

# STANDING OFFER ARRANGEMENT CONDITIONS

For the provision of Goods 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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# STANDING OFFER ARRANGEMENT CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Standing Offer Arrangement Conditions, unless the context otherwise requires, the following definitions will apply:

**“Additional Provisions”** means the departures from and additions to the Specifications or Standing Offer Arrangement Conditions and/or any additional terms and conditions that are:

- (a) specified in Section 5 of the Invitation; and/or
- (b) agreed between the Principal and Contractor as specified in Schedule 3 of the Deed of Agreement;

**“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 11 of Schedule A;

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

**“Arrangement Commencement Date”** means:

- (a) the date specified in item 5 of Schedule 1;
- (b) the date otherwise agreed in writing between the Parties; or
- (c) if neither (a) nor (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;

**“Arrangement Completion Date”** means the expiry date specified in item 6 of Schedule 1, or as otherwise agreed in writing between the Parties, and includes an extension of that date in accordance with clause 31;

**“Arrangement Term”** means the term of the Arrangement, as specified in item 7 of Schedule 1;

**“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) Arrangement - at the Principal’s address; or
- (b) Contract – at the Customer’s address;

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

**“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 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 the 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 Arrangement or a Contract fairly and objectively;

**“Contract”** means a legally binding contract as agreed between a Customer and the Contractor in accordance with the Arrangement, the terms of which are set out in the Documents specified in clause 41.2;

**“Contract Commencement Date”** means:

- (a) the date specified in item 5 of Schedule A;
- (b) as otherwise agreed in writing between the Parties; or
- (c) if neither (a) nor (b) apply, the date on which the Contractor is deemed to receive an Order;

**“Contract Completion Date”** means the expiry date specified in item 6 of Schedule A, or as otherwise agreed in writing between the Customer and Contractor, or as extended in accordance with clause 43.2;

**“Contract Material”** means New Contract Material and Existing Contract Material;

**“Contract Term”** means the term of the Contract, as specified in item 7 of Schedule A;

**“Contractor”** means in relation to the:

- (a) Arrangement - the entity specified in item 3 of Schedule 1; and
- (b) Contract – the entity specified in item 4 of Schedule A;

**“Correctly Rendered Invoice”** means an invoice:

- (a) in which the amount claimed is due for payment in accordance with the Contract;
- (b) in which the amount claimed is correctly calculated in accordance with the Contract;
- (c) which correctly identifies the Goods and/or Services supplied;
- (d) which, if GST applies is a valid tax invoice under the GST Legislation; and
- (e) which complies with clause 11.2;

**“Customer”** means in relation to the:

- (a) Arrangement – the State of Queensland and the entities referred to in clause 16.1, unless otherwise specified in item 4 of Schedule 1; and
- (b) Contract – the State of Queensland or other entity specified in item 2 of Schedule A;

**“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 Arrangement is established;

**“Deliverables”** means in relation to the:

- (a) Arrangement - the Goods and/or Services specified in Schedule 2; and
- (b) Contract – the Goods and/or Services specified in an Order;

**“Delivery”** means the transfer of possession of the Goods to the Customer, at the Customer’s Site or other delivery address notified by the Customer to the Contractor in writing;

**“Delivery Period”** means the period specified in item 11 of Schedule 1, in which the Goods will be supplied and/or the Services will be performed by the Contractor to the 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;

**“Existing Contract Material”** means any material that:

- (a) exists at the Contract Commencement Date; or
- (b) is produced after the Contract Commencement Date, independently of the Contract, and

which is provided in connection with or forms part of any Deliverable;

**“Financial Security”** means the unconditional financial security in a form set out in the ‘*Supplementary Provisions - Standing Offer Arrangement*’ document - ‘*Financial Security*’ which is available from the Queensland Government Chief Procurement Office website: [www.qgcpo.qld.gov.au](http://www.qgcpo.qld.gov.au) under ‘*Government terms and conditions*’, or other form of unconditional financial security in a form acceptable to the Principal, as specified in item 14 of Schedule 1;

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

- (a) Arrangement - Schedule 2; and
- (b) Contract - item 10 of Schedule A;

**“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 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;

**“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 Contract Commencement Date, but excludes Moral Rights;

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

**“Key Personnel”** means the representatives of the Contractor specified in item 16 of Schedule A (if applicable);

**“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;

**"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 Contract Commencement Date;

**"New Contract Material"** means any material that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract;

**"Non-Government Organisation" or "NGO"** 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 Goods and/or Services pursuant to a Contract in accordance with the Arrangement;

**"Notice"** means a notice in writing under or in connection with the Arrangement and/or Contract from one 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 Invitation if an Invitation was issued;

**"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 Standing Offer and creates a Contract between the Customer and Contractor to supply the Goods and/or perform the Services specified in the Order;

**"Parties"** means in relation to the:

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

**"Performance Guarantee"** means the performance guarantee, in the form set out in the *Supplementary Provisions - Standing Offer Arrangement* document – *Performance Guarantee* which is available from the Queensland Government Chief Procurement Office website: [www.ggcpcpo.qld.gov.au](http://www.ggcpcpo.qld.gov.au) under *Government terms and conditions*, or other form of performance guarantee in a form acceptable to the Principal, as specified in item 13 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 item 10 of Schedule A) 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 2 of Schedule 1;

**"Principal's Authorised Officer"** means the person specified in item 8 of Schedule 1, who is the Principal's representative and point of contact for the Arrangement;

**"Project Manager"** means the person nominated by the:

- (a) Principal to oversee and supervise the technical requirements of the Specifications under the Arrangement, as specified in item 9 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 Contract, as specified in item 12 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 a Customer to the Contractor in connection with the performance of the Arrangement and/or any Contract and includes a copy of such material;

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

**"Services"** means the services as specified in the:

- (a) Arrangement – Schedule 2; and
- (b) Contract - item 10 of Schedule A;

**"Site"** means the place or places as specified in item 8 of Schedule A where the Goods and/or Services are to be supplied, installed, delivered and/or maintained;

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

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

**"Standing Offer"** means the Contractor's standing offer to supply the Goods and/or Services in accordance with the Arrangement for the Arrangement Term;

**"Standing Offer Arrangement"** or **"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 the Contractor by executing a Deed of Agreement which comprise the documents specified in clause 5.2; and

**"Standing Offer Arrangement Conditions"** or **"Arrangement Conditions"** means these terms and conditions of the Arrangement (Divisions A and B) and any Additional Provisions.

## 1.2 Interpretation

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

1.2.2 The following rules apply in interpreting these 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 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.

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## **DIVISION A – ARRANGEMENT**

### **2. PRINCIPAL**

- 2.1 The Principal is responsible for the administration of the 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 32, or terminate, in accordance with clause 34, the Arrangement.

### **3. NATURE OF THE ARRANGEMENT BETWEEN THE PRINCIPAL AND THE CONTRACTOR**

- 3.1 A Customer may accept the Standing Offer by placing an Order with the Contractor.
- 3.2 A Contract is formed whenever a Customer places an Order with the Contractor for the supply of the Goods and/or Services, and the Contractor must supply the Goods and/or Services in accordance with the Arrangement and the Contract.
- 3.3 Nothing in the Arrangement creates any obligation on the Contractor to provide Goods 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 goods and/or services which are identical or similar to the Goods and/or Services.

