

Short Form Conditions of Contract (incorporating Schedule)

For the Provision of Goods and/or Services

Version 001- dated 23 March 2007



1. Definition and Interpretation

1. Definitions

In this Contract, unless the context otherwise requires, the following definitions will apply:

“Agency” means the entity specified in item 1 of the Schedule procuring the Goods and/or Services, on its own behalf and/or behalf of any Cluster Members;

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

“Cluster Members” means the Agencies and their representatives (if any) as specified in item 4 of the Schedule;

“Conflict of Interest” includes engaging in any activity, or having any interest which conflicts or may conflict with the ability of the Contractor to perform its obligations under this Contract in good faith and objectively;

“Contract” means the legally binding contract as agreed between the Agency and the Contractor on the terms and conditions of the documentation specified in clause 2.1, for the provision of the Goods and/or Services;

“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 or carrying out this Contract;

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

“Correctly Rendered Invoice” means an invoice:

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

“Goods” means any material, plant, item or equipment specified in item 5 of the Schedule;

“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 this Contract, but excludes Moral Rights;

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

“Notice” means notice in writing which may be given by personal delivery, pre-paid postage or facsimile to the Agency’s or Contractor’s business address or registered office or, except for a notice under clause 15, notice given by email to a Party’s nominated email address;

“Party” means a party to this Contract and includes its executors, administrators, successors and permitted assigns;

“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 total of itemised prices and/or the price calculated by reference to a schedule of rates payable by the Agency for the Goods and/or Services, as specified in item 6 of the Schedule, in Australian dollars and unless otherwise specified in item 6 of the Schedule is inclusive of packaging, handling, freight, GST, and all other duties, taxes and charges;

“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 Agency to the Contractor in connection with the performance of this Contract and includes a copy of any Records;

“Services” means any services specified in item 5 of the Schedule;

“Schedule” means the schedule which forms part of the Contract.

1.2 Interpretation

The following rules shall apply in interpreting this 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) “consent” means prior written consent;

- (g) a clause, attachment or annexure is a reference to a clause, attachment or annexure to this Contract;
- (h) 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 Agency and Contractor agree otherwise;
- (i) 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 the entire Contract between the Agency and the Contractor:
- (a) the letter of acceptance or other document, by which a binding contract is formed between the Agency and the Contractor, including the Schedule, as completed by the Agency;
 - (b) these Conditions of Contract;
 - (c) the Contractor's offer; and
 - (d) any other documentation forming part of this Contract, as agreed in writing between the Agency and the 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.
- 2.3 This Contract supersedes all prior representations, agreements, statements and understandings between the Agency and Contractor, whether oral or in writing relating to the subject matter of this Contract.

3. PROVISION OF GOODS AND/OR SERVICES

- 3.1 The Contractor shall deliver the Goods and/or provide the Services at or by the time specified in item 7 of the Schedule, and, if not specified, within a reasonable time having regard to normal commercial practice.
- 3.2 The Contractor must ensure that the Goods and/or Services comply in all respects with:
- (a) the terms of this Contract;
 - (b) applicable legislation; and
 - (c) any applicable Government code, policy or guideline and 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 this Contract, which govern the provision of the Goods and/or Services.
- 3.3 All Goods supplied by the Contractor must be in a new and unused condition, of recent origin, suitably packed and otherwise appropriately prepared for transportation, unless otherwise specified in item 8 of the Schedule.
- 3.4 The Contractor warrants that all Goods will be fit for purpose.
- 3.5 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Agency upon delivery.
- 3.6 The Contractor warrants that it will provide the Services with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.
- 3.7 The Contractor must ensure that any manufacturer's or supplier's warranty that applies to the Goods and/or Services will be transferred to the Agency, at no cost to the Agency.
- 3.8 The Contractor will be responsible for the supply and performance of all personnel, material and equipment, necessary for the proper supply or performance of the Goods and/or Services.
- 3.9 The Contractor must take all measures to protect people and property, avoid unnecessary interference with the passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance.
- 3.10 The Contractor must comply with any reporting requirements reasonably requested by the Agency during this Contract.

