

Conditions of Contract

For the Provision of Goods and/or Services

Version 002- dated 1 July 2009



Introduction

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

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

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CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Conditions of Contract, unless the context otherwise requires, the following definitions will apply:

“Additional Provisions” means any terms and conditions, that are agreed between the Customer and Contractor and specified in Schedule C;

“Approved Expenses” means the Contractor's expenses (if any) which have been agreed between the Parties and approved by the Customer prior to any expenditure being incurred, as specified in item 3 of Schedule A;

“Business Day” means between 9.00am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday at the Customer's address;

“Commencement Date” means either:

- (a) the date specified in item 5 of Schedule A; or
- (b) if no date is specified in item 5 of Schedule A or as otherwise agreed in writing between the Parties, the date on which the Contractor receives the Letter of Acceptance and/or Order;

“Completion Date” means the expiry date specified in item 6 of Schedule A or as otherwise agreed in writing between the Customer and Contractor;

“Conditions of Contract” means these terms and conditions of Contract and includes the attached Schedules and any additional conditions of contract as specified in Part 5 of the Invitation;

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

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

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

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

but does not include information which:

- (vi) was already lawfully disclosed by the Contractor prior to the Contractor being required to treat the information as confidential;
- (vii) is lawfully received from a third party which is not bound by a duty of confidentiality;
- (viii) has become public knowledge (other than through a breach of an obligation of confidence under this Contract);
- (ix) was independently developed or released by the Contractor without reference to the Confidential Information;
- (x) the Contractor is required by law to disclose; or
- (xi) the Contractor is required by this Contract to disclose to a third party;

“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 Contract fairly and objectively;

“Contract” means a legally binding contract as agreed between the Customer and the Contractor pursuant to clause 2.1;

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

“Contractor” means the entity specified in item 2 of Schedule A, from whom the Goods and/or Services are being procured;

“Contract Term” means the term of the Contract as specified in item 6 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 11.3;

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

“Deliverable” means the Goods and/or Services supplied to the Customer by the Contractor as specified in Schedule B;

“Delivery” means the transfer of possession of the Goods to the Customer, at the Customer’s delivery address specified in item 10 of Schedule A;

“Delivery Date” means the date specified in item 7 of Schedule A in which the Goods and/or Services will be supplied and/or performed by the Contractor to the Customer;

“Delivery Period” means the period specified in item 7 of Schedule A in which the Goods and/or Services will be supplied and/or 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; and/or
- (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, and includes electronic documents;

“Existing Contract Material” means any material that:

- (a) exists at the Commencement Date; or
- (b) is produced after the Commencement Date, independently of this Contract, and which is provided in connection with or forms part of a Deliverable;

“Goods” means the material, plant, item or equipment as specified in Schedule B (if applicable);

“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 this Contract, calculated at the rate of GST applicable at the time;

“GST Legislation” means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (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 Acts;

“Intellectual Property Rights” includes all copyright, trade mark, design, patents 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 Commencement Date of the Contract, 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;

“Key Personnel” means the representative/s of the Contractor specified in item 8 of Schedule A (if applicable);

“Letter of Acceptance” means a letter from the Customer to the Contractor accepting the Contractor’s Offer;

“Machinery of Government Change” means a transfer of responsibility, function or operations either wholly or partly, 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 Commencement Date of the Contract;

“New Contract Material” means any material provided in connection with the Contract 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 or agency, which is:

- (a) directly or indirectly, partially or entirely funded by the Commonwealth, State or Territory;
- (b) non-profit making; and/or
- (c) another entity,

from time to time approved by the Customer to acquire a Good and/or Service in accordance with this Contract;

“Notice” means notice in writing which may be given by personal delivery, pre-paid postage or facsimile to the Party's business address or registered office or, except for a notice under clause 29 or 30, notice given by email to a Party's nominated email address;

“Occurrence” means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one root cause;

“Offer” means the Offer submitted by the Contractor in response to the Invitation;

“Order” means an order substantially in the form of Schedule A, for the supply of the Goods and/or Services by the Contractor to the Customer;

“Parties” means the Customer and Contractor;

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

“Price” 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 B, and unless otherwise specified in Schedule B is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

“Project Manager” means the person nominated by the Customer to oversee and supervise the technical requirements of the Specifications relating to the Contract, as specified in item 9 of Schedule A, or other person nominated from time to time by the Customer as the Project Manager;

“Queensland Government Body” means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by 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 Customer to the Contractor in connection with the performance of this Contract and includes a copy of any Records;

“Schedules” means the schedules which are part of this Contract;

“Security” means an unconditional undertaking or such other security approved by the Customer in order to secure the due and proper performance of the Contract by the Contractor;

“Services” means the services as specified in Schedule B (if applicable);

“Site” means the place or places as specified in item 10 of Schedule A where the Goods and/or Services are to be supplied, installed, delivered and/or maintained;

“Specification” means the detailed description of the Customer's requirements as specified in Part 3 of the Invitation

1.2 Interpretation

1.2.1 In these Conditions of Contract, 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 Conditions of Contract.

1.2.2 The following rules shall apply in interpreting these Conditions of Contract, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;