### **4. CUSTOMER MAY ENFORCE THE ARRANGEMENT**

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

### **5. FORMATION OF THE ARRANGEMENT**

- 5.1 The 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 Arrangement between the Principal and the Contractor:
  - (a) the Deed of Agreement (including Additional Provisions);
  - (b) these Standing Offer Arrangement Conditions;
  - (c) Specifications;
  - (d) Offer (to the extent accepted under the Deed of Agreement); and
  - (e) any other Document, in whole or in part, forming part of the Arrangement, as agreed in writing and executed by the Principal and Contractor.
- 5.3 Subject to clause 5.4, 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 which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under clause 37.11 are null and void.
- 5.5 The Arrangement supersedes all prior representations, agreements, statements and understandings between the Principal and Contractor, whether oral or in writing relating to the subject matter of the Arrangement.

### **6. ARRANGEMENT TERM**

- 6.1 The Arrangement Term will commence on the Arrangement Commencement Date and, unless terminated sooner in accordance with clause 34, will continue until the Arrangement Completion Date.
- 6.2 The Arrangement Term may be extended at the entire discretion of the Principal, for a further period as specified in item 7 of Schedule 1, by Notice given by the Principal to the Contractor. Any extended Arrangement Term will be governed by the same terms and conditions as the Arrangement, unless otherwise agreed between the Parties.

### **7. TRANSFERABILITY / PORTABILITY OF THE ARRANGEMENT**

- 7.1 Notwithstanding any provision of the Arrangement, the Principal is entitled, by the giving of a Notice to the Contractor, to freely transfer its rights and responsibilities under the 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 Arrangement, the Principal may freely transfer its rights and responsibilities under the 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 Standing Offer Arrangement*' document available from the Queensland Government Chief Procurement Office website: [www.qgcpo.qld.gov.au](http://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 Arrangement, any variations to the Goods and/or Services, or any matters affecting the terms and conditions of the Arrangement.
- 8.2 The Contractor must:
- (a) liaise with and report to the Principal's Authorised Officer about the performance of the Arrangement;
  - (b) attend meetings with, or provide briefings to the Principal's Authorised Officer, as required from time to time; and
  - (c) promptly comply with any request or direction given by the Principal's Authorised Officer, in accordance with the Arrangement, in relation to the performance of the Arrangement.
- 8.3 The Project Manager is the Principal's technical representative responsible for the detail and accuracy of the Specifications in the Arrangement. The Project Manager is not authorised either apparently or ostensibly to amend the Arrangement or enter into any Contract on behalf of the Principal.
- 8.3 The Contractor must:
- (a) liaise with and report to the Project Manager about the supply of the Goods and/or the 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 Arrangement, about the supply of the Goods and/or performance of the Services.

## 9. LIST OF GOODS AND/OR SERVICES AND PRICING UNDER THE ARRANGEMENT

- 9.1 The Contractor agrees to provide the Goods and/or Services at the Price specified in Schedule 2, to a Customer in accordance with the Arrangement, and any Contract formed in accordance with clause 41.
- 9.2 The Principal is not obliged to purchase any Goods and/or Services from the Contractor in accordance with the Arrangement.
- 9.3 Where the Contractor seeks to increase or decrease the Price for the Goods and/or Services to take into consideration:
- (a) movements in the relevant exchange rates as it affects the Goods, 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 Goods and/or Services, if specified in Schedule 2;
  - (c) other factors as they affect the Goods and/or Services, if specified in Schedule 2; and/or
  - (d) any variation in any tax, duty or charge as it affects the Goods and/or Services,
- the Contractor must give Notice to the Principal in accordance with clause 31 and such Notice must include evidence to substantiate the basis of the Price increase or decrease.
- 9.4 If the Contractor's request to increase or decrease the Price for the Goods and/or Services is rejected by the Principal, the Arrangement will remain unvaried.

## 10. NEGOTIATION FOR INCREASED BULK PURCHASE DISCOUNTS

- 10.1 The Principal may request quotations from the Contractor for:
- (a) discounts on volume purchases of Goods and/or Services on behalf of a Customer; and/or
  - (b) aggregate purchases of Goods and/or Services on behalf of Customers.
- 10.2 The Contractor must promptly make any negotiated volume or bulk purchase discounts available to all Customers entitled to the benefit of the Arrangement, for future Contracts, and amend the Price to reflect the volume or bulk purchase discounts.

## 11. PAYMENT

- 11.1 The Price will be payable in the manner specified in Schedule 2. The Contractor must submit a Correctly Rendered Invoice to the Customer, and the Customer will pay the Correctly Rendered Invoice at the times specified in item 10 of Schedule A.
- 11.2 The Correctly Rendered Invoice submitted by the Contractor must:
- (a) specify the Goods and/or Services and the name of the Customer's Project Manager (if applicable);
  - (b) identify the Order number and specific details pertaining to that Order (if applicable);
  - (c) include sufficient details to allow the Customer to assess progress against milestones (if applicable);

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- (d) for Services carried out on a time basis, be supported by records of time spent by individuals involved in the Services and verified by the Contractor;
  - (e) itemise Approved Expenses claimed; and
  - (f) identify any discounts given.
- 11.3 Upon receipt of an invoice, the Customer may require the Contractor to provide additional information or documentary evidence to enable the Customer to determine whether or not an amount is payable.
- 11.4 A Customer may pay a Correctly Rendered Invoice by either corporate credit card, of a type accepted by the Contractor, or by an electronic facility as specified in Schedule 2.
- 11.5 The Contractor must not charge, or pass on to, the Customer any fees, costs or charges associated with the use of the corporate credit card or electronic facility.
- 12. GST**
- 12.1 The Price is inclusive of GST and:
- (a) the Customer is not required to pay a GST Amount in addition to the Price; and
  - (b) the Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.
- 12.2 Where the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including but not limited to:
- (a) an amendment to the GST Legislation;
  - (b) the issue of a ruling or advice by the Commissioner of Taxation;
  - (c) a refund of GST to the Contractor in respect of any supply made under the Contract; or
  - (d) a decision of any tribunal or court;
- then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.
- 13. REQUIREMENTS FOR GOODS AND/OR SERVICES**
- 13.1 All Goods and/or Services provided by the Contractor to a Customer under a Contract in accordance with the Arrangement, unless otherwise specified by the Principal, must comply in all aspects with:
- (a) the terms of the Arrangement and any 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 Arrangement Term, which govern the provision of the Goods and/or Services.
- 13.2 All Goods supplied by the Contractor to a Customer must be in a new and unused condition and of recent origin, unless otherwise specified in item 10 of Schedule 1.
- 13.3 All Goods supplied by the Contractor to a Customer must be suitably packed and otherwise appropriately prepared for transportation.
- 13.4 Risk and title in the Goods (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 Goods 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 Goods are not supplied in accordance with the Contract, a Customer may at its entire discretion, by Notice to the Contractor:
- (a) reject the Goods, or part of the Goods;
  - (b) require the Contractor to promptly supply or supply again the Goods, or part of the Goods; and/or
  - (c) require the Contractor to promptly correct any defect or omission.
- 13.7 Where a Customer rejects Goods in accordance with clause 13.6:
- (a) a Customer is not required to pay for the rejected Goods, and any amounts paid by the Customer in respect of the rejected Goods 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 Goods to the Contractor or by Notice to the Contractor, require the Contractor to remove the rejected Goods 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 Goods and/or performance of the Services.
- 14.2 When supplying the Goods 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 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 Contract, which are allocated to them by the Contractor.
- 15. TRANSACTING WITH A CUSTOMER**
- 15.1 The Contractor acknowledges that there has been no representation by the Principal (even if the Invitation invited offers for a common use whole-of-government supply strategy) that on the entering into of the Arrangement, the Contractor will necessarily receive any orders from any Customer in accordance with the Arrangement.
- 15.2 A Customer may enter into a Contract with the Contractor by placing an Order at any time until the Arrangement Completion Date, and the Contractor will be bound by any such Order, unless the Arrangement:
- (a) is suspended; or
  - (b) has been terminated,
- at the time the Order is placed.
- 15.3 An 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 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.
- 15.4 The Arrangement is not an exclusive arrangement with the Contractor, even if the 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 Goods and/or Services.
- 15.5 A Customer is not obliged to request any or a minimum number of Goods and/or Services from the Contractor under the Arrangement.
- 16. UTILISATION OF THE 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 the Commonwealth, States or Territories to purchase the Goods and/or Services under the Arrangement.
- 17. DELIVERY PERIOD**
- 17.1 The Contractor agrees to supply the Goods and/or perform the Services in the Delivery Period specified in item 11 of Schedule 1, to a Customer in accordance with the Arrangement and any Contract.
- 18. PERFORMANCE REVIEW**
- 18.1 A periodic review of the Contractor's performance in respect of the Arrangement and any Contract will be undertaken by the Principal to assess the Contractor's performance and its eligibility to continue to be a participant in the Arrangement. The extent of the Goods and/or Services covered by the performance review will be based on the Contractor's performance under the Arrangement and the performance review criteria (e.g. key performance indicators or performance standards) as specified in item 12 of Schedule 1.

