitor the performance of the Contractor annually, or such other period as specified by the Principal, during the ICT Arrangement Term.

24. VARIATION TO THE ICT ARRANGEMENT

24.1 Except in the circumstances specified in clause 24.2, the ICT Arrangement may only be varied by written agreement between the Parties after the Party requesting the variation has given the other Party a Notice setting out the proposed variation. The Parties must act reasonably and within a reasonable time period in deciding whether to agree to a variation, as requested by the other Party.

24.2 The Principal may vary the terms and conditions of the ICT Arrangement by Notice to the Contractor, when reasonably required as a result of changes in Government policy.

24.3 Where the terms and conditions of the ICT Arrangement are varied as a result of clause 24.2 the Contractor is required to comply with any amendments to Government policy the Contractor must promptly submit in writing to the Principal any proposed variation to the ICT Arrangement which is required as a result of this amendment. If the Parties are unable to reach agreement in relation to the Contractor's proposed variation, the provisions of clause 14 of GITC Part 2 will apply to resolve the dispute, as if reference in clause 14 of GITC Part 2, were references to the ICT Arrangement.

24.4 Any variation proposed by the Contractor in accordance with clause 24.1 or clause 24.3 must be accompanied by evidence to substantiate such proposed variation.

24.5 Despite any other provision of this clause 24, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Principal in accordance with clause 30.11, will be deemed to be rejected by the Principal and the ICT Arrangement will remain unvaried.

25. SUSPENSION OF THE ICT ARRANGEMENT

25.1 The Principal at its entire discretion may suspend the ICT Arrangement by giving Notice to the Contractor, providing details of:

- (a) the period of suspension with effect from the date stated in the Notice;
- (b) the reasons for the suspension; and

- (c) reasonable directions in relation to subsequent performance of the ICT Arrangement.
- 25.2 Where the ICT Arrangement is suspended in accordance with clause 25.1, prior to the period of suspension expiring, the Principal will notify the Contractor in writing that either the:
- (a) period of suspension has ceased to be effective from the date specified in the Notice, and each Party must resume its performance under the ICT Arrangement;
 - (b) period of suspension will be extended for a period of time specified in the Notice; or
 - (c) ICT Arrangement is to be terminated in whole from the date specified in the Notice, in accordance with clause 27.
- 25.3 If the Contractor's GITC Agreement is suspended by the Contract Authority, the Contractor must immediately advise the Principal in writing of this suspension. The Contractor in providing this advice must provide full details of this suspension.
- 25.4 The Contractor must immediately comply with any direction given by the Principal, in accordance with clause 25.1.
- 26. EFFECT OF SUSPENSION OF THE ICT ARRANGEMENT**
- 26.1 The effect of suspension of the ICT Arrangement in accordance with clause 25 is that:
- (a) the Contractor must not enter into any new Customer Contracts during the period of suspension;
 - (b) any existing Customer Contracts will not, unless the Customer Contract requires it, be affected in any way whatsoever; and
 - (c) otherwise, all other rights and obligations of the Parties will continue under the ICT Arrangement.
- 27. TERMINATION OF THE ICT ARRANGEMENT**
- 27.1 The Principal may terminate the ICT Arrangement, in whole or in part, for convenience by giving 30 days prior Notice or such other reasonable period determined by the Principal, to the Contractor.
- 27.2 The Principal will not be liable for payment to the Contractor for any compensation arising from the termination of the ICT Arrangement, including without limitation compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss,
- 27.3 Without limiting clause 27.5, where the Contractor commits any breach of the ICT Arrangement the Principal may by Notice require the Contractor to show cause, by the date specified in the Notice, why the Principal should not terminate the ICT Arrangement.
- 27.4 If the Contractor fails to show reasonable cause by the date specified in the Notice in clause 27.3, then the Principal is entitled upon Notice to the Contractor to terminate the ICT Arrangement.
- 27.5 The Principal may immediately terminate the ICT Arrangement by Notice to the Contractor if:
- (a) the Contractor gives Notice in accordance with clause 17.2 or 17.3(b) or the Principal otherwise identifies a Conflict of Interest;
 - (b) the Principal is satisfied that the Contractor has breached any part of clause 30.1;
 - (c) the Contractor fails to provide the Performance Guarantee in accordance with clause 10 or Financial Security in accordance with clause 11;
 - (d) the Contractor breaches any part of clauses 9 and/or 14.4;
 - (e) the Contractor:
 - (i) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
 - (ii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration;
 - (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (iv) is wound up, voluntarily or involuntarily; or
 - (f) the Contractor indicates that it is unable or unwilling to comply with its obligations under the ICT Arrangement or any Customer Contracts in accordance with the ICT Arrangement.
- 27.6 Termination of the ICT Arrangement for any reason is without prejudice to any rights of the Principal under the ICT Arrangement or at common law, including the right to claim damages for breach of the ICT Arrangement.
- 27.7 If the ICT Arrangement is terminated, discharged or in any other way comes to an end, in whole or in part, whether in accordance with this clause 27 or in any other way, no Customer Contract will, unless the Customer Contract requires it, be affected in any way whatsoever.
- 27.8 If the Contractor's GITC Agreement is terminated by the Contract Authority, the Contractor must immediately advise the Principal in writing of this termination. The Contractor in providing this advice must provide full details of this termination.