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

2. FORMATION OF CONTRACT

- 2.1 The following documents will constitute this entire Contract between the Customer and Contractor:
- (a) Letter of Acceptance and/or other form of document (e.g. Order) incorporating the terms and conditions of the Conditions of Contract including Schedules A, B and C, as completed by the Customer which are attached to the Letter to Acceptance and/or other form of document (e.g. Order) ;
 - (b) Specifications;
 - (c) Contractor's Offer; and
 - (d) any other documentation forming part of this Contract, as agreed in writing between the Customer and Contractor.;
- 2.2 In the event of any conflict between the documents specified in clause 2.1, the order of precedence to resolve the conflict will be in the above order. In the event of any inconsistency between the Letter of Acceptance and Schedules A, B and C, the Letter of Acceptance will prevail to the extent of the inconsistency.
- 2.3 Any Additional Provisions which have been agreed between the Customer and Contractor in relation to the Specifications and/or these Conditions of Contract as specified in Schedule C.
- 2.4 Despite clause 2.3, any Additional Provisions which take away or reduce the entitlement that would otherwise be provided to the Customer under clause 32.11 are null and void.
- 2.5 This 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 this Contract.

3. TERM

- 3.1 This Contract Term will commence on the Commencement Date and, unless terminated sooner pursuant to clause 30, will continue until the earlier of:
- (a) the 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) the Completion Date.
- 3.2 If the Deliverables have not been supplied and/or performed by the Completion Date, the Contractor must seek an extension of the Completion Date from the Customer, in accordance with clause 27.

4. TRANSFERABILITY / PORTABILITY OF GOODS AND/OR SERVICES

- 4.1 Notwithstanding any provision of this 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 this Contract, either wholly or partly, to a Queensland Government department or agency that is part of the same legal entity as the Customer.
- 4.2 Notwithstanding any provision of this Contract, the Customer may freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under this Contract, either wholly or partly, 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.
- 4.3 If clause 4.2 applies the Contractor must execute a deed of novation, which is located from the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under '*Standard contract forms*' – '*Additional Provisions*' document, or by contacting the Customer. The Contractor must execute and return this deed of novation to the Customer within 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.

- 4.4 If the Goods and/or Services are transferred in accordance with clause 4.1 or 4.2, 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) may 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.
- 4.5 The Contractor agrees to negotiate with the Customer in good faith to vary or consolidate this Contract to:
- (a) adjust the Price as a result of the notification of the matters raised in clause 4.4; and/or
 - (b) comply with any specific requirements of the Customer to which its rights and responsibilities, including the use and title to any Goods and/or Services are, or will be, freely transferred in accordance with clause 4.1 or 4.2.

5. ROLE OF THE PROJECT MANAGER

- 5.1 The Project Manager is the Customer's technical representative responsible for the detail and accuracy of the Specifications in this Contract. The Project Manager is NOT authorised either apparently or ostensibly to amend this Contract on behalf of the Customer.
- 5.2 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.

6. PROVISION OF THE GOODS AND/OR SERVICES

- 6.1 The Contractor agrees to supply the Goods and/or Services, as an independent contractor, for the Contract Term in a competent and professional manner.
- 6.2 The Contractor must provide the Goods and/or Services:
- (a) during the Delivery Period or Delivery Date;
 - (b) by the milestone dates (if milestones are specified in item 11 of Schedule A);
 - (b) by the Completion Date; or
 - (c) if the Services are periodic or recurrent Services, at the times, intervals and frequency as specified in item 12 of Schedule A.
- 6.3 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 or Project Manager; and
 - (c) exercise due skill, care and diligence.
- 6.4 The Contractor must ensure that:
- (a) the supply of the Goods and/or Services are performed in accordance with any key performance indicators or performance standards specified in item 13 of Schedule A; and
 - (b) all Goods and/or Services are of a high quality and professional standard.
- 6.5 The Customer will provide the assistance (if any) described in item 14 of Schedule A to the Contractor.

7. REQUIREMENTS FOR GOODS AND/OR SERVICES

- 7.1 All Goods and/or Services provided by the Contractor, unless otherwise specified, shall comply in all aspects of the:
- (a) terms of the Contract, including but not limited to the Specifications;
 - (b) applicable legislation; and
 - (c) applicable Government code, policy or guideline and 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 Term of the Contract, which govern the provision of the Goods and/or Services.
- 7.2 All Goods supplied by the Contractor must be in a new and unused condition and of recent origin, unless otherwise specified in item 15 of Schedule A.
- 7.3 All Goods supplied by the Contractor must be suitably packed and otherwise appropriately prepared for transportation.
- 7.4 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Customer upon Delivery.

7.5 The Contractor must ensure that any manufacturer's warranty that applies to the Goods will be transferred to the Customer, at no cost to the Customer.

8. CONTRACTOR'S OBLIGATIONS

8.1 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.

8.2 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.

8.3 The Contractor:

- (a) warrants that it has the necessary skills and expertise to complete this Contract; and
- (b) will ensure that its officers, employees and sub-contractors have the necessary skills and expertise to perform those obligations of the Contract, which are allotted to them by the Contractor.

