

CONDITIONS OF CONTRACT

For the provision of Goods and/or Services

Version 003 – dated 1 July 2011

© State of Queensland (Department of Public Works) 2011. All rights reserved.

Introduction

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

Copyright

© **State of Queensland** (Department of Public Works) 2011. All rights reserved.

This document may be reproduced, transmitted or stored, in electronic form or otherwise, for the purpose of entering into Contracts with the State of Queensland or authorised entity and for training, educational and advice purposes associated with this document. Otherwise, no part of this document may be produced by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any form, without prior written permission of the copyright holder, except as permitted under the *Copyright Act 1968 (Cth)*.

Any use of this document will be at the risk of the user.

Any inquiries relating to the reproduction of these conditions should be directed to:

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

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

Table of Contents

CONDITIONS OF CONTRACT

1. Definitions and Interpretation
2. Formation of Contract
3. Contract Term
4. Transferability / Portability of Goods and/or Services
5. Role of the Project Manager
6. Provision of the Goods and/or Services
7. Requirements for Goods and/or Services
8. Contractor's Obligations
9. Performance of Services by Key Personnel
10. List of Goods and/or Services and Pricing
11. Payment
12. General Right of Set-Off by the Customer
13. GST
14. Performance Guarantee
15. Financial Security
16. Commissions, Incentives and Collusion
17. Conflict of Interest
18. Intellectual Property Rights and Moral Rights
19. Confidentiality
20. Privacy and Personal Information
21. Security and Access
22. Liability
23. Indemnity
24. Insurance
25. Licensing Requirements
26. Industrial Relations
27. Resolution of Disputes
28. Variation
29. Suspension of Payment
30. Suspension
31. Termination
32. Notices
33. General Provisions
 - 33.1 Relationship of Parties
 - 33.2 No Advertising
 - 33.3 Waiver
 - 33.4 No Sub-Contracting
 - 33.5 Governing Law
 - 33.6 Compliance with all Laws
 - 33.7 Severability
 - 33.8 Further Assistance
 - 33.9 No Assignment
 - 33.10 Disclosure by Customer
 - 33.11 Right to Information and Disclosure
34. Clauses to Survive Termination

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 the departures from and additions to the Specifications or Conditions of Contract and/or any additional terms and conditions that are:

- (a) specified in Section 5 of the Invitation; and/or
- (b) agreed between the Customer and Contractor as 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 day other than a Saturday, Sunday or public holiday at the Customer’s address;

“Commencement Date” means:

- (a) the date specified in item 4 of Schedule A;
- (b) the date otherwise agreed in writing between the Parties; or
- (c) if neither (a) nor (b) apply, the date on which the Contractor receives the Order;

“Completion Date” means the date specified in item 5 of Schedule A or otherwise agreed in writing between the Parties, and includes an extension of that date in accordance with clause 28;

“Conditions of Contract” means these terms and conditions of Contract and includes:

- (a) the Schedules as contained in ‘*Conditions of Contract (Schedules) Version 001 – dated 1 July 2011*’ which is available from the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under ‘*Government terms and conditions*’; and
- (b) any Additional Provisions;

“Confidential Information” means information of, or supplied by, the Customer, that:

- (a) is by its nature confidential;
- (b) is designated as confidential, including the information specified in item 4 of Section 1 of the Invitation (if applicable); or
- (c) the Contractor knows or ought to know is confidential;

and includes information:

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

but does not include information that:

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

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

“Contract” means a legally binding contract as agreed between the Customer and the Contractor constituted by the Documents specified in clause 2.1;

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

“Contract Term” means the term of the Contract as specified in item 5 of Schedule A;

“Contractor” means the entity specified in item 2 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 11.4;

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

“Deliverables” means the Goods and/or Services as specified in the Order;

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

“Delivery Date” means the date specified in item 6 of Schedule A in which the Goods will be supplied and/or the Services will be performed by the Contractor to the Customer;

“Delivery Period” means the period specified in item 6 of Schedule A in which the Goods will be supplied and/or the Services will be performed by the Contractor to the Customer;

“Document” includes:

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

“Existing Contract Material” means any material that:

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

“Financial Security” means the unconditional financial security in a form set out in the ‘*Supplementary Provisions - Conditions of Offer and Conditions of Contract*’ document – ‘*Financial Security*’ which is available from the Queensland Government Chief Procurement Office website: www.ggcpo.qld.gov.au under ‘*Government terms and conditions*’, or other form of unconditional financial security in a form acceptable to the Customer, as specified in item 17 of Schedule A;