28. TERMINATION OF A CUSTOMER CONTRACT

- 28.1 If a Customer lawfully terminates a Customer Contract for breach by the Contractor, the Principal may at its entire discretion suspend the Contractor from the ICT Arrangement in accordance with clause 25, or terminate the ICT Arrangement in accordance with clause 27.
- 28.2 Notwithstanding clause 28.1, termination of a Customer Contract by either the Contractor or the Customer for any reason will not affect the continuation of the ICT Arrangement except as stipulated in the ICT Arrangement.

29. NOTICES RELATING TO THE ICT ARRANGEMENT

- 29.1 Any Notice which may be given to or served on either Party under the ICT Arrangement must be sent or delivered to the following respective addresses:
- (a) for the Principal – as specified in item 21 of Schedule 1;
 - (b) for the Contractor – as specified in item 22 of Schedule 1;
- or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.
- 29.2 Notwithstanding clause 29.1, if the Contractor is a company then the Principal may serve a Notice at any time to the Contractor's registered office.
- 29.3 A Notice to be given or served in accordance with clauses 25, 27 or 28 must not be sent via email.
- 29.4 A Notice will be deemed to be given:
- (a) if posted – two (2) 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 recorded on the device from which the Party sent the email, unless the sending Party receives an automated message that the email has not been delivered;
- except that a delivery by hand, fax or email received after 5:00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

30. GENERAL PROVISIONS**30.1 Commissions, Incentives and Collusion**Commissions and Incentives

- 30.1.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not give or offer anything to the Principal or any officer or employee of the Principal or to a parent, spouse, child or associate of the officer or employee of the Principal, including any commission, inducement, gift or reward, which could in any way tend to or be perceived as attempting to influence the Principal's actions in relation to the ICT Arrangement.
- 30.1.2 If the Principal discovers at any time during the ICT Arrangement Term that the Contractor has breached clause 30.1.1, the Principal may, in addition to any other action, elect to suspend the ICT Arrangement in accordance with clause 25 or terminate the ICT Arrangement in accordance with clause 27.

Collusion

- 30.1.3 The Contractor warrants to the Principal that:
- (a) except as is expressly disclosed to the Principal, its Offer was not prepared (and any variations to the ICT Arrangement will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including any contractor under an arrangement similar to this ICT Arrangement) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not to submit an offer (or request a variation) under the ICT Arrangement;
 - (iv) the submission of an offer (or request for variation) of the ICT Arrangement that is non conforming with the terms of the ICT Arrangement;
 - (v) the quality, quantity, specifications or delivery particulars of products and/or services (including the Products and/or Services) to which the Offer related or ICT Arrangement relates; or
 - (vi) the terms of the Offer (or variation) or a competitor's offer (or variation);
 - (b) except with the consent of the Principal:
 - (i) it has not provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly, to any competitor (including any contractor under a similar ICT Arrangement) relating in any way to the ICT Arrangement;
 - (ii) it has not received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any contractor under a similar ICT Arrangement) relating in any way to the ICT Arrangement; and

(iii) it will not provide or receive any such benefit.

- (c) except as is expressly disclosed to the Principal, it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the ICT Arrangement, nor has it provided, nor will it provide any such benefit;
- (d) except as is fully disclosed in the ICT Arrangement, at the time of entering into the ICT Arrangement, the Contractor and all corporations and persons associated with the Contractor, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas; and
- (e) the Contractor will notify the Principal immediately upon becoming aware that the Contractor or any corporation or person associated with the Contractor, including a director or member of senior management, becomes subject to proceedings relating to anti-competitive conduct in Australia or overseas during the ICT Arrangement Term, by disclosing at a minimum:
 - (i) the names of the parties to the proceedings;
 - (ii) the case number;
 - (iii) the general nature of the proceedings; and
 - (iv) the outcome or current status of the proceedings.