9. PERFORMANCE OF SERVICES BY KEY PERSONNEL

9.1 The Services must be performed by the Key Personnel as specified in item 8 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.

9.2 The Contractor must ensure that the Key Personnel are competent and have the necessary skills to perform the Services on which they will be engaged.

9.3 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.

9.4 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.

9.5 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 9.5, 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.

10. PRICE AND APPROVED EXPENSES

10.1 If the Goods and/or Services are provided in accordance with the Contract, the Customer will:

- (a) pay the Contractor the Price; and
- (b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.

10.2 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.

10.3 The Price will be payable in the manner and at the times specified in Schedule B and the Contractor must submit invoices for the Price at the times specified in Schedule B.

10.4 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 rate as it affects the Goods, if specified in Schedule B;
- (b) movements in the Consumer Price Index (all Capital) as it affects the Goods and/or Services, if specified in Schedule B;
- (c) other factors as it affects the Goods and/or Services, if specified in Schedule B; and/or
- (c) any variation in any tax, duty or charge as it affects the Goods and/or Services;

the Contractor must give Notice to the Customer and such Notice must include evidence to substantiate the basis of the Price increase or decrease.

- 10.5 Where the Contractor gives Notice to the Customer of a Price increase or decrease in accordance with clause 10.4, that increase or decrease will be incorporated into this Contract 30 days from the date notification is received by the Customer, unless within that 30 day period, the Customer gives Notice to the Contractor that it rejects the increase or decrease.
- 10.6 If the Contractor's request to increase or decrease the Price for the Goods and/or Services is rejected by the Customer, the Contract will remain unvaried.

11. PAYMENT

- 11.1 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 that are due to be delivered;
 - (b) Customer has certified that the Deliverables specified in the Correctly Rendered Invoice have been supplied and completed in accordance with this Contract; and
 - (c) Contractor has given the Customer a Correctly Rendered Invoice.
- 11.2 Despite any certification under clause 11.1(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 this 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 this Contract.
- 11.3 The Correctly Rendered Invoice submitted by the Contractor must:
- (a) identify the title of the Goods and/or Services and the name of the 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);
 - (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; and
 - (e) itemise Approved Expenses claimed.
- 11.4 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.
- 11.5 Unless otherwise specified in Schedule B, the Customer will make payment within 30 days after the last to occur of clause 11.1(a) and 11.1(c) or, if additional information or evidence is required by the Customer pursuant to this clause, 30 days after receipt of the additional information or evidence.

12 GENERAL RIGHT OF SET-OFF BY THE CUSTOMER

- 12.1 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 this Contract, any other contract/s, or is independent of any contract.
- 12.2 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 Security provided under clause 14.
- 12.3 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.

13. GST

- 13.1 The Price is either exclusive or inclusive of GST, as specified in Schedule B.
- 13.2 If the Price is exclusive of GST the Customer will pay the GST Amount to the Contractor in addition to the Price and the Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.
- 13.3 If the Price is inclusive of GST the:
- (a) Customer is not required to pay the GST Amount in addition to the Price; and
 - (b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.
- 13.4 Where the amount of GST collected by the Customer under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor, including but not limited to:
- (a) an amendment to the GST Legislation;
 - (b) the issue of a ruling or advice by the Commissioner for Taxation;
 - (c) a refund of GST to the Contractor in respect of any supply made under this 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.

- 13.5 The Parties agree to exchange with each other such information as may be necessary to enable each Party to accurately assess its rights and obligations under this clause.

14. SECURITY

- 14.1 If specified in item 16 of Schedule A, the Contractor must provide a Security to the Customer, in accordance with item 16 of Schedule A. The Contractor shall arrange for this Security to be executed by a security provider approved by the Customer and to the level required by the Customer, within 10 Business Days, or such other period agreed between the Parties.
- 14.2 Where specified in item 16 of Schedule A, the Security shall be held as security for the due and proper performance of all the obligations of the Contractor under the Contract.
- 14.3 All charges incurred by the Contractor, in obtaining, maintaining and releasing the Security pursuant to this clause 14 shall be met by the Contractor.
- 14.4 The Contractor shall not take nor be entitled to take any action or proceeding to obtain an injunction or otherwise prevent the Customer from making a claim or receiving a payment under the Security.
- 14.5 The Contractor agrees that the Customer, whilst exercising its rights in accordance with this clause 14 in good faith and reasonably 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.
- 14.6 The Customer may have recourse to the Security where:
- (a) 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;
 - (b) the Customer is entitled to terminate the Contract pursuant to clause 30.5(a), 30.5(d) and 30.5(e) of this Contract and the Customer suffers loss or damage arising from, or in connection with, the termination of the Contract; or
 - (c) the Customer is entitled to take action in accordance with clause 12.2.
- 14.7 If the Security is not sufficient to meet any of the payment contemplated by clause 14.6, the unpaid amount may be recovered from the Contractor by the Customer in any appropriate court.
- 14.8 The Customer will return the Security to the Contractor at the end of the Term, provided that the Customer is not entitled to have recourse to the Security pursuant to clause 14.6.