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

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

“Intellectual Property Rights” includes all copyright, trade mark, design, 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, but excludes Moral Rights;

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

“Key Personnel” means the representatives of the Contractor specified in item 7 of Schedule A (if applicable);

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

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

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

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

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

from time to time approved by the State of Queensland acting through the Department of Public Works, - Queensland Government Chief Procurement Office to procure Goods and/or Services in accordance with the Contract;

“Notice” means a notice in writing under or in connection with the Contract from one Party to the other Party;

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

“Offer” means the offer submitted by the Contractor in response to:

- (a) the Invitation; or
- (b) a request for quote by the Customer or some other form of offer;

“Order” means an order or any other Document that is:

- (a) substantially in the form of Schedules A, B and C;
- (b) in another form that is acceptable to the Customer that includes all of the information required by Schedules A, B and C; or
- (c) letter of acceptance,,

by which the Customer accepts the Contractor’s Offer to supply the Goods and/or perform the Services as specified in the Contract;

“Party” means each of the Customer and the Contractor;

“Performance Guarantee” means the performance guarantee, in a form set out in the ‘*Supplementary Provisions - Conditions of Offer and Conditions of Contract*’ document – ‘*Performance Guarantee*’ which is available from the Queensland Government Chief Procurement Office website: www.gccpo.qld.gov.au under ‘*Government terms and conditions*’, or other form of performance guarantee in a form acceptable to the Customer, as specified in item 16 of Schedule A;

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

“Price” and **“Pricing”** means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Customer for a Deliverable, as specified in Schedule 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 any of:

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

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

“Schedule” means the schedules which are part of the Contract;

“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; and

“Specifications” means the detailed description of the Customer’s requirements:

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

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 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, attachment or annexure is a reference to a clause, 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 reference to a clause is a reference to all of its sub-clauses;
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) a Schedule forms part of the document to which it is attached.

2. FORMATION OF CONTRACT

- 2.1 The following Documents constitute the entire Contract between the Customer and Contractor:
- (a) the Order (including Additional Provisions);
 - (b) these Conditions of Contract;
 - (c) Specifications;
 - (d) Offer (to the extent accepted under the Order); and
 - (e) any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Customer and Contractor.
- 2.2 Subject to clause 2.3, 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 Any Additional Provisions which purport to take away or reduce the entitlements that would otherwise be provided to the Customer under clause 33.11 are null and void.
- 2.4 The Contract supersedes all prior representations, agreements, statements and understandings between the Customer and Contractor, whether oral or in writing relating to the subject matter of the Contract.

3. CONTRACT TERM

- 3.1 The Contract Term will commence on the Commencement Date and, unless terminated sooner in accordance with clause 31, will continue until the earlier of the:
- (a) date when all Deliverables have been provided by the Contractor to the Customer and the Customer has given Notice to the Contractor that the Deliverables have been supplied and completed in accordance with the Contract; or
 - (b) 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 28.