30.1.4 The Contractor acknowledges that the Principal has entered into the ICT Arrangement in reliance of the warranties in clause 30.1.3.

30.1.5 If the Contractor breaches clause 30.1.3, without limiting its rights under the ICT Arrangement, the Principal may:

- (a) deduct from any moneys due to the Contractor under the ICT Arrangement, and equivalent sum as an amount due from the Contractor to the Principal; and
- (b) at its entire discretion terminate the ICT Arrangement and claim damages for breach of the ICT Arrangement.

30.2 No Advertising

30.2.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not make any public announcement or advertisement in any medium in relation to the ICT Arrangement, without the consent of the Principal.

30.3 Waiver

- 30.3.1 Any failure by a Party at any time to enforce a clause of the ICT Arrangement, or any forbearance, delay or indulgence granted by a Party to the other, will not constitute a waiver of the Party's rights.
- 30.3.2 No provision of the ICT Arrangement will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.
- 30.3.3 A waiver by a Party of a breach of any part of the ICT Arrangement will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

30.4 Governing Law

- 30.4.1 The ICT Arrangement is governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 30.4.2 Notwithstanding clause 30.4.1, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* (Qld) to the ICT Arrangement to the fullest extent permitted by law.

30.5 Compliance with all Laws

30.5.1 The Contractor must comply with all relevant laws in performing its obligations under the ICT Arrangement and any Customer Contract.

30.6 Severability

30.6.1 If any part of the ICT Arrangement 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 ICT Arrangement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

30.7 No Sub-Contracting

- 30.7.1 The Contractor must not sub-contract the provision of any Products and/or Services in accordance with the ICT Arrangement, without the prior consent of the Principal. Any consent given by the Principal to sub-contract:
 - (a) may be conditional;
 - (b) will not operate as an authority to transfer responsibility to the sub-contractor; and
 - (c) will not relieve the Contractor from any of its liabilities or obligations under the ICT Arrangement.

30.8 Further Assistance

30.8.1 The Contractor must do all things reasonably required by the Principal to give effect to the ICT Arrangement.

30.9 No Assignment

30.9.1 The Contractor must not assign, in whole or in part, its obligations or interest in the ICT Arrangement, except with the consent of the Principal.

30.10 Disclosure by Principal

30.10.1 The Contractor acknowledges that the Principal, its officers, employees, agents and sub-contractors may use and disclose any of the information provided by the Contractor about the Contractor, the ICT Arrangement or the Products and/or Services to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or the Commonwealth, States or Territories for any purpose in connection with the administration of the ICT Arrangement.

30.11 Right to Information and Disclosure

30.11.1 The *Right to Information Act 2009* (Qld) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

30.11.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

30.11.3 Information relating to the ICT Arrangement is potentially subject to disclosure to third parties.

30.11.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the ICT Arrangement, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Principal. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

30.11.5 Despite any other provision of the ICT Arrangement, the Principal is entitled to publish on the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under '*eTendering website for Government Suppliers*', or by any other means, the following details:

- (a) the name and address of the Principal;
- (b) a description of the Product and/or Services;
- (c) ICT Arrangement Commencement Date or award date;
- (d) value of the ICT Arrangement
- (e) name and address of the Contractor;
- (f) the procurement method used; and
- (g) where the total value of the Products and/or Services is \$10 million or more, the Principal is entitled to publish the following additional information:
 - (i) Invitation details;
 - (ii) ICT Standing Offer Arrangement overview; and
 - (iii) reasons for non-disclosure of procurement results (if applicable).

30.12 Relationship of Parties

30.12.1 The relationship of the Parties under the Customer Contract is one of principal and contractor and the Contractor is not by virtue of the ICT Arrangement in partnership or joint venture with the Principal, and must not represent itself or allow itself to be represented as a partner, joint venture, officer or employee of the Principal.