15. COMMISSIONS AND INCENTIVES

- 15.1 The Contractor will not offer anything to the Customer or any officer or employee of the Customer, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence the Customer's actions in relation to the Contract.

16. CONFLICT OF INTEREST

- 16.1 The Contractor warrants that, to the best of its knowledge, as at the Commencement Date neither the Contractor nor any of its officers, employees or sub-contractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor's obligations under this Contract.
- 16.2 If a Conflict of Interest or risk of Conflict of Interest arises during the Term of this Contract (without limitation, because of work undertaken by the Contractor for any person other than the Customer), the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Customer.
- 16.3 The Contractor must:
- (a) take all reasonable measures to ensure that its officers, employees 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 or sub-contractors.
- 16.4 Upon receipt of a notice under clauses 16.2 or 16.3(b) or 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 this Contract in accordance with clause 29.1; or
 - (b) elect to terminate this Contract in accordance with clause 30.5(a).

17. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS

- 17.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in the Party specified in item 17 of Schedule A.
- 17.2 If item 17 of Schedule A is blank, title to, and Intellectual Property Rights in, New Contract Material vests in the Customer.
- 17.3 If item 17 of Schedule A specifies that this clause 17.3 applies or if clause 17.2 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 Term of the Contract the New Contract Material and Records are used, copied, supplied or reproduced only for the purposes of this Contract; and
 - (b) after the expiration or sooner termination of this 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.
- 17.4 If item 17 of Schedule A specifies that this clause 17.4 applies, title to, and Intellectual Property Rights in, New Contract Material will, upon its creation, vest in the **Contractor**, 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 rights comprised in the copyright, for any purpose of the Customer and/or a Queensland Government Body; and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if specified in item 17 of Schedule A.
- 17.5 This 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 rights comprised in the copyright for any purpose of the Customer and/or a Queensland Government Body; and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if specified in item 17 of Schedule A.
- 17.6 Intellectual Property Rights in Records will remain vested in the Customer.
- 17.7 If the Contractor is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the individual's Moral Rights and without limiting this, the individual consents to:
- (a) the Customer determining in its 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 of the Contract Material (or any part thereof) at the discretion of the Customer;
 - (c) the publication or communication of the Contract Material or any part thereof; and
 - (d) any other acts or omissions as specified in item 17 of Schedule A.
- 17.8 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:
- (a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under this Contract in full, without impediment or cost to the Customer; and
 - (b) without limiting clause 17.8(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the person's Moral Rights, including a consent to the acts or omissions specified in clause 17.7(a) to (d).

18. CONFIDENTIALITY

- 18.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose any Confidential Information without the Customer's consent, other than in accordance with clause 18.
- 18.2 The Contractor may disclose Confidential Information to its officers, employees, agents and sub-contractors to the extent necessary for the performance of this Contract, provided that the Contractor:
- (a) makes such persons aware that the information is confidential; and
 - (b) if specified in item 18 of Schedule A or directed by the Customer during the Term of this Contract, obtains from such persons a confidentiality undertaking in a form acceptable to the Customer.

- 18.3 The Customer and Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 18.4 Upon receipt of a written request by the Customer either during the Term or upon termination or expiration of this Contract, the Contractor must deliver to the Customer any Records in the Contractor's power, possession or control.
- 18.5 Subject to clause 18.4, the Contractor may:
- (a) return any Record to the Customer upon the completion of this Contract; and/or
 - (b) destroy its file/s and any copy (but not the original) of a Record held in its file in accordance with usual business practice and any applicable legislative requirements.

19. PRIVACY AND PERSONAL INFORMATION

- 19.1 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" within the meaning of the *Information Privacy Act 2009*, comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract, as if the Contractor was the Customer;
 - (b) 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;
 - (c) not disclose Personal Information without the consent of the Customer, unless required or authorised by law;
 - (d) not transfer Personal Information outside of Australia without the consent of the Customer;
 - (e) ensure that access to Personal information is restricted to those of its employees and officers who require access in order to perform their duties;
 - (f) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties;
 - (g) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;
 - (h) 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
 - (i) comply with such other privacy and security measures as the Customer reasonably advises the Contractor in writing from time to time.
- 19.2 On request by the Customer, the Contractor must obtain from its employees, officers or sub-contractors engaged for the purposes of this Contract, an executed deed of privacy in a form acceptable to the Customer.
- 19.3 The Contractor must immediately notify the Customer on becoming aware of any breach of clause 19.1.

20. SECURITY AND ACCESS

- 20.1 The Contractor, and any employee, agent or subcontractor of the Contractor, must, 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.
- 20.2 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.
- 20.3 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.

21. LIABILITY

- 21.1 The liability of a Party to the other Party for loss or damage sustained, shall 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 Contract or otherwise at law.
- 21.2 Unless otherwise agreed in writing between the Parties, the liability of a Party arising under and/or in connection with the Contract, shall exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.