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- 18.2 The Contractor must also attend any Arrangement performance evaluation meetings and provide such documentation, reports and data as specified in item 12 of Schedule 1, as and when required by the Principal.
- 18.3 The Principal will monitor the performance of the Contractor annually, or such other period as specified by the Principal, during the Arrangement Term.

## 19 PERFORMANCE GUARANTEE

- 19.1 The Contractor must, if specified in item 13 of Schedule 1, or if requested by the Principal during the 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.
- 19.2 The Performance Guarantee will be held as security for the due and proper performance of all obligations of the Contractor under any Contract established as a result of the Arrangement.
- 19.3 All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this clause 19 must be met by the Contractor.
- 19.4 A Customer is entitled to rely upon the Performance Guarantee, which has been put in place by the Contractor in accordance with clause 19.1.
- 19.5 A claim by the Principal against the Contractor's Performance Guarantee in relation to one or more Contracts, must not have the effect of extinguishing the Performance Guarantee in relation to all other Contracts, nor will it release the Contractor from its obligations in accordance with this clause 19.
- 19.6 The Principal and Contractor may agree to release the Performance Guarantee on terms acceptable to the Principal.
- 19.7 Notwithstanding clause 19.6, upon termination of the Arrangement in accordance with clause 34, the Principal will release the Performance Guarantee to the Contractor where the Contractor has fully performed and discharged all of its obligations under the Arrangement (other than the obligations as specified in clause 38 which will survive the termination of the Arrangement) and all Contracts.

## 20 FINANCIAL SECURITY

- 20.1 The Contractor must, if specified in item 14 of Schedule 1, or if requested by the Principal during the 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.
- 20.2 Notwithstanding this clause 20, 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.
- 20.3 A Customer which is a Queensland Government Body or Non-Government Organisation is entitled to request its own Financial Security from the Contractor.
- 20.4 Where the Contractor has a Financial Security in place pursuant to a request by the Principal, subject to clause 20.5, a Customer is entitled to rely on this Financial Security.
- 20.5 Except where clause 20.3 applies, only the Principal may enforce the Financial Security. A Customer seeking to rely on such Financial Security must request the Principal to make a claim on its behalf.
- 20.6 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.
- 20.7 The Financial Security is to be held as security for the due and proper performance of all the obligations of the Contractor under any Contract established as a result of the Arrangement.
- 20.8 If the Contractor fails to properly perform its obligations under a 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 20.5) 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 25) 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.
- 20.9 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 20.1.
- 20.10 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 20.5) or receiving a payment under the Financial Security.
- 20.11 The Contractor agrees that the Principal or a Customer, 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.
- 20.12 The Contractor must not take any action or proceeding against the Principal or attempt to recover from the Principal any amount claimed under a Financial Security that has been received by the Principal, on behalf of a Customer. The Principal

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will promptly forward to the Customer any such amounts claimed under a Financial Security that have been received by the Principal on behalf of a Customer.

- 20.13 The Principal will release the Financial Security requested in accordance with 20.1 to the Contractor (or to whom the Contractor directs) where:
- (a) the Contractor has fully performed and discharged all of its obligations under the Arrangement (other than the obligations as specified in clause 38, which will survive the termination of the Arrangement) and all 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.
- 20.14 All charges incurred by the Contractor in obtaining, maintaining and releasing the Financial Security in accordance with this clause 20 must be met by the Contractor.

## 21. CONFLICT OF INTEREST

- 21.1 The Contractor warrants that, to the best of its knowledge, as at the 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 Arrangement and any Contract.
- 21.2 If a Conflict of Interest or risk of Conflict of Interest arises during the 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.
- 21.3 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 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.
- 21.4 Upon receipt of a Notice in accordance with clause 21.2 or 21.3(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 Arrangement in accordance with clause 32.1; or
  - (c) elect to terminate the Arrangement in accordance with clause 34.5(a).
- 21.5 If clause 21.4(a) or 21.4(b) applies, the Contractor must give Notice to the Principal when the Conflict of Interest or risk of Conflict of Interest is resolved.

## 22. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS

- 22.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in the Party specified in item 15 of Schedule 1.
- 22.2 If item 15 of Schedule 1 is blank, title to, and Intellectual Property Rights in, New Contract Material vests in the Customer.
- 22.3 If item 15 of Schedule 1 specifies that this clause 22.3 applies or if clause 22.2 applies, title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest in the Customer, and:
- (a) the Contractor must ensure that during the Contract Term the New Contract Material and Records are used, copied, supplied or reproduced only for the purposes of the Contract; and
  - (b) after the expiration or sooner termination of the Contract (or some earlier date if required by the Customer), the Contractor must deliver to the Customer, in a format specified by the Customer, all New Contract Material and Records.
- 22.4 If item 15 of Schedule 1 specifies that this clause 22.4 applies, title to, and Intellectual Property Rights in, New Contract Material will, upon its creation, vest in the Contractor, and 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 New Contract Material (and any future development of that New Contract Material), without additional cost to the Customer to:
- (a) use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Customer, the State of Queensland and/or a Queensland Government Body; and
  - (b) use or exploit (whether commercially or otherwise) for any purpose, if specified in item 15 of Schedule 1.
- 22.5 The Contract does not affect 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 cost to the Customer to:

- (a) use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Customer, the State of Queensland and/or a Queensland Government Body; and
- (b) use or exploit (whether commercially or otherwise) for any purpose, if clauses 22.2, 22.3 or 22.4(b) applies.

22.6 Intellectual Property Rights in Records will remain vested in the Principal and/or Customer, whichever Party disclosed or made available the Records to the Contractor.

22.7 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 the 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 entire 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, deletion, destruction, alteration, relocation or selection, in whole or in part, of the Contract Material at the entire discretion of the Customer;
- (c) the publication or communication, in whole or in part of the Contract Material; and
- (d) any other acts or omissions as specified in item 15 of Schedule 1.

22.8 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 the Contract in full, without impediment or cost to the Customer; and
- (b) without limiting clause 22.8(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 the Contract that might otherwise constitute an infringement of the person's Moral Rights, including a consent to the acts or omissions specified in clause 22.7(a) to (d).

### 23. CONFIDENTIALITY

23.1 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 23.

23.2 The Contractor may disclose Confidential Information:

- (a) to its officers, employees, agents and sub-contractors to the extent necessary for the performance of the Arrangement, provided that the Contractor:
  - (i) makes such persons aware that the information is confidential; and
  - (ii) if specified in item 16 of Schedule 1 or directed by the Principal during the 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 Arrangement requires disclosure to a third party.