31. CLAUSES TO SURVIVE TERMINATION OF THE ICT ARRANGEMENT

31.1 The following clauses will survive termination or expiration of the ICT Arrangement:

clause 1 of ICT SOA Conditions	–	Definitions and Interpretation
clause 4 of ICT SOA Conditions	–	Customer May Enforce ICT Arrangement
clause 7 of ICT SOA Conditions	–	Transferability / Portability of the ICT Arrangement;
clause 9.1(c) of ICT SOA Conditions	–	Insurance;
clause 10 of ICT SOA Conditions	–	Performance Guarantee;
clause 11 of ICT SOA Conditions	–	Financial Security;
clause 18 of ICT SOA Conditions	–	Confidentiality;
clause 19 of ICT SOA Conditions	–	Privacy and Personal Information;

clause 20 of ICT SOA Conditions	-	Liability;
clause 21 of ICT SOA Conditions	-	Indemnity;
clause 30.2 of ICT SOA Conditions	-	No Advertising;
clause 30.3 of ICT SOA Conditions	-	Waiver;
clause 30.4 of ICT SOA Conditions	-	Governing Law;
clause 30.10 of ICT SOA Conditions	-	Disclosure by Principal; and
clause 30.11 of ICT SOA Conditions	-	Right to Information and Disclosure.

DIVISION B – ICT CONDITIONS OF CUSTOMER CONTRACT

Explanatory Note:

The following terms and conditions are incorporated into each Customer Contract the Contractor enters into with Customers who places Orders under this ICT Standing Offer Arrangement. These terms and conditions vary the standard GITC Customer Contract Provisions.

32. CONTRACTOR'S SUPPLY OF PRODUCTS AND/OR SERVICES AND ICT CONDITIONS OF CUSTOMER CONTRACT

- 32.1 The Contractor must supply the Products and/or Services to the Customer in accordance with the ICT Arrangement and the Customer Contract.
- 32.2 The terms and conditions governing any Customer Contract established as a result of the ICT Arrangement will be under the terms and conditions as specified in clause 33.

33. FORMATION OF CUSTOMER CONTRACT

- 33.1 The Customer Contract comes into force when the Contractor receives a General Order from the Customer by which the Customer communicates acceptance of the Contractor's ICT Standing Offer to provide Products and/or Services.
- 33.2 The following documents will constitute the entire Customer Contract, which may be established as a result of the ICT Arrangement, between the Customer and Contractor:
- (a) the Deed of Agreement including Additional Provisions – ICT Arrangement;
 - (b) these ICT Standing Offer Arrangement Conditions;
 - (c) Contractor's GITC Agreement with the Contract Authority including Additional Provisions – GITC Agreement;
 - (d) Customer Contract Provisions in GITC Part 2, except for those clauses which are excluded, in accordance with clause 35 of the ICT Standing Offer Arrangement Conditions;
 - (e) General Order
 - (f) Module Order/s;
 - (g) applicable Schedules, as relevant to the supply of the Deliverables;
 - (h) applicable Modules in GITC Part 3, as relevant to the supply of the Deliverables;
 - (i) Specifications;
 - (j) Offer (to the extent accepted under the Deed of Agreement); and
 - (k) any other Document, in whole or in part, forming part of the ICT Arrangement, as agreed in writing and executed by the Principal and Contractor.
- 33.3 Subject to clause 33.4, the list of Documents specified in clause 33.2 replaces the list in clause 2.1.12 of GITC Part 2, and in the event of any conflict between the documents specified in clause 33.2, the order of precedence to resolve the conflict will be in the above order.
- 33.4 Despite clause 33.3, any terms or conditions of the Customer Contract which purport to take away or reduce the entitlements that would otherwise be provided to a Customer under clause 42 and the ICT Arrangement Conditions are null and void.
- 33.5 These ICT Standing Offer Arrangement Conditions and any Additional Provisions – ICT Arrangement are incorporated into all Customer Contracts and cannot be varied or deleted by the Contractor and/or Customer in relation to a Customer Contract, without the consent of the Principal.
- 33.6 The Customer and the Contractor must not agree under clause 2.7.3 of GITC Part 1 or clause 2.1.3 of Part 2 to include Additional Provisions in the General Order and/or any applicable Module Order/s in relation to the Customer Contract, unless they obtain the consent of the Principal. Any Additional Provisions purportedly agreed between the Customer and the Contractor and not approved by the Principal will be null and void.
- 33.7 If the Customer Contract is terminated in accordance with clause 16 of GITC Part 2, the ICT Arrangement will not, unless the ICT Arrangement requires it, be affected in any way whatsoever.
- 33.8 If the ICT Arrangement is terminated, discharged or in any other way comes to an end, in whole or in part, no Customer Contract will, unless the Customer Contract requires it, be affected in any way whatsoever.
- 33.9 The Customer Contract supersedes all prior representations, agreements, statements and understandings between the Customer and Contractor, whether oral or in writing, relating to the subject matter of the Customer Contract.
- ### 34. CUSTOMER MAY ENFORCE THE ICT ARRANGEMENT
- 34.1 The Customer, although not a party to the ICT Arrangement, may take the benefit of, and seek to enforce, the ICT Arrangement to the extent that such enforcement is required to enable the Customer to obtain the benefit of a Customer Contract with the Contractor.