- 21.3 The liability of a Party arising under and/or in connection with the Contract, shall, 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 clause 17; or
 - (d) under an indemnity provided by the Contractor under clause 22,
- be limited to the per Occurrence amount specified in item 19 of Schedule A.
- 21.4 If no amount is specified in item 19 of Schedule A, then the liability of a Party will be unlimited.
- 21.5 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under or in connection with a breach of the Contract, or in tort, or for any other common law or legislative cause of action arising under or in connection with the Contract.
- 22. INDEMNITY**
- 22.1 In this clause 22:
- “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.
- 22.2 The Contractor releases, discharges and indemnifies the Customer and its officers and employees from and against any claim by a third party 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 or employees;
 - (b) breach of this Contract by the Contractor;
 - (c) contravention of any legislative requirement by the Contractor, its officers or employees; or
 - (d) infringement by the Contractor and its officers or employees 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 Customer, its officers or employees.
- 23. INSURANCE**
- 23.1 The Contractor warrants that it will hold and maintain for the duration of this Contract the following insurances:
- (a) Workers' Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) Public Liability insurance for the amount specified in item 20 of Schedule A;
 - (c) Professional Indemnity insurance if specified in item 21 of Schedule A for the amount specified in item 21 of Schedule A in respect of each claim, which shall be maintained by the Contractor for a continuous period of four years, after the Completion Date or termination of the Contract, unless otherwise specified in item 21 of Schedule A; and/or
 - (d) any other insurances specified in item 22 of Schedule A.
- 23.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 23.3 The Contractor warrants if it is a member of a scheme approved under the *Professional Standards Act 2004* that it will hold and maintain the minimum level of insurance as specified in item 21 of Schedule A.
- 23.4 The Contractor must, if required by the Customer, promptly provide a certificate of currency for each insurance policy.
- 23.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause 23, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Customer's rights under this Contract.
- 23.5 The Contractor must immediately advise the Customer if any insurance policy, as required by this clause 23, is materially modified or cancelled. The Contractor must provide full details of any changes in writing to the Customer.
- 24. LICENSING REQUIREMENTS**
- 24.1 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.
- 24.2 The Contractor must, if requested by the Customer, provide evidence of compliance with its obligations under this clause to the satisfaction of the Customer.
- 25. INDUSTRIAL RELATIONS**
- 25.1 The 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.
- 25.2 During the periods of industrial disputes of any duration, the Contractor will be responsible for continued compliance with its obligations under the Contract at the Contractor's expense.

26. RESOLUTION OF DISPUTES

- 26.1 If a dispute or difference arises between the Parties in relation to the Contract or concerning the performance or non-performance by either Party of their obligations under this 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 a 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.

The mediator shall be:

- (a) mutually agreed upon by the Parties in writing; or
- (b) in the absence of agreement, appointed by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

27. VARIATION

- 27.1 Except for the circumstances specified in clauses 27.2 and 27.6, the Contract may only be varied by written agreement between the Parties. The Parties must act reasonably in deciding whether to agree to a variation, as requested by the other Party.
- 27.2 The Customer may vary the terms and conditions of this Contract by Notice to the Contractor, when reasonably required as a result of changes in Government policy.
- 27.3 Where as a result of clause 27.2 the Contractor is required to comply with any amendments to Government policy, the Contractor must promptly submit in writing to the Customer any proposed variations to this Contract which are 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 26 will apply to resolve the dispute.
- 27.4 Any variation proposed by the Contractor in accordance with clause 27.1 or 27.3 must be accompanied by evidence to substantiate such proposed variation.
- 27.5 Despite any other provision of this clause 27, any variation proposed by the Contractor which take away or reduce the entitlement of the Principal under clause 32.11, will be deemed to be rejected by the Customer and this Contract will remain unvaried.
- 27.6 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.
- 27.7 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.
- 27.8 Where the supply of any part of the Goods and/or Services have been decreased or omitted under clause 27.6, the Customer will pay the Contractor:
- (a) for the Goods and/or Services supplied as varied by the notice under clause 27.6; and
 - (b) any reasonable costs incurred by the Contractor which are directly attributed to the reduction in the Goods and/or Services. However, the Customer shall not be liable to the Contractor for any loss of profits.
- 27.9 Where specified in this Contract that the Price of the Goods and/or Services are to be adjusted to reflect any variation in the Consumer Price Index during the previous year, the variation will apply from 1st July each year. This variation will be calculated by multiplying the existing Price of the Goods and/or Services by the Consumer Price Index for the 12 months ending at the end of the latest available quarter and dividing it by the Consumer Price Index for the preceding 12 months. In this clause 27 the "Consumer Price Index" means the Brisbane (All Groups) Consumer Price Index published by the Australian Bureau of Statistics.
- 27.10 Except for the circumstances specified in clause 27.2, if the receiving Party rejects the proposed variation, including any pricing variation, this Contract will remain unvaried.

28. SUSPENSION OF PAYMENT

- 28.1 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 this Contract.

29. SUSPENSION OF GOODS AND/OR SERVICES

- 29.1 The Customer may without having cause, 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.