23.3 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

23.4 Subject to clause 23.6, upon receipt of a written request by the Principal, either during the Arrangement Term or upon termination or expiration of the Arrangement, the Contractor must deliver to the Principal any Documents and/or Records in the Contractor's power, possession or control.

23.5 Subject to clause 23.4 the Contractor must:

- (a) return any Documents and/or Records to the Principal upon the completion of the 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.

23.6 If the Contractor wishes to retain a copy of any Documents and/or Records in connection with the 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 Arrangement, identifying the Documents and/or Records and the reasons for the request for retention.

23.7 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 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 Arrangement.

- 23.8 Regardless of the terms of the Principal's consent, the Contractor must maintain confidentiality and otherwise comply with the terms of the Arrangement and in relation to the Documents and/or Records during the period in which it retains a copy of the Documents and/or Records.

## 24. PRIVACY AND PERSONAL INFORMATION

- 24.1 If the Contractor collects or has access to Personal Information as a result of the 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 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 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 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 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 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 24;
  - (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.
- 24.2 The Contractor must, if specified in item 17 of Schedule 1, or if requested by the Principal during the Arrangement Term, obtain from its officers, employees, agents or sub-contractors engaged for the purposes of the Arrangement, an executed deed of privacy in a form acceptable to the Principal.
- 24.3 The Contractor must immediately notify the Principal on becoming aware of any breach of clause 24.1.

## 25. LIABILITY

- 25.1 The liability of a Party to the other Party under the Arrangement and/or Contract 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 Arrangement and/or Contract or otherwise at law.
- 25.2 Unless otherwise agreed in writing between the Parties, the liability of a Party arising under and/or in connection with the Arrangement and/or Contract, will exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 25.3 The liability of a Party arising under and/or in connection with the Arrangement and/or Contract, 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 22; or
  - (d) under an indemnity provided by the Contractor in accordance with clause 26,
- be limited to the per Occurrence amount specified in item 18 of Schedule 1.
- 25.4 If no amount, 'nil' or an indication of \$0 is specified in item 18 of Schedule 1, then the liability of a Party will be unlimited.
- 25.5 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 Arrangement and/or Contract, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the Arrangement and/or Contract.
- 25.6 Despite any other provision of the Arrangement or any Contract, the Contractor's liability under the Arrangement and any Contract (including but not limited to any liability under this clause 25 and any liability to indemnify in accordance with clause 26) 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).

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**26. INDEMNITY**

26.1 In this clause 26:

“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.

26.2 The Contractor releases, discharges and indemnifies the Principal and the Customer 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 Arrangement and/or Contract 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.

**27 INSURANCE**

27.1 The Contractor warrants that it will hold and maintain for the Arrangement Term the following insurances to cover its obligations under the Arrangement and each Contract:

- (a) Workers' Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
- (b) Public Liability insurance for the amount specified in item 19 of Schedule 1;
- (c) Professional Indemnity insurance if specified in item 20 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 Contract Completion Date or termination of the last Contract, unless otherwise specified in item 20 of Schedule 1; and
- (d) any other insurances specified in item 21 of Schedule 1.

27.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.

27.3 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 20 of Schedule 1.

27.4 The Contractor must, if requested by the Principal, promptly provide a certificate of currency for each insurance policy.

27.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause 27, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Customer's rights under a Contract.

27.6 The Contractor must immediately advise the Principal if any insurance policy, as required by this clause 27, is materially modified.

**28. LICENSING REQUIREMENTS**

28.1 The Contractor warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.

28.2 The Contractor must, if requested by the Principal, provide evidence of compliance with its obligations under this clause to the satisfaction of the Principal.

**29. INDUSTRIAL RELATIONS**

29.1 The Principal and/or Customer will not become involved in industrial disputes between the Contractor and the Contractor's staff unless required to do so by an industrial authority.

29.2 During the periods of industrial disputes of any duration, the Contractor will be responsible for continued compliance with its obligations under the Arrangement and any Contract at the Contractor's expense.

**30. RESOLUTION OF DISPUTES**

30.1 If a dispute or difference arises between the Parties in relation to the Arrangement and/or a Contract or concerning the performance or non-performance by a Party of its obligations under the Arrangement and/or a Contract, whether raised during the performance of the Deliverables under the Contract or after the completion of the Deliverables, a Party may give Notice of the dispute to the other Party. The Parties must, if requested by either Party, within 10 Business Days of receipt of a Notice of dispute by a Party, refer the dispute to mediation before commencement of any litigation, other than for injunctive relief, in relation to the dispute.

30.2 The mediator, the mediator's fees and the mediation rules must be:

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- (a) mutually agreed upon by the Parties in writing; or
  - (b) in the absence of agreement, within ten (10) Business Days from receipt of a Notice of a dispute, as determined by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

30.3 The Parties agree to share the costs associated with the mediation in equal shares between them.

30.4 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under the Arrangement and/or the Contract where practicable, unless otherwise directed by the Principal or Customer.

### **31 VARIATION TO THE ARRANGEMENT**

31.1 Except in the circumstances specified in clause 31.2, the 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.

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

31.3 Where the terms and conditions of the Arrangement are varied as a result of clause 31.2, the Contractor must promptly submit in writing to the Principal any proposed variation to the 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 30 will apply to resolve the dispute.

31.4 Any variation proposed by the Contractor in accordance with clause 31.1 or 31.3 must be accompanied by evidence to substantiate such proposed variation.

31.5 Despite any other provision of this clause 31, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Principal in accordance with clause 37.11, will be deemed to be rejected by the Principal and the Arrangement will remain unvaried.

### **32. SUSPENSION OF THE ARRANGEMENT**

32.1 The Principal at its entire discretion may suspend the 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 Arrangement.

32.2 Where the Arrangement is suspended in accordance with clause 32.1, 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 Arrangement;
- (b) period of suspension will be extended for a period of time specified in the Notice; or
- (c) Arrangement is to be terminated in whole from the date specified in the Notice, in accordance with clause 34.

32.3 The Contractor must immediately comply with any direction given by the Principal, in accordance with clause 32.1.

### **33. EFFECT OF SUSPENSION OF THE ARRANGEMENT**

33.1 The effect of suspension of the Arrangement in accordance with clause 32 is that:

- (a) the Contractor must not enter into any new Contracts during the period of suspension;
- (b) any existing Contracts will not, unless the Contract requires it, be affected in any way whatsoever; and
- (c) otherwise, all other rights and obligations of the Parties will continue under the Arrangement.

### **34. TERMINATION OF THE ARRANGEMENT**

34.1 The Principal may terminate the Arrangement, in whole or in part, for convenience by giving 30 days Notice or such other reasonable period determined by the Principal, to the Contractor.

34.2 The Principal will not be liable for payment to the Contractor for any compensation arising from the termination of the Arrangement, including without limitation compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss.

34.3 Without limiting clause 34.5, where the Contractor commits any breach of the 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 Arrangement.

34.4 If the Contractor fails to show reasonable cause by the date specified in the Notice in clause 34.3, then the Principal is entitled upon Notice to the Contractor to terminate the Arrangement.

- 34.5 The Principal may immediately terminate the Arrangement by Notice to the Contractor if:
- (a) the Contractor gives Notice in accordance with clause 21.2 or 21.3(b) or the Principal otherwise identifies a Conflict of Interest;
  - (b) the Principal is satisfied that the Contractor has breached any part of clause 37.1;
  - (c) the Contractor fails to provide the Performance Guarantee in accordance with clause 19 or Financial Security in accordance with clause 20;
  - (d) the Contractor breaches any part of clauses 27 and 28;
  - (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 Arrangement or any Contracts in accordance with the Arrangement.