35. GOVERNMENT INFORMATION TECHNOLOGY CONTRACTING (GITC) PART 2

35.1 The following clauses in GITC Part 2 do not apply to any Customer Contracts entered into under the ICT Arrangement:

- (a) clause 5.1 - Minimum Insurance Requirements;
- (b) clause 5.2 - Performance Guarantee; and
- (c) clause 5.3 - Financial Security.
- (d) clause 17.8 - Notices
- (e) clauses 2.7.12 and 2.7.13 of GITC Part 1; and
- (f) clauses 2.1.12 and 2.1.13 of GITC Part 2.

36. INSURANCES

36.1 A failure of the Contractor to hold and maintain the insurances specified in Schedule 1 of the ICT Arrangement is a material breach of the Customer Contract by the Contractor. Without limiting any other right of action or remedy of the Customer, the Customer is entitled to exercise its rights in accordance with clause 16 of GITC Part 2.

37. PERFORMANCE GUARANTEE

37.1 The Contractor acknowledges that the Customer is entitled to rely upon the Performance Guarantee, which has been put in place by the Contractor at the request of the Principal in accordance with clause 10 or by the GITC Contract Authority in accordance with clause 5.2 of GITC Part 1..

38. FINANCIAL SECURITY

38.1 The Contractor acknowledges that where the Contractor has a Financial Security in place pursuant to a request by either the:

- (a) Principal in accordance with clause 11; or
 - (b) GITC Contract Authority in accordance with clause 5.3 of GITC Part 1,
- subject to clause 38.2, the Customer is entitled to rely on this Financial Security.

38.2 Only the Principal or GITC Contract Authority, depending upon who requested the Financial Security, may enforce the Financial Security. A Customer seeking to rely on such Financial Security must request the Principal or GITC Contract Authority to make a claim on its behalf.

38.3 If the Contractor fails to properly perform its obligations under the Customer Contract and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer will be entitled (subject to clause 38.2) to make a claim and to receive payment for any or all such loss or damage (as ascertained and certified by the Customer, but subject to limitation in clause 7.1 of GITC Part 2) from the Financial Security. If the Financial Security is not sufficient to meet such payment, the unpaid amount may be recovered from the Contractor by the Customer in any appropriate court.

39. COMMISSIONS, INCENTIVES AND COLLUSION**Commissions and Incentives**

39.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not give or offer anything to the Customer or any officer or employee of the Customer or to a parent, spouse, child or associate of the officer or employee of the Customer, including any commission, inducement, gift or reward, which could in any way tend to or be perceived as attempting to influence the Customer's actions in relation to the Customer Contract.

39.2 If the Customer discovers at any time during the Customer Contract Term that the Contractor has breached clause 39.1, the Customer in addition to any other action, may elect to suspend the Customer Contract in accordance with clause 16 of GITC Part 2 or terminate the Customer Contract in accordance with clause 16 of GITC Part 2.

Collusion

39.3 The Contractor warrants to the Customer that:

- (a) except as is expressly disclosed to the Customer, its ICT Standing Offer and any variations to the ICT Standing Offer were not prepared with (and any variations to the Customer Contract will not be prepared with), any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract with the Customer or a similar arrangement with the Principal) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not to submit a quote (or request a variation to the Customer Contract);
 - (iv) the submission of a quote (or a request for variation) that is non conforming with the terms of the ICT Standing Offer or the ICT Arrangement;