- 29.2 Where the Customer suspends the supply of the Goods and/or Services by Notice under clause 29.1(a):
- (a) the Contractor shall, 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; and
 - (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.
- 29.3 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.
- 29.4 The Contractor must immediately comply with any reasonable directions given by the Customer, pursuant to clause 29.3(b).
- 29.5 Prior to the period of suspension expiring, the Customer shall notify the Contractor in writing that the:
- (a) period of suspension shall 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; or
 - (b) period of suspension shall 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.
- 29.6 If the Customer fails to notify the Contractor in writing, pursuant to clause 29.5, the period of suspension shall expire at the end of the nominated period and each Party must then resume its performance under this Contract.

30. TERMINATION

- 30.1 The Customer may terminate this Contract for convenience by giving 30 days prior Notice or such other reasonable period as specified by the Customer.
- 30.2 If the Contract is terminated pursuant to clause 30.1:
- (a) the Contractor shall, 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) 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; 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 and indirect or consequential loss, or any other reason in relation to termination nor shall 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 this Contract been completely performed.
- 30.3 Without limiting clause 30.5, where the Contractor commits any substantial breach of the Contract or, the Customer may by Notice, require the Contractor to show cause by the date specified in the Notice, why the Customer should not terminate this Contract.
- 30.4 If the Contractor fails to show reasonable cause by the date specified by the Customer, then the Customer shall have the power upon Notice to the Contractor to terminate this Contract.
- 30.5 The Customer may immediately terminate this Contract by Notice to the Contractor if:
- (a) the Contractor gives Notice under clause 16.2 or 16.3(b);
 - (b) the Contractor fails to provide the Security in accordance with clause 14;
 - (c) the Contractor breaches any part of clause 23 or 24; or
 - (d) 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 or 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
- (e) the Contractor indicates that it is unable or unwilling to complete the Contract.

30.6 If the Customer terminates this Contract under either clauses 30.4 or 30.5, the termination is without prejudice to any rights of the Customer under the Contract or at common law.

31. NOTICES

31.1 Any Notice or other form of communication (a "notice") which may be given to or served on either Party under this Contract must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following respective addresses:

- (a) for the Customer - as specified in item 23 of Schedule A;
 - (b) for the Contractor - as specified in item 24 of Schedule A,
- or such other address as a Party may subsequently notify to the other.

31.2 Notwithstanding clause 31.1, if the Contractor is a company then the Customer may serve a notice at any time on the Contractor's registered office.

31.3 A notice to be given or served pursuant to clauses 29 or 30 must not be sent via email.

31.4 A notice will be deemed to be given:

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

except that a fax or email received after 5:00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

32. GENERAL PROVISIONS

32.1 Relationship of Parties

32.1.1 The relationship of the Parties under this Contract is one of principal and contractor and the Contractor is not by virtue of this 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.

32.2 No Advertising

32.2.1 The Contractor will not make any public announcement or advertisement in any medium in relation to this Contract without the consent of the Customer.

32.3 Waiver

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

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

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

32.4 No Sub-contracting

32.4.1 The Contractor shall not sub-contract the provision of any Goods and/or Services pursuant to this Contract, without the prior consent of the Customer. Any consent given by the Customer to sub-contract:

- (a) may be conditional;
- (b) will not operate as an authority to transfer responsibility to the subcontractor; and
- (c) will not relieve the Contractor from any of its liabilities or obligations under this Contract.

32.5 Governing Law

32.5.1 This 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.

- 32.5.2 Notwithstanding clause 32.5.1, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* to this Contract to the fullest extent permitted by law.
- 32.6 Compliance with all Laws**
- 32.6.1 The Contractor must comply with all relevant laws in the provision of the Goods and/or Services and in performing its obligations under this Contract.
- 32.7 Severability**
- 32.7.1 If any part of this 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 this Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 32.8 Further Assistance**
- 32.8.1 The Contractor must do all things reasonably required by the Customer to give effect to this Contract.
- 32.9 No Assignment**
- 32.9.1 The Contractor may not assign its obligations or interest in this Contract, except with the consent of the Customer.
- 32.10 Disclosure by Customer**
- 32.10.1 The Contractor acknowledges that the Customer, its officers, employees and sub-contractors may use and disclose any of the information provided by the Contractor 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 this Contract.
- 32.11 Right to Information and Disclosure**
- 32.11.1 The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 32.11.2 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.
- 32.11.3 Information relating to this Contract is potentially subject to disclosure to third parties.
- 32.11.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with this Contract, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor. The Customer cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.
- 32.11.5 Despite any other provision of this Contract, the Customer is entitled to publish on the Queensland Government Chief Procurement Office website: www.qgcpcqld.gov.au under 'eTender system 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) commencement date of the Contract or award date;
 - (d) Contract value;
 - (e) name and address of the Contractor; and
 - (f) procurement method used.
- 33. CLAUSES TO SURVIVE TERMINATION**
- 33.1 The following clauses will survive termination or expiration of this Contract:
- clause 14 Security;
 - clause 17 Intellectual Property Rights and Moral Rights;
 - clause 18 Confidentiality;
 - clause 19 Privacy and Personal Information;
 - clause 21 Liability;
 - clause 22 Indemnity;
 - clause 23.1(c) Insurance;
 - clause 32.2 No Advertising;

- clause 32.3 Waiver;
- clause 32.5 Governing Law;
- clause 32.10 Disclosure by Customer; and
- clause 32.11 Right to Information and Disclosure.