34.6 Termination of the Arrangement for any reason is without prejudice to any rights of the Principal under the Arrangement or at common law, including the right to claim damages for breach of the Arrangement.

34.7 If the Arrangement is terminated, discharged or in any other way comes to an end, in whole or in part, whether in accordance with this clause 34 or in any other way, no Contract will, unless the Contract requires it, be affected in any way whatsoever.

## 35. TERMINATION OF A CONTRACT

35.1 If a Customer lawfully terminates a Contract for breach by the Contractor, the Principal may at its entire discretion suspend the Contractor from the Arrangement in accordance with clause 32, or terminate the Arrangement in accordance with clause 34.

35.2 Notwithstanding clause 35.1, termination of a Contract by either the Contractor or the Customer for any reason will not affect the continuation of the Arrangement except as stipulated in the Arrangement.

## 36. NOTICES RELATING TO THE ARRANGEMENT

36.1 Any Notice which may be given to or served on either Party under the Arrangement must be sent or delivered to the following respective addresses:

- (a) for the Principal – as specified in item 22 of Schedule 1; or
- (b) for the Contractor – as specified in item 23 of Schedule 1;

or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.

36.2 Notwithstanding clause 36.1, if the Contractor is a company then the Principal may serve a Notice at any time to the Contractor's registered office.

36.3 A Notice to be given or served in accordance with clauses 32, 34 or 35 must not be sent via email.

36.4 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.

## 37. GENERAL PROVISIONS

### 37.1 COMMISSIONS, INCENTIVES AND COLLUSION

#### Commissions and Incentives

37.1.1 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 an officer or employee of the Principal, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Principal's actions in relation to the Arrangement.

- 37.1.2 If the Principal discovers at any time during the Arrangement Term that the Contractor has breached clause 37.1.1, the Principal may, in addition to any other action, elect to suspend the Arrangement in accordance with clause 32 or terminate the Arrangement in accordance with clause 34.

### **Collusion**

- 37.1.3 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 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 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 Arrangement;
    - (iv) the submission of an offer (or a request for variation) under the Arrangement that is non conforming with the terms of the Arrangement;
    - (v) the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Offer related or 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 Arrangement) relating in any way to the 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 Arrangement) relating in any way to the 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 Arrangement, nor has it provided, nor will it provide any such benefit;
  - (d) except as is fully disclosed in the Arrangement, at the time of entering into the 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 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.
- 37.1.4 The Contractor acknowledges that the Principal has entered into the Arrangement in reliance of the warranties in clause 37.1.3.
- 37.1.5 If the Contractor breaches clause 37.1.3, without limiting its rights under the Arrangement, the Principal may:
- (a) deduct from any moneys due to the Contractor under the Arrangement, an equivalent sum as an amount due from the Contractor to the Principal; and
  - (b) at its entire discretion terminate the Arrangement and claim damages for breach of the Arrangement.
- 37.2 NO ADVERTISING**
- 37.2.1 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 Arrangement without the consent of the Principal.
- 37.3 WAIVER**
- 37.3.1 Any failure by a Party at any time to enforce a clause of the Arrangement, or any forbearance, delay or indulgence granted by a Party to the other, will not constitute a waiver of the Party's rights.
- 37.3.2 No provision of the Arrangement will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.

- 37.3.3 A waiver by a Party of a breach of any part of the Arrangement will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.
- 37.4 GOVERNING LAW**
- 37.4.1 The Arrangement and any Contract 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.
- 37.4.2 Notwithstanding clause 37.4.1, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* (Qld) to the Arrangement and any Contract to the fullest extent permitted by law.
- 37.5 COMPLIANCE WITH ALL LAWS**
- 37.5.1 The Contractor must comply with all relevant laws in performing its obligations under the Arrangement and any Contract.
- 37.6 SEVERABILITY**
- 37.6.1 If any part of the 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 Arrangement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 37.7 NO SUB-CONTRACTING**
- 37.7.1 The Contractor must not sub-contract the provision of any Goods and/or Services in accordance with the Arrangement or any Contract, 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 Arrangement and any Contract.
- 37.8 FURTHER ASSISTANCE**
- 37.8.1 The Contractor must do all things reasonably required by the Principal to give effect to the Arrangement.
- 37.9 NO ASSIGNMENT**
- 37.9.1 The Contractor must not assign, in whole or in part, its obligations or interest in the Arrangement, except with the consent of the Principal.
- 37.10 DISCLOSURE BY PRINCIPAL**
- 37.10.1 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 Arrangement or the Goods 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 Arrangement.
- 37.11 RIGHT TO INFORMATION AND DISCLOSURE**
- 37.11.1 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.
- 37.11.2 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.
- 37.11.3 Information relating to the Arrangement is potentially subject to disclosure to third parties.
- 37.11.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Arrangement, 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 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.
- 37.11.5 Despite any other provision of the Arrangement, the Principal is entitled to publish on the Queensland Government Chief Procurement Office website: [www.qgcpcpo.qld.gov.au](http://www.qgcpcpo.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 and/or Eligible Customer;
  - b) a description of the Goods and/or Services;
  - c) Arrangement Commencement Date or award date;
  - d) value of the Arrangement;
  - e) name and address of the Contractor;
  - f) the procurement method used; and
  - g) where the total value of the Goods and/or Services is \$10 million or more, the Principal is entitled to publish the following additional information:
    - (i) Invitation details;
    - (ii) Standing Offer Arrangement overview; and
    - (iii) reasons for non-disclosure of procurement results (if applicable).

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**38. CLAUSES TO SURVIVE TERMINATION OF THE ARRANGEMENT**

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

- clause 1 - Definitions and Interpretation;
- clause 4 - Customer May Enforce Arrangement;
- clause 7 - Transferability / Portability of the Arrangement;
- clause 19 - Performance Guarantee;
- clause 20 - Financial Security;
- clause 22 - Intellectual Property Rights and Moral Rights;
- clause 23 - Confidentiality;
- clause 24 - Privacy and Personal Information;
- clause 25 - Liability;
- clause 26 - Indemnity;
- clause 27.1(c) - Insurance;
- clause 37.2 - No Advertising;
- clause 37.3 - Waiver;
- clause 37.4 - Governing Law;
- clause 37.10 - Disclosure by Principal; and
- clause 37.11 - Right to Information and Disclosure.

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## **DIVISION B – CONDITIONS OF CONTRACT**

### **39. CONTRACTOR'S SUPPLY OF GOODS AND/OR SERVICES**

39.1 The Contractor must supply the Goods and/or Services to the Customer in accordance with the Arrangement and the Contract.

### **40. CONDITIONS OF CONTRACT**

40.1 The terms and conditions governing any Contract established as a result of the Arrangement will be under the terms and conditions as specified in clause 41.

### **41. FORMATION OF CONTRACT**

41.1 The Contract comes into force when the Contractor receives an Order from the Customer by which the Customer communicates acceptance of the Contractor's Standing Offer to provide Goods and/or Services.

41.2 The following documents constitute the entire Contract, which may be established as a result of the Arrangement, between the Customer and Contractor:

- (a) the Arrangement;
- (b) the Order;
- (c) applicable Schedules, as relevant to the supply of the Deliverable; and
- (d) any other Document, in whole or in part, which the Order expressly incorporates as part of a Contract.

41.3 Subject to clause 41.4, in the event of any conflict between the Documents specified in clause 41.2, the order of precedence to resolve the conflict will be in the above order.

41.4 Despite clause 41.3, any term or condition of the Contract which purport to take away or reduce the entitlements that would otherwise be provided to a Customer under clause 63.7 are null and void.