- (v) the quality, quantity, specifications or delivery particulars of products and/or services (including the Products and/or Services) to which the Customer Contract relates; or
 - (vi) the terms of its ICT Standing Offer and any quote (or variation) or a competitor's quote (or variation);
- (b) except with the consent of the Customer:
- (i) it has not provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly, to any competitor (including any contractor under a similar contract with the Customer or under the ICT Arrangement) relating in any way to the Customer Contract;
 - (ii) it has not received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any contractor under a similar contract with the Customer or under the ICT Arrangement) relating in any way to the Customer Contract; and
 - (iii) it will not provide or receive any such benefit;
- (c) except as expressly disclosed to the Customer, it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Customer Contract, nor has it provided, nor will it provide any such benefit;
- (d) except as is fully disclosed to the Customer in the Customer Contract, at the time of entering into the Customer Contract, the Contractor and all corporations and persons associated with the Contractor, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas; and
- (e) the Contractor will notify the Customer immediately upon becoming aware that the Contractor or any corporation or person associated with the Contractor, including a director or member of senior management becomes subject to proceedings relating to anti-competitive conduct in Australia or overseas during the Customer Contract Term by disclosing, at a minimum:
- (i) the names of the parties to the proceedings;
 - (ii) the case number;
 - (iii) the general nature of the proceedings; and
 - (iv) the outcome or current status of the proceedings.

39.4 The Contractor acknowledges that the Customer has entered into the Customer Contract in reliance of the warranties in clause 39.3.

39.5 If the Contractor breaches clause 39.3, without limiting its rights under the Customer Contract, the Customer may:

- (a) deduct from any moneys due to the Contractor under the Customer Contract, an equivalent sum as an amount due from the Contractor to the Customer; and
- (b) at its entire discretion terminate the Customer Contract and claim damages for breach of the Customer Contract.

40. ROLE OF THE PROJECT MANAGER

40.1 The Project Manager is the Customer's technical representative responsible for the detail and accuracy of the Specifications in the Customer Contract. The Project Manager is not authorised either apparently or ostensibly to amend the Customer Contract or enter into any Customer Contract on behalf of the Customer.

40.2 The Contractor must:

- (a) liaise with and report to the Project Manager about the supply of the Products and/or performance of the Services;
- (b) attend meetings with, or provide briefings to the Project Manager, as required from time to time; and
- (c) promptly comply with any request or direction given by the Project Manager, in accordance with the Customer Contract, about the supply of the Products and/or performance of the Services.

41. GENERAL PROVISIONS

41.1 No Advertising

41.1.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not make any public announcement or advertisement in any medium in relation to the Customer Contract without the consent of the Customer.

41.2 Further Assistance

41.2.1 The Contractor must do all things reasonably required by the Customer to give effect to the Customer Contract.

41.3 Disclosure by Customer

41.3.1 The Contractor acknowledges that the Customer, its officers, employees, agents and sub-contractors may use and disclose any of the information provided by the Contractor about the Contractor, the Customer Contact or the Products and/or Services to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or the Commonwealth, States or Territories, for any purpose in connection with the administration of the Customer Contract.

42. RIGHT TO INFORMATION AND DISCLOSURE

42.1 The *Right to Information Act 2009* (Qld) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

42.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

42.3 Information relating to the Customer Contract is potentially subject to disclosure to third parties.

42.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Customer Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of the disclosing the information to the Customer. The Customer cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

42.5 Despite any other provision of the Customer Contract, the Customer is entitled to publish on the Queensland Government Chief Procurement Office website: www.ggcpo.qld.gov.au under '*eTendering website for Government Suppliers*'; or by any other means, the following details:

- a) the name and address of the Customer;
- b) a description of the Products and/or Services;
- c) Customer Contract Commencement Date or award date;
- d) value of the Customer Contract;
- e) name and address of the Contractor;
- f) procurement method used; and
- g) where the total value of the Products and/or Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - (i) ICT Invitation details;
 - (ii) Customer Contract overview; and
 - (iii) reasons for non-disclosure of procurement results (if applicable).

43. CLAUSES TO SURVIVE TERMINATION

43.1 The following clause will survive termination or expiration of the Customer Contract:

clause 18 of ICT SOA Conditions	-	Liability;
clause 19 of ICT SOA Conditions	-	Indemnity;
clause 1	-	Definitions and Interpretation;
clause 34	-	Customer may Enforce the ICT Arrangement;
clause 37	-	Performance Guarantee;
clause 38	-	Financial Security;
clause 41.1	-	No Advertising;
clause 41.3	-	Disclosure by Customer;
clause 42	-	Right to Information and Disclosure; and
clause 17.9 of GITC Part 2	-	Survival.