4. TRANSFERABILITY / PORTABILITY OF GOODS AND/OR SERVICES

- 4.1 Notwithstanding any provision of the Contract, the Customer is entitled, by the giving of a Notice to the Contractor, to freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under the Contract, either in whole or in part, to a Queensland Government department or agency that is part of the same legal entity as the Customer.
- 4.2 Notwithstanding any provision of the Contract, the Customer may freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under the Contract, either in whole or in part, to a Queensland Government department or agency or Queensland Government Body that is not part of the same legal entity as the Customer, but only as a consequence of a Machinery of Government Change.
- 4.3 If clause 4.2 applies the Contractor must execute a deed of novation in the form set out in the '*Supplementary Provisions - Conditions of Offer and Conditions of Contract*' document available from the Queensland Government Chief Procurement Office website: www.qgcpc.gld.gov.au under '*Government terms and conditions*', or other form of deed of novation in a form acceptable to the Customer, and return it to the Customer within five (5) Business Days from receipt of a Notice from the Customer advising of the transfer and requiring the Contractor to execute the deed of novation.
- 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) must notify the Customer of any proposed additional fees for any additional costs directly incurred as a result of the provision of additional overall Goods and/or Services.
- 4.5 The Contractor agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
- (a) adjust the Price as a result of the notification of the matters raised in clause 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 the Contract. The Project Manager is not authorised either apparently or ostensibly to amend the Contract or enter into any Contract on behalf of the Customer.
- 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 perform the 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) on the Delivery Date or during the Delivery Period;
 - (b) by the milestone dates (if milestones are specified in item 11 of Schedule A);
 - (c) by the Completion Date; and
 - (d) 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 and/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 performance of the Services are 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, professional standard and are fit for purpose.
- 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 to the Customer in accordance with the Contract, unless otherwise specified by the Customer, must comply in all aspects with:
- (a) the terms of the Contract, including but not limited to the Specifications;
 - (b) applicable legislative requirements;
 - (c) any applicable Government code, policy or guideline; and
 - (d) any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO);
- including any that may be introduced or varied during the Contract Term, which govern the provision of the Goods and/or Services.
- 7.2 All Goods supplied by the Contractor to the Customer 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 to the Customer 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 Without limiting the Contractor's obligations, the Contractor must ensure that any manufacturer's or supplier's warranty that applies to the Goods will be transferred to the Customer, at no cost to the Customer.
- 7.6 Without limiting any other rights the Customer may have, where any part of the Goods are not supplied in accordance with the Contract, the Customer may at its entire discretion, by Notice to the Contractor:
- reject the Goods, or part of the Goods;
 - require the Contractor to promptly supply or supply again the Goods, or part of the Goods; and/or
 - require the Contractor to promptly correct any defect or omission.
- 7.7 Where the Customer rejects Goods in accordance with clause 7.6:
- the Customer is not required to pay for the rejected Goods, and any amounts paid by the Customer in respect of the rejected Goods must be refunded by the Contractor within ten (10) Business Days of the Notice given in accordance with clauses 7.6; and
 - the Customer may either return any rejected Goods to the Contractor or by Notice to the Contractor, require the Contractor to remove the rejected Goods within five (5) Business Days of receipt of the Notice by the Contractor.
- 7.8 The Contractor must meet all costs of and incidental to the discharge of its obligations in accordance with clauses 7.6 and 7.7 (b), including, but not limited to, any packaging, handling, freight, disassembly and reassembly costs.
- 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:
- 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.
- 8.3 The Contractor:
- warrants that it has the necessary skills and expertise to complete the Contract; and
 - will ensure that its officers, employees, agents and sub-contractors have the necessary skills and expertise to perform those obligations of the Contract, which are allocated to them by the Contractor.
- 9. PERFORMANCE OF SERVICES BY KEY PERSONNEL**
- 9.1 The Services must be performed by the Key Personnel as specified in item 7 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 and expertise to perform the Services on which they will be engaged.
- 9.3 The Contractor must not, without consent from the Customer:
- allow Key Personnel to delegate any part of the Services; or
 - 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:
- notify the Customer of the circumstances; and
 - 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. LIST OF GOODS AND/OR SERVICES AND PRICING**
- 10.1 If the Goods and/or Services are provided in accordance with the Contract, the Customer will:
- upon receipt of a Correctly Rendered Invoice, pay the Contractor the Price; and