41.5 These Standing Offer Arrangement Conditions and any Additional Provisions are incorporated into all Contracts and cannot be varied or deleted by the Contractor and/or Customer in relation to a Contract, without the consent of the Principal.

41.6 If the Contract is terminated in accordance with clause 61, the Arrangement must not, unless the Arrangement requires it, be affected in any way whatsoever.

41.7 If the Arrangement is terminated, discharged or in any other way comes to an end, in whole or in part no Contract will, unless the Contract requires it, be affected in any way whatsoever.

41.8 The 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 Contract.

### **42. CUSTOMER MAY ENFORCE THE ARRANGEMENT**

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

### **43. CONTRACT TERM**

43.1 The Contract Term will commence on the Contract Commencement Date and, unless terminated sooner in accordance with clause 61, will continue until the earlier of the:

- (a) date when all Deliverables have been provided by the Contractor to the Customer and the Customer has given Notice to the Contractor that the Deliverables have been supplied and completed in accordance with the Contract; or
- (b) Contract Completion Date.

43.2 If the Deliverables have not been supplied and/or performed by the Contract Completion Date, the Contractor may seek an extension of the Contract Completion Date from the Customer, in accordance with clause 58.

### **44. TRANSFERABILITY / PORTABILITY OF GOODS AND/OR SERVICES**

44.1 Notwithstanding any provision of the Contract, the Customer is entitled, by the giving of a Notice to the Contractor, to freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under the Contract, either in whole or in part, to a Queensland Government department or agency that is part of the same legal entity as the Customer.

44.2 Notwithstanding any provision of the Contract, the Customer may freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under the Contract, 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 Customer, but only as a consequence of a Machinery of Government Change.

- 44.3 If clause 44.2 applies the Contractor must execute a deed of novation in the form set out in the '*Supplementary Provisions – Standing Offer Arrangement*' document available from the Queensland Government Chief Procurement Office website: [www.qgcpc.o.gld.gov.au](http://www.qgcpc.o.gld.gov.au) under '*Government terms and conditions*' or other form of deed of novation in a form acceptable to the Customer, and return it to the Customer within five (5) Business Days from receipt of a Notice from the Customer advising of the transfer and requiring the Contractor to execute the deed of novation.
- 44.4 If the Goods and/or Services are transferred in accordance with clause 44.1 or 44.2, the Contractor:
- (a) must immediately notify the Customer of any reduction in costs, including but not limited to volume discounts, which may occur; and
  - (b) must notify the Customer of any proposed additional fees for any additional costs directly incurred as a result of the provision of additional overall Goods and/or Services.
- 44.5 The Contractor agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
- (a) adjust the Price as a result of the notification of the matters raised in clause 44.4; and/or
  - (b) comply with any specific requirements of the Customer to which its rights and responsibilities, including the use of and title to any Goods and/or Services are, or will be, freely transferred in accordance with clause 44.1 or 44.2.

#### 45. ROLE OF THE PROJECT MANAGER

- 45.1 The Project Manager is the Customer's technical representative responsible for the detail and accuracy of the Specifications in the Contract. The Project Manager is not authorised either apparently or ostensibly to amend the Contract or enter into any Contract on behalf of the Customer.
- 45.2 The Contractor must:
- (a) liaise with and report to the Project Manager about the supply of the Goods 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 Contract, about the supply of the Goods and/or the performance of the Services.

#### 46. PROVISION OF THE GOODS AND/OR SERVICES

- 46.1 The Contractor agrees to supply the Goods and/or perform the Services, as an independent contractor, for the Contract Term in a competent and professional manner.
- 46.2 The Contractor must provide the Goods and/or Services:
- (a) during the Delivery Period;
  - (b) by the milestone dates (if milestones are specified in item 13 of Schedule A);
  - (c) by the Contract Completion Date; and
  - (d) if the Services are periodic or recurrent Services, at the times, intervals and frequency as specified in item 14 of Schedule A.
- 46.3 In supplying the Goods and/or performing the Services, the Contractor must:
- (a) inform itself of the Customer's requirements in respect of the Goods and/or Services;
  - (b) consult regularly with the Customer and/or Project Manager; and
  - (c) exercise due skill, care and diligence.
- 46.4 The Contractor must ensure that:
- (a) the supply of the Goods and/or performance of the Services are in accordance with any key performance indicators or performance standards as specified in the Arrangement; and
  - (b) all Goods and/or Services are of a high quality, professional standard and are fit for purpose.
- 46.5 The Customer will provide the assistance (if any) described in item 15 of Schedule A to the Contractor.

#### 47. PERFORMANCE OF SERVICES BY KEY PERSONNEL

- 47.1 The Services must be performed by the Key Personnel as specified in item 16 of Schedule A, unless the Customer has consented otherwise. A person replacing one of the Key Personnel, with the Customer's consent, will be considered to be one of the Key Personnel during the person's engagement to provide the Services.
- 47.2 The Contractor will ensure that the Key Personnel are competent and have the necessary skills and expertise to perform the Services on which they will be engaged.
- 47.3 The Contractor must not without consent from the Customer:
- (a) allow Key Personnel to delegate any part of the Services; or

- (b) allocate tasks not connected with the Services to any of the Key Personnel who are engaged on the Services on a full time basis, until the Services allocated to that person have been completed by that person.

- 47.4 If any of the Key Personnel are not available to perform any of the Services allocated to them, the Contractor must immediately:
- (a) notify the Customer of the circumstances; and
  - (b) if so requested by the Customer, arrange for replacement of that person with a person satisfactory to the Customer, at no cost to the Customer.
- 47.5 The Customer may, on reasonable grounds, give Notice to the Contractor to remove any Key Personnel from working on the Services. Upon receipt of such Notice under this clause 47.5, the Contractor must, at no cost to the Customer, promptly remove and replace the Key Personnel mentioned in the Notice with a person approved by the Customer.

#### **48. PRICE AND APPROVED EXPENSES**

- 48.1 If the Goods and/or Services are provided in accordance with the Contract, the Customer will:
- (a) upon receipt of a Correctly Rendered Invoice, pay the Contractor the Price; and
  - (b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.
- 48.2 The Customer will not be liable to reimburse the Contractor for expenses other than the Approved Expenses, unless the Contractor has obtained the Customer's consent.
- 48.3 The Price will be payable in the manner and at the times specified in item 10 of Schedule A and the Contractor must submit a Correctly Rendered Invoice for the Price at the times specified in item 10 of Schedule A.

#### **49. PAYMENT**

- 49.1 In accordance with the Arrangement, the Customer is not obliged to pay the Contractor for any part of the Goods and/or Services until the:
- (a) Contractor has delivered to the Customer any Deliverables;
  - (b) Customer has certified that the Deliverables specified in the Correctly Rendered Invoice have been supplied and/or performed in accordance with the Contract; and
  - (c) Contractor has given the Customer a Correctly Rendered Invoice.
- 49.2 Despite any previous certification in accordance with clause 49.1(b) the Contractor must promptly supply or supply again, any part of the Goods and/or promptly perform or perform again, any part of the Services, certified by the Customer as not having been supplied and/or performed in accordance with the Contract. The Customer may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Customer is satisfied that the Goods and/or Services have been supplied or supplied again and/or performed or performed again, in accordance with the Contract.
- 49.3 Unless otherwise specified in item 10 of Schedule A, the Customer will make payment within 30 days after the Contractor has submitted to the Customer a Correctly Rendered Invoice. If additional information or evidence, required by the Customer in accordance with clause 11.3, is accepted by the Customer, payment will be made 30 days after receipt of the additional information or evidence.