4. PRICE AND PAYMENT

- 4.1 If the Goods and/or Services are provided in accordance with this Contract, the Agency 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.
- 4.2 The Agency will not be liable to reimburse the Contractor for expenses other than the Approved Expenses, unless the Contractor has obtained the Agency's prior written consent.
- 4.3 The Agency is not obliged to pay the Contractor for any part of the Goods and/or Services until the:
- (a) Contractor has given the Agency a Correctly Rendered Invoice;
 - (b) Contractor has delivered to the Agency any Goods and/or Services that are due to be delivered; and
 - (c) Agency has certified that the Goods and/or Services specified in the Correctly Rendered Invoice have been provided in accordance with this Contract.
- 4.4 Despite any certification under clause 4.3(c), 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 Agency as not having been supplied and/or performed in accordance with this Contract. The Agency may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Agency 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.
- 4.5 Upon receipt of an invoice, the Agency may require the Contractor to provide additional information or documentary evidence to enable the Agency to determine whether or not an amount is payable.

4.6 Unless otherwise agreed between the Agency and the Contractor, the Agency will make payment within 30 days after the last to occur of clause 4.3(a) and clause 4.3(b) or, if additional information or evidence is required by the Agency pursuant to clause 4.5, 30 days after receipt of the additional information or evidence.

5. GST

5.1 If the Price is exclusive of GST the:

- (a) Agency will pay the GST Amount to the Contractor in addition to the Price; and
- (b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.

5.2 If the Price is inclusive of GST the:

- (a) Agency 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.

5.3 Where the amount of GST collected by the Agency under this 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 Agency as the case may be.

6 CONFLICT OF INTEREST

6.1 The Contractor warrants that, to the best of its knowledge, as at the commencement date of this Contract neither the Contractor nor any of its officers or employees have, or are likely to have a Conflict of Interest in the performance of the Contractor's obligations under this Contract.

6.2 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 Agency), the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Agency.

7. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS

7.1 If item 9 of the Schedule specifies that this clause 7.1 applies or if item 9 of the Schedule is blank, title to, and all Intellectual Property Rights in, all Contract Material will, upon its creation, vest in the Agency.

7.2 If the Contractor is an individual, the individual consents to any act or omission done by the Agency 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.

7.3 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under this Contract, the Contractor must, prior to allowing that individual to commence work in respect of the Goods and/or Services, obtain from that individual who is to create Contract Material:

- (a) all consents, permissions and assignments necessary to enable the Agency to exercise the Intellectual Property Rights granted under this Contract in full, without impediment or cost to the Agency; and
- (b) without limiting clause 7.3(a), a consent from the individual to any act or omission by the Agency 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.

7.4 If item 9 of the Schedule specifies that this clause 7.4 applies, title to all Intellectual Property Rights in all Contract Material will upon its creation vest in the Contractor, and the Contractor grants to the Agency a royalty free, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) to use and exploit any Intellectual Property Rights in the Contract Material necessary to enable the Agency to lawfully use the Goods and/or Services for any purpose of the Agency.

8. RECORDS AND PERSONAL INFORMATION

8.1 The Contractor must not use Records or Contract Material for any purpose other than to provide the Goods and/or Services and must ensure that no unauthorised person has access to the Records or Contract Material while in the Contractor's possession or control, either during or after completion of this Contract.

8.2 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must comply with the information privacy principles in Information Standard 42, 42A or any other applicable Queensland public sector regime on privacy.

8.3 On termination or completion of this Contract the Contractor must return all Records to the Agency.

9. SECURITY, ACCESS AND COMPLIANCE WITH AGENCY POLICIES

9.1 The Contractor, and any employee, agent or subcontractor of the Contractor, must, when entering upon the Agency's premises, dealing with the Agency's employees or members of the public, or using the Agency's facilities, equipment or resources, comply with all applicable policies, standards codes of conduct, directions and procedures of the Agency, 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 Agency.

10. LIABILITY

- 10.1 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 this Contract or otherwise at law.
- 10.2 Unless otherwise agreed in writing between the Agency and Contractor the liability of a Party arising under and/or in connection with this Contract, shall exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 10.3 The liability of a Party arising under and/or in connection with this 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) a breach of the Intellectual Property Rights and Moral Rights clause 8;
 - (d) under an indemnity provided by the Contractor under clause 11,
- be limited to three (3) times the Contract Price.
- 10.4 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under or in connection with a breach of this Contract, or in tort, or for any other common law or legislative cause of action arising under or in connection with this Contract.