SCHEDULE A - CONTRACT PARTICULARS

The below Schedule A must be read in conjunction with the Queensland Government's Conditions of Contract Version 002 – dated 1 July 2009 located via www.ggcpo.qld.gov.au – under 'Standard contract forms' along with any additional conditions of contract as detailed in Schedule 3. The Conditions of Contract Version 002 – dated 1 July 2009 along with the below Schedule will govern this Contract.

ITEM	INFORMATION	DETAILS
1.	<p>Customer (clause 1.1):</p> <p>[Insert full name of the Customer]:</p> <p>[Insert the Customer's ABN]:</p> <p>[Insert the Customer's address]:</p> <p>[Insert the name of the person representing the Customer, who will be responsible for this Contract].</p> <p>[Insert the Customer's contact person's email address]</p>	<p>Name: State of Queensland (acting through <<insert name of Government department or agency>>)</p> <p>OR</p> <p><<insert name of entity, if not the State of Queensland>></p> <p>ABN: <<insert Customer's ABN number>>.</p> <p>Address:</p> <p>Contact Person:</p> <p>Email:</p>
2.	<p>Contractor (clause 1.1):</p> <p>[Insert full name of Contractor]:</p> <p>[Insert Contractor's ABN]:</p> <p>[Insert Contractor's address]:</p> <p>[Insert the name of the person representing the Contractor, who will be responsible for the Contract].</p>	<p>Name:</p> <p>ABN:</p> <p>Address:</p> <p>Contact Person:</p>
3.	<p>Approved Expenses (clauses 1.1 & 10):</p> <p>[Insert expenses for which the Contractor will be entitled to be reimbursed].</p> <p>[Specify the maximum amount payable to the Contractor by the Customer under this Contract, if applicable].</p>	
4.	<p>Cluster Members (clause 1.1):</p> <p>[Insert the Customer names of the 'Cluster Members', (if applicable)].</p>	
5.	<p>Commencement Date (clauses 1.1 & 3):</p> <p>[If Contract is to commence on a specified dated then insert date].</p>	
6.	<p>Completion Date (clauses 1.1, 3 & 6.2(b)):</p> <p>[If Contract is to be completed on a specified dated then</p>	

	<p>insert date].</p> <p>Contract Term (clauses 1.1, 3.1 & 6.1)</p> <p>[Specify the term of this Contract]</p>	
7.	<p>Delivery Date / Delivery Period (clause 1.1):</p> <p>[Specify the date or period which the Goods are to be supplied and/or the Services are to be performed].</p>	
8.	<p>Performance of Services by Key Personnel (clauses 1.1 & 9.1):</p> <p>[Insert names of personnel who are to undertake the Services for the Contractor and their qualifications].</p> <p>Insert "<i>Not Applicable</i>" if there is no Key Personnel].</p>	
9.	<p>Project Manager (clauses 1.1 & 5):</p> <p>[Insert the position title of the nominated Customer's officer who will oversee the Contract on the Customer's behalf].</p>	
10.	<p>Site (clause 1.1):</p> <p>[Insert the site details on where the Deliverable is to be installed, supplied, performed, etc].</p>	
11.	<p>Provision of the Goods and/or Services - Milestones (clause 6.2(a)):</p> <p>[Insert description of milestones and proposed achievement dates].</p>	
12.	<p>Provision of the Goods and/or Services - Periodic or recurrent Services (clause 6.2(c)):</p> <p>[Insert times/frequency/intervals for performance of periodic or recurrent Services. If Services are not periodic or recurrent, insert '<i>Not Applicable</i>'].</p>	
13.	<p>Provision of the Goods and/or Services - Key performance indicators or performance standards (clause 6.4(a)):</p> <p>[Specify the key performance indicators with which the Services are required to comply].</p>	
14.	<p>Provision of the Good and/or Services - Assistance to be provided by the Customer (clause 6.5):</p> <p>[Specify if any assistance is to be provided by the Customer to the Contractor in relation to the Goods or Services and specify details].</p>	
15.	<p>Requirements for Goods and/or Services (clause 7.2):</p> <p>[Specify if the Goods are to be other than new and unused condition and of recent origin].</p>	