#### **50. GENERAL RIGHT OF SET-OFF BY THE CUSTOMER**

- 50.1 The Customer may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Customer whether or not the Customer's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Customer's right to payment arises out of the Contract, any other contract, or is independent of any contract.
- 50.2 If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Customer, the Customer may have recourse to any Financial Security provided in accordance with clause 20.
- 50.3 Nothing in this clause will affect the right of the Customer to recover from the Contractor the whole of such moneys or any balance that remains owing.

#### **51. PERFORMANCE GUARANTEE**

- 51.1 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 19.

#### **52. FINANCIAL SECURITY**

- 52.1 The Contractor acknowledges that where the Contractor has a Financial Security in place pursuant to a request by the Principal in accordance with clause 20, subject to clause 52.2, the Customer is entitled to rely on this Financial Security.

- 52.2 Only the Principal may enforce the Financial Security. A Customer seeking to rely on such Financial Security must request the Principal to make a claim on its behalf.
- 52.3 If the Contractor fails to properly perform its obligations under the 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 52.2) to make a claim and to receive payment for any or all such loss or damage (as ascertained and certified by the Customer) 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.

### 53. COMMISSIONS, INCENTIVES AND COLLUSION

#### Commissions and Incentives

- 53.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, give or offer to the Customer or any officer or employee of the Customer, or to a parent, spouse, child or associate of an officer or employee of the Customer, any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Customer's actions in relation to the Contract.
- 53.2 If the Customer discovers at any time during the Contract Term that the Contractor has breached clause 53.1, the Customer may in addition to any other action, elect to suspend the Contract in accordance with clause 60 or terminate the Contract in accordance with clause 61.

#### Collusion

- 53.3 The Contractor warrants to the Customer that:
- (a) except as is expressly disclosed to the Customer, its Standing Offer and any variations to the Standing Offer were not prepared with (and any variations to the 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 Contract);
    - (iv) the submission of a quote (or a request for variation) that is non conforming with the terms of the Standing Offer or the Arrangement;
    - (v) the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Contract relates; or
    - (vi) the terms of its 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 Arrangement) relating in any way to the 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 Arrangement) relating in any way to the 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 Contract, nor has it provided, nor will it provide any such benefit;
  - (d) except as is fully disclosed to the Customer in the Contract, at the time of entering into the 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 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.

- 53.4 The Contractor acknowledges that the Customer has entered into this Contract in reliance of the warranties in clause 53.3.
- 53.5 If the Contractor breaches clause 53.3, without limiting its rights under the Contract, the Customer may:
- (a) deduct from any moneys due to the Contractor under the Contract, an equivalent sum as an amount due from the Contractor to the Customer; and
  - (b) at its entire discretion terminate the Contract and claim damages for breach of the Contract.
- 54. CONFLICT OF INTEREST**
- 54.1 The Contractor warrants that, to the best of its knowledge, as at the Contract 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 Contract.
- 54.2 If a Conflict of Interest or risk of Conflict of Interest arises during the Contract Term (without limitation, including work undertaken by the Contractor for any entity other than the Customer), the Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Customer.
- 54.3 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 supply the Goods and/or perform the Services for the Customer in good faith and objectively; and
  - (b) immediately give Notice to the Customer of any Conflict of Interest relating to the activities or interests of any of its officers, employees, agents or sub-contractors.
- 54.4 Upon receipt of a Notice in accordance with clause 54.2 or 54.3(b), or upon the Customer otherwise identifying a Conflict of Interest, the Customer 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 Customer;
  - (b) suspend the Contract in accordance with clause 60; or
  - (c) elect to terminate the Contract in accordance with clause 61.5(a).
- 54.5 If clause 54.4(a) or 54.4(b) applies, the Contractor must give Notice to the Customer when the Conflict of Interest or risk of Conflict of Interest is resolved.
- 55. CONFIDENTIALITY**
- 55.1 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 Customer's consent, other than in accordance with this clause 55.
- 55.2 The Contractor may disclose Confidential Information:
- (a) to its officers, employees, agents and sub-contractors to the extent necessary for the performance of the Contract, provided that the Contractor:
    - (i) makes such persons aware that the information is confidential; and
    - (ii) if specified in item 17 of Schedule A or directed by the Customer during the Contract Term, obtains from such persons a deed of confidentiality in a form acceptable to the Customer;
  - (b) where required by law; or
  - (c) where the Contract requires disclosure to a third party.
- 55.3 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 55.4 Subject to clause 55.6, upon receipt of a written request by the Customer either during the Contract Term or upon termination or expiration of the Contract, the Contractor must deliver to the Customer any Documents and/or Records in the Contractor's power, possession or control.
- 55.5 Subject to clause 55.4 the Contractor must:
- (a) return any Documents and/or Records to the Customer upon the completion of the Contract; 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 practices and any applicable legislative requirements.
- 55.6 If the Contractor wishes to retain a copy of any Documents and/or Records in connection with the Contract for the purposes of the Contractor's own reasonable internal credit, risk, insurance, legal and professional responsibilities, the Contractor must notify the Customer in writing prior to the termination or expiration of the Contract, identifying the Documents and/or Records and the reasons for the request for retention.

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

## 56. PRIVACY AND PERSONAL INFORMATION

- 56.1 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must:
- (a) if the Customer 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 Contract, as if the Contractor was the Customer;
  - (b) if the Customer 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 Contract, as if the Contractor was the Customer;
  - (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 the supply of the Goods and/or performance of the Services, unless required or authorised by law;
  - (e) not disclose Personal Information without the consent of the Customer, unless required or authorised by law;
  - (f) not transfer Personal Information outside of Australia without the consent of the Customer;
  - (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 Contract;
  - (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 Contract;
  - (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 56;
  - (j) fully co-operate with the Customer to enable the Customer 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 Customer reasonably advises the Contractor in writing from time to time.
- 56.2 The Contractor must, if specified in item 18 of Schedule A or if requested by the Customer during the Contract Term, obtain from its officers, employees, agents or sub-contractors engaged for the purposes of the Contract, an executed deed of privacy in a form acceptable to the Customer.
- 56.3 The Contractor must immediately notify the Customer on becoming aware of any breach of clause 56.1.

## 57. SECURITY AND ACCESS

- 57.1 The Contractor must, and must ensure that its officers, employees, agents and/or sub-contractors, when entering upon the Customer's premises, dealing with the Customer's employees or members of the public, or using the Customer's facilities, equipment or resources, comply with all applicable rules, policies, standards, codes of conduct, directions and procedures of the Customer, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Customer.
- 57.2 The Contractor must give the Project Manager and/or any other person authorised in writing by the Customer reasonable access to premises occupied by the Contractor where the Goods and/or Services are being produced and/or undertaken and must permit them to inspect any Contract Material or other material related to the Goods and/or Services.
- 57.3 The Project Manager and/or any other person authorised in writing by the Customer must, when attending at the Contractor's premises or facilities, comply with all applicable rules, directions and procedures as notified by the Contractor, including those relating to security or workplace health and safety, that are in effect at the premises or facilities.

## 58. VARIATION TO THE CONTRACT

- 58.1 Except for the circumstances specified in clauses 58.2 and 58.6, the Contract 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.