11. INDEMNITY

- 11.1 In this clause 11 a "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.
- 11.2 The Contractor releases, discharges and indemnifies the Agency and its officers and employees 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 or employees;
 - (b) breach of this Contract by the Contractor;
 - (c) contravention of any legislative requirements by the Contractor, its officers or employees; or
 - (d) infringement by the Contractor, its officers and 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 Agency, its officers or employees.

12. INSURANCE

- 12.1 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 a minimum amount of \$10 million in respect of each claim; and
 - (c) any other insurances as specified in item 10 of the Schedule.
- 12.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 12.3 The Contractor must, if requested by the Agency, provide evidence of compliance with its insurance obligations to the satisfaction of the Agency.

13. LICENSING REQUIREMENTS

- 13.1 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.
- 13.2 The Contractor must, if requested by the Agency, provide evidence of compliance with its obligations under this clause, to the satisfaction of the Agency.

14. VARIATION

- 14.1 This Contract will only be varied by written agreement between the Agency and Contractor. The Agency and Contractor shall act reasonably in deciding whether to agree to a variation, as requested by the other Party.

15. BREACH AND TERMINATION

- 15.1 The Agency may terminate this Contract for convenience by giving 30 days prior notice or such other reasonable period as specified by the Agency.
- 15.2 If this Contract is terminated pursuant to clause 15.1:
- (a) the Contractor shall, following receipt of that notice from the Agency, 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/or sub-contractors;
 - (b) the Agency 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 Agency 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 for any indirect or consequential loss or for any other reason in relation to termination nor shall the Agency be liable for payment to the Contractor for any amount greater than the amount that the Agency would have paid to the Contractor had this Contract been completely performed.

- 15.3 Without limiting clause 15.5, where the Contractor commits any substantial breach of this Contract or, the Agency may by notice, require the Contractor to show cause by the date specified in the notice, why the Agency should not terminate this Contract.
- 15.4 If the Contractor fails to show reasonable cause by the date specified by the Agency, then the Agency shall have the power upon notice to the Contractor to terminate this Contract.
- 15.5 The Agency may immediately terminate this Contract by notice to the Contractor if:
- (a) the Contractor gives notice of a Conflict of Interest under clause 6.2;
 - (b) the Contractor breaches any part of clause 12 or clause 13;
 - (c) 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 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
 - (d) the Contractor indicates that it is unable or unwilling to complete this Contract.
- 15.6 If the Agency terminates this Contract under either clauses 15.4 or 15.5, the termination is without prejudice to any rights of the Agency under this Contract or at common law.

16. GENERAL PROVISIONS

16.1 Relationship of the Agency and Contractor

- 16.1.1 The relationship of the Agency and Contractor 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 Agency and must not represent itself or allow itself to be represented as a partner or joint venturer, officer or employee of the Agency.

16.2 No Advertising

- 16.2.1 The Contractor must not make any public announcement or advertisement in any medium in relation to this Contract without the consent of the Agency.

16.3 Waiver

- 16.3.1 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.
- 16.3.2 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.
- 16.3.3 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.

16.4 No Assignment or Sub-contracting

- 16.4.1 The Contractor must not assign its interest in this Contract or sub-contract the provision of any Goods and/or Services pursuant to this Contract, without the prior consent of the Agency.

16.5 Governing Law

- 16.5.1 This Contract is governed by and construed in accordance with the laws of Queensland and the Agency and Contractor submit to the non-exclusive jurisdiction of the courts of Queensland.
- 16.5.2 Notwithstanding clause 16.5.1, the Agency and Contractor agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* to this Contract to the fullest extent permitted by law.

16.7 Severability

- 16.7.1 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.

16.8 Further Assistance

- 16.8.1 The Contractor must do all things reasonably required by the Agency to give effect to this Contract.

17. CLAUSES TO SURVIVE TERMINATION

- 17.1 The following clauses will survive termination or expiration of this Contract:
- clause 7 Intellectual Property Rights and Moral Rights;
 - clause 8 Records and Personal Information;
 - clause 10 Liability;
 - clause 11 Indemnity;
 - clause 16.2 No Advertising;
 - clause 16.3 Waiver; and
 - clause 16.5 Governing Law.