<p>16.</p>	<p>Security (clause 14):</p> <p>[Specify if a Security is required].</p> <p>[Specify the nature of the Security (e.g. financial or performance)].</p> <p>[Specify the time when the Security must be provided by the Contractor to the Customer, (e.g. 5 Business Days after the Commencement Date)].</p> <p>[If a Security is applicable specify the amount of Security required by the Customer].</p>	
<p>17.</p>	<p>Intellectual Property Rights (clause 17):</p> <p>Clause 17.3 applies (New Contract Material vests in the Customer)</p> <p style="text-align: center;">OR</p> <p>Clause 17.4 applies (New Contract Material vests in the Contractor) with licence rights to the Customer for Government use</p> <p>If "YES" to clause 17.4, clause 17.4(b) applies (Customer has full commercial exploitation rights).</p> <p>Moral Rights (clause 17 – Conditions of Contract)</p> <p>17.7(d) [List any specific acts or omissions in relation to Moral Rights in addition to those specified in clause 17.7(a) – (c) that are being consented to.</p> <p>[If no additional acts or omissions are to be specified insert 'NIL' or 'Not Applicable']</p>	<p>Yes <input type="checkbox"/></p> <p>OR</p> <p>Yes <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p>
<p>18.</p>	<p>Confidentiality (clause 18.2(b)):</p> <p>[Specify whether the Contractor is required to obtain from its officers, employees, agents and sub-contractors a confidentiality undertaking in a form approved or provided by the Customer].</p>	
<p>19.</p>	<p>Liability (clause 21):</p> <p>[Specify the amount of the liability cap (e.g. an amount of \$(x) million or (y) times the value of the Contract Price.)]</p> <p><i>For the avoidance of doubt, \$0 or no amount specified means liability is unlimited.</i></p>	
<p>20.</p>	<p>Insurance – Public Liability (clause 23.1(b)):</p> <p>[Specify if public liability insurance is required]. If "YES", specify the sum to be insured].</p> <p>[Specify the public liability insurance policy no.].</p> <p>[Specify the name of the insurance provider].</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Sum Insured:</p> <p>Policy No.;</p> <p>Insurance Provider:</p>

	<p>[Specify the name on the public liability insurance policy as the "insured"].</p> <p>[Specify the Contractor's expiry date of the public liability insurance policy].</p> <p><i>[Public liability insurance covers liability for personal injury and property damage. Typically the amount is at least \$10 million per claim depending upon the Risk Assessment]</i></p>	<p>Named Insured:</p> <p>Expiry Date of Policy:</p>
<p>21.</p>	<p>Insurance - Professional indemnity (clause 23.1(c) and 23.3):</p> <p>[Specify if professional indemnity insurance is required] If "YES" specify the sum to be insured.</p> <p>[Specify the professional indemnity insurance policy no.].</p> <p>[Specify the name of the insurance provider].</p> <p>[Specify the name on the professional indemnity insurance policy as the "insured"].</p> <p>[Specify the Contractor's expiry date of the professional indemnity insurance policy].</p> <p><i>[Professional indemnity insurance covers the consequences of a breach of professional duty and professional negligence. It is only required where relevant, (e.g. if you engage an accountant to provide professional accounting services)].</i></p> <p>[Specify if professional indemnity insurance is to be maintained for <u>an alternative period</u> (i.e. other than four years from the Completion Date or termination of the Contract).] If "YES" specify alternative period.</p> <p>[Specify and provide details if the Contractor is a member of a scheme approved under the <i>Professional Standards Act 2004</i>.]</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Sum Insured:</p> <p>Policy No.:</p> <p>Insurance Provider:</p> <p>Named Insured:</p> <p>Expiry Date of Policy:</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Alternative Period:</p>
<p>22.</p>	<p>Insurance - Other insurances (clause 23.1(d)):</p> <p>[Specify if any other insurances are required (e.g. product liability insurance)] If "YES" specify the sum to be insured].</p> <p>[Specify the other insurance policy no.].</p> <p>[Specify the name of the insurance provider].</p> <p>[Specify the name on the insurance policy as the "insured"]</p> <p>[Specify the Contractor's expiry date of the above insurance policy].</p>	<p>Insurance Policy:</p> <p>Sum Insured:</p> <p>Policy No.:</p> <p>Insurance Provider:</p> <p>Named Insured:</p> <p>Expiry Date of Policy:</p>
<p>23.</p>	<p>Notices - Customer's address for notices (clause 31.1(a)):</p> <p>[Insert address for notices]</p> <p>[Insert facsimile no.]</p> <p>[Insert email address].</p>	<p>Address:</p> <p>Facsimile No.:</p> <p>Email Address:</p>

24.	<p>Notices - Contractor's address for notices (clause 31.1(b)):</p> <p>[Insert address for notices]</p> <p>[Insert facsimile no.]</p> <p>[Insert email address].</p>	<p>Address:</p> <p>Facsimile No.:</p> <p>Email Address:</p>
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Privacy Statement - The Principal is collecting Personal Information from the Contractor for the purpose of administering this Contract. This Personal Information may be disclosed to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering this Contract. Personal information will not be disclosed to any other third party without consent of the Contractor, except where authorised or required by law.

SCHEDULE B – GOODS AND/OR SERVICES INCLUDING PRICE

The following Goods and/or Services including Price forms part of this Contract.

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

<<Specify when and manner in which the Price is payable>>.
 <<Specify time and manner in which the Contractor must submit invoices>>.

SCHEDULE C – DEPARTURE DETAILS

These terms and conditions reflect variations to the standard provisions of this Contract.

This Contract includes the following Additional Provisions from the Specifications and/or Conditions of Contract Version 002 – dated 1 July 2009.

Parts	Clause Number	Departures
Specifications		
Conditions of Contract		