- 58.2 The Customer may vary the terms and conditions of the Contract by Notice to the Contractor, when reasonably required as a result of changes in Government policy.
- 58.3 Where the terms and conditions of the Contract are varied as a result of clause 58.2, the Contractor must promptly submit in writing to the Customer any proposed variation to the Contract 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 30 will apply to resolve the dispute.
- 58.4 Any variation proposed by the Contractor in accordance with clause 58.1 or 58.3 must be accompanied by evidence to substantiate such proposed variation.
- 58.5 Despite any other provision of this clause 58, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Customer in accordance with clause 63.7, will be deemed to be rejected by the Customer and the Contract will remain unvaried.
- 58.6 The Customer may at any time serve a Notice on the Contractor requiring the Contractor to decrease or omit the supply of any part of the Goods and/or Services.
- 58.7 Following issue of such Notice, the Contractor will comply with the Notice and immediately take steps necessary to minimise the loss suffered by it as a result of the Notice.
- 58.8 Where the supply of any part of the Goods and/or Services have been decreased or omitted in accordance with clause 58.6, the Customer will pay the Contractor:
- (a) for the Goods and/or Services supplied as varied by the Notice in accordance with clause 58.6; and
  - (b) any reasonable costs incurred by the Contractor which are directly attributable to the reduction in the Goods and/or Services. However, the Customer will not be liable to the Contractor for any loss of profits.
- 59. SUSPENSION OF PAYMENT**
- 59.1 The Customer may suspend payments to the Contractor without penalty if the Contractor refuses, neglects or fails to supply and/or perform any part of the Contract, until the Goods are supplied and/or the Services performed in the manner acceptable to the Customer and in accordance with the Contract.
- 60. SUSPENSION OF THE CONTRACT**
- 60.1 The Customer may at any time by Notice, direct the Contractor to:
- (a) suspend work on the supply of all or any part of the Goods and/or Services for a specified period; or
  - (b) recommence work on the supply of all or any part of the suspended Goods and/or Services.
- 60.2 Where the Customer suspends the supply of the Goods and/or Services by Notice in accordance with clause 60.1(a):
- (a) the Contractor must, following receipt of that Notice, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the suspension, including taking all reasonable steps to prevent or minimise its liabilities to its suppliers, contractors and sub-contractors;
  - (b) the Contractor and the Customer must negotiate in good faith as to reasonable compensation payable to the Contractor for any additional costs that were reasonably and properly incurred by the Contractor as a direct result of the suspension but the compensation must not include loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss, and, where the suspension is the result of any act or omission of the Contractor, the Contractor will not be entitled to payment by the Customer of any costs, expenses or any other compensation arising out of such suspension; and
  - (c) any previously agreed completion dates for the Goods and/or Services will be postponed by a period equivalent to the duration of the suspension.
- 60.3 Where the Contractor commits a breach of the Contract, the Customer may without limiting any right of action or remedy which has accrued or may accrue in favour of the Customer:
- (a) give Notice to the Contractor, by a notice of suspension, that the Contract is suspended in whole or in part from the date specified in the Notice for a nominated period; and
  - (b) provide the Contractor with reasonable directions in relation to subsequent performance of the Contract.
- 60.4 The Contractor must immediately comply with any reasonable directions given by the Customer, in accordance with clause 60.3(b).
- 60.5 Prior to the period of suspension expiring, the Customer will notify the Contractor in writing that the:
- (a) period of suspension will cease to be effective from the date specified in the Notice based on the Customer being satisfied that the issues/concerns which gave rise to the suspension have been resolved, upon which, each Party must resume its performance under the Contract from that date;
  - (b) period of suspension will be extended for a further period of time specified in the Notice; or

- (c) Contractor must show cause, pursuant to a Notice issued by the Customer, why the Customer should not terminate the Contract from the date specified in the Notice.

60.6 If the Customer fails to notify the Contractor in writing in accordance with clause 60.5, the period of suspension will expire at the end of the nominated period and each Party must then resume its performance under the Contract.

## 61. TERMINATION OF THE CONTRACT

61.1 The Customer may terminate the Contract, in whole or in part, for convenience by giving 30 days Notice or such other reasonable period determined by the Customer, to the Contractor.

61.2 If the Contract is terminated in accordance with clause 61.1:

- (a) the Contractor must, following receipt of that Notice from the Customer, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and sub-contractors;
- (b) subject to clause 61.2 (c), the Customer must pay to the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Contract to the date of termination together with any costs and expenses reasonably incurred by the Contractor which are directly attributable to the termination; and
- (c) the Customer will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss, or any other reason in relation to termination nor will the Customer be liable for payment to the Contractor for any amount greater than the amount that the Customer would have paid to the Contractor had the Contract been completely performed.

61.3 Without limiting clause 61.5, where the Contractor commits any breach of the Contract, the Customer may by Notice, require the Contractor to show cause by the date specified in the Notice, why the Customer should not terminate the Contract.

61.4 If the Contractor fails to show reasonable cause by the date specified in the Notice, then the Customer is entitled, upon Notice to the Contractor, to terminate the Contract.

61.5 The Customer may immediately terminate the Contract by Notice to the Contractor if:

- (a) the Contractor gives Notice in accordance with clauses 54.2 or 54.3(b) or the Customer otherwise identifies a Conflict of Interest;
- (b) the Principal is satisfied that the Contractor has breached any part of clause 53;
- (c) the Contractor fails to provide the Performance Guarantee in accordance with clause 19 or Financial Security in accordance with clause 20;
- (d) the Contractor breaches any part of clause 27 or 28; or
- (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 mortgage 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 complete the Contract.

61.6 If the Customer terminates the Contract in accordance with clause 61.4 or 61.5, the termination is without prejudice to any rights of the Customer under the Contract or at common law, including the right to claim damages for breach of the Contract.

## 62. NOTICES RELATING TO THE CONTRACT

62.1 Any Notice which may be given to or served on either Party under the Contract must be sent or delivered to the following respective addresses:

- (a) for the Customer - as specified in item 19 of Schedule A; or
- (b) for the Contractor - as specified in item 20 of Schedule A,

or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.

62.2 Notwithstanding clause 62.1, if the Contractor is a company then the Customer may serve a Notice at any time on the Contractor's registered office.

62.3 A Notice to be given or served in accordance with clause 60 or 61 must not be sent via email.

62.4 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;

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- (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 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.

## 63. GENERAL PROVISIONS

### 63.1 RELATIONSHIP OF PARTIES

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

### 63.2 WAIVER

63.2.1 Any failure by a Party at any time to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a Party to the other, will not constitute a waiver of the Party's rights.

63.2.2 No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.

63.2.3 A waiver by a Party of a breach of any part of the Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

### 63.3 SEVERABILITY

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

### 63.4 FURTHER ASSISTANCE

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

### 63.5 NO ASSIGNMENT

63.5.1 The Contractor must not assign, in whole or in part, its obligations or interest in the Contract, except with the consent of the Customer.

### 63.6 DISCLOSURE BY CUSTOMER

63.6.1 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 Contract or the Goods 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 Contract.

### 63.7 RIGHT TO INFORMATION AND DISCLOSURE

63.7.1 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.

63.7.2 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.

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

63.7.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the 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.

63.7.5 Despite any other provision of the Contract, the Customer is entitled to publish on the Queensland Government Chief Procurement Office website: [www.qgcpo.qld.gov.au](http://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 Customer;
- (b) a description of the Goods and/or Services;
- (c) Contract Commencement Date or award date;
- (d) value of the Contract;

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

### 63.8 NO ADVERTISING

63.8.1 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 Contract without the consent of the Customer.

### 64. CLAUSES TO SURVIVE TERMINATION OF THE CONTRACT

64.1 The following clauses will survive termination or expiration of the Contract:

- clause 1 - Definitions and Interpretation;
- clause 42 - Customer may Enforce the Arrangement;
- clause 44 - Transferability / Portability of Goods and/or Services;
- clause 51 - Performance Guarantee;
- clause 52 - Financial Security;
- clause 55 - Confidentiality;
- clause 56 - Privacy and Personal Information;
- clause 63.2 - Waiver;
- clause 63.6 - Disclosure by Customer;
- clause 63.7 - Right to Information and Disclosure; and
- clause 63.8 - No Advertising.