- (b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.
- 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 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 Brisbane (All Groups), as published by the Australian Bureau of Statistics, 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
 - (d) any variation in any tax, duty or charge as it affects the Goods and/or Services,
- the Contractor must give Notice to the Customer in accordance with clause 28 and such Notice must include evidence to substantiate the basis of the Price increase or decrease.
- 10.4 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;
 - (b) Customer has certified that the Deliverables specified in the Correctly Rendered Invoice have been supplied and/or performed in accordance with the Contract; and
 - (c) Contractor has given the Customer a Correctly Rendered Invoice.
- 11.2 Despite any previous certification in accordance with 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 the Contract. The Customer may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Customer is satisfied that the Goods and/or Services have been supplied or supplied again and/or performed or performed again, in accordance with the Contract.
- 11.3 The Price will be payable in the manner specified in Schedule B. The Contractor must submit a Correctly Rendered Invoice to the Customer, and the Customer will pay the Correctly Rendered Invoice at the times specified in Schedule B;
- 11.4 The Correctly Rendered Invoice submitted by the Contractor must:
- (a) specify 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;
 - (e) itemise Approved Expenses claimed; and
 - (f) identify any discounts given.
- 11.5 Upon receipt of a Correctly Rendered 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.
- 11.6 Unless otherwise specified in Schedule B, the Customer will make payment within 30 days after the Contractor has submitted to the Customer a Correctly Rendered Invoice. If additional information or evidence required by the Customer in accordance with clause 11.4, is accepted by the Customer, payment will be made 30 days after receipt of the additional information or evidence.
- 11.7 The Customer may pay a Correctly Rendered Invoice by either corporate credit card, of a type accepted by the Contractor, or by an electronic facility as specified in Schedule B.
- 11.8 The Contractor must not charge, or pass on to, the Customer any fees, costs or charges associated with the use of the corporate credit card or electronic facility.
- 12 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 the Contract, any other contract, 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 Financial Security provided in accordance with clause 15.
- 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 inclusive of GST and:
- (a) the Customer is not required to pay a GST Amount in addition to the Price; and
 - (b) the Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.
- 13.2 Where the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including but not limited to:
- (a) an amendment to the GST Legislation;
 - (b) the issue of a ruling or advice by the Commissioner of Taxation;
 - (c) a refund of GST to the Contractor in respect of any supply made under the Contract; or
 - (d) a decision of any tribunal or court;
- then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.
- 13.3 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. PERFORMANCE GUARANTEE**
- 14.1 The Contractor must, if specified in item 16 of Schedule A, or if requested by the Customer during the Contract Term, arrange within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, for a guarantor, approved by the Customer, to execute the Performance Guarantee in a form acceptable to the Customer.
- 14.2 The Performance Guarantee will be held as security for the due and proper performance of all obligations of the Contractor under the Contract.
- 14.3 All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this clause 14 must be met by the Contractor.
- 14.4 A claim by the Customer against the Contractor's Performance Guarantee in relation to the Contract, will not release the Contractor from its obligations in accordance with this clause 14.
- 14.5 The Customer and Contractor may agree to release the Performance Guarantee on terms acceptable to the Customer.
- 14.6 Notwithstanding clause 14.5, upon termination of the Contract in accordance with clause 31, the Customer will release the Performance Guarantee to the Contractor where the Contractor has fully performed and discharged all of its obligations under the Contract, other than the obligations as specified in clause 33.11 which will survive the termination of the Contract.
- 15 FINANCIAL SECURITY**
- 15.1 The Contractor must, if specified in item 17 of Schedule A, or if requested by the Customer during the Contract Term, provide within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, a Financial Security in a form acceptable to the Customer.
- 15.2 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution acceptable to the Customer in its entire discretion.
- 15.3 The Financial Security is to be held as security for the due and proper performance of all the obligations of the Contractor under the Contract.
- 15.4 If the Contractor fails to properly perform its obligations under the Contract and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer will be entitled to make a claim and to receive payment for any or all such loss or damage (as ascertained and certified by the Customer, but subject to any limitation in clause 22) from the Financial Security. If the Financial Security is not sufficient to meet such payment, the unpaid amount may be recovered from the Contractor by the Customer in any appropriate court.
- 15.5 If any claims are made against the Financial Security at any time, the Contractor must within a period not exceeding 30 days of the claim being made, reinstate the Financial Security to the level required by the Customer in accordance with clause 15.1.

- 15.6 The Contractor must 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 Financial Security.
- 15.7 The Contractor agrees that the Customer, whilst exercising its rights in accordance with this clause, will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor.
- 15.8 The Customer will release the Financial Security requested in accordance with clause 15.1 to the Contractor (or to whom the Contractor directs) where:
- (a) the Contractor has fully performed and discharged all of its obligations under the Contract (other than the obligations as specified in clause 34, which will survive the termination of the Contract); and
 - (b) in the reasonable opinion of the Customer, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Customer.
- 15.9 All charges incurred by the Contractor in obtaining, maintaining and releasing the Financial Security in accordance with this clause 15 must be met by the Contractor.

16. COMMISSIONS, INCENTIVES AND COLLUSION

Commissions and Incentives

- 16.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, give or offer anything to the Customer or any officer or employee of the Customer, or to a parent, spouse, child or associate of an officer or employee of the Customer, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Customer's actions in relation to the Contract.
- 16.2 If the Customer discovers at any time during the Contract Term that the Contractor has breached clause 16.1, the Customer may, in addition to any other action, elect to suspend the Contract in accordance with clause 30 or terminate the Contract in accordance with clause 31.

Collusion

- 16.3 The Contractor warrants to the Customer that:
- (a) except as is expressly disclosed to the Customer, its Offer was not prepared (and any variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract with the Customer) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not submit an offer (or request a variation) to the Contract;
 - (iv) the submission of an offer (or a request for variation) that is non conforming with the terms of the Contract;
 - (v) the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Contract relates; or
 - (vi) the terms of the Offer (or variation) or a competitor's offer (or variation);
 - (b) except with the consent of the Customer:
 - (i) it has not provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly, to any competitor (including any contractor under a similar contract with the Customer) relating in any way to the Contract;
 - (ii) it has not received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any contractor under a similar Contract similar contract with the Customer) relating in any way to the Contract; and
 - (iii) it will not provide or receive any such benefit;
 - (c) except as is expressly disclosed to the Customer, it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Contract, nor has it provided, nor will it provide any such benefit;
 - (d) except as is fully disclosed in the Contract, at the time of entering into the Contract, the Contractor and all corporations and persons associated with the Contractor, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas; and
 - (e) the Contractor will notify the Customer immediately upon becoming aware that the Contractor or any corporation or person associated with the Contractor, including a director or member of senior management becomes subject to proceedings relating to anti-competitive conduct in Australia or overseas during the Contract Term by disclosing, at a minimum:

- (i) the names of the parties to the proceedings;
 - (ii) the case number;
 - (iii) the general nature of the proceedings; and
 - (iv) the outcome or current status of the proceedings.
- 16.4 The Contractor acknowledges that the Customer has entered into the Contract in reliance of the warranties in clause 16.3.
- 16.5 If the Contractor breaches clause 16.3, without limiting its rights under the Contract, the Customer may:
 - (a) deduct from any moneys due to the Contractor under the Contract, an equivalent sum as an amount due from the Contractor to the Customer; and
 - (b) at its entire discretion terminate the Contract and claim damages for breach of the Contract.
- 17. CONFLICT OF INTEREST**
- 17.1 The Contractor warrants that, to the best of its knowledge, as at the Commencement Date neither the Contractor nor any of its officers, employees, agents and/or sub-contractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor's obligations under the Contract.
- 17.2 If a Conflict of Interest or risk of Conflict of Interest arises during the Contract Term (without limitation, including work undertaken by the Contractor for any entity other than the Customer), the Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Customer.
- 17.3 The Contractor must:
 - (a) take all reasonable measures to ensure that its officers, employees, agents and sub-contractors do not engage in any activity or obtain any interest which is in conflict with the Contractor's ability to supply the Goods and/or perform the Services for the Customer in good faith and objectively; and
 - (b) immediately give Notice to the Customer of any Conflict of Interest relating to the activities or interests of any of its officers, employees, agents and/or sub-contractors.
- 17.4 Upon receipt of a Notice in accordance with clause 17.2 or 17.3(b), or upon the Customer otherwise identifying a Conflict of Interest, the Customer may either:
 - (a) direct the Contractor as to how to manage the Conflict of Interest and the Contractor must comply with any reasonable direction so given by the Customer;
 - (b) suspend the Contract in accordance with clause 30; or
 - (c) elect to terminate the Contract in accordance with clause 31.5(a).
- 17.5 If clause 17.4(a) or 17.4(b) applies, the Contractor must give Notice to the Customer when the Conflict of Interest or risk of Conflict of Interest is resolved.
- 18. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS**
- 18.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in the Party specified in item 18 of Schedule A.
- 18.2 If item 18 of Schedule A is blank, title to, and Intellectual Property Rights in, New Contract Material vests in the Customer.
- 18.3 If item 18 of Schedule A specifies that this clause 18.3 applies, or if clause 18.2 applies, title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest in the Customer, and:
 - (a) the Contractor must ensure that during the Contract Term the New Contract Material and Records are used, copied, supplied or reproduced only for the purposes of the Contract; and
 - (b) after the expiration or sooner termination of the Contract (or some earlier date if required by the Customer), the Contractor must deliver to the Customer, in a format specified by the Customer, all New Contract Material and Records.
- 18.4 If item 18 of Schedule A specifies that this clause 18.4 applies, title to, and Intellectual Property Rights in, New Contract Material will, upon its creation, vest in the Contractor and the Contractor grants, and will ensure that relevant third parties grant, to the Customer a paid-up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the New Contract Material (and any future development of that New Contract Material), without additional cost to the Customer to:
 - (a) use, exploit and otherwise exercise all Intellectual Property Rights, for any purpose of the Customer, the State of Queensland and/or a Queensland Government Body; and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if specified in item 18 of Schedule A.

- 18.5 The Contract does not affect Intellectual Property Rights in Existing Contract Material but the Contractor grants, and will ensure that relevant third parties grant, to the Customer a paid up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the Existing Contract Material but only as part of the Contract Material (and any future development of the Contract Material), without additional cost to the Customer to:
- (a) use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Customer, the State of Queensland and/or a Queensland Government Body; and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if clauses 18.2, 18.3 or 18.4(b) applies.
- 18.6 Intellectual Property Rights in Records will remain vested in the Customer.
- 18.7 If the Contractor is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the individual's Moral Rights and without limiting this, the individual consents to:
- (a) the Customer determining in its entire discretion whether or not the individual will be attributed as author of the Contract Material comprised in a Deliverable and if the individual will be attributed, that attribution will occur in a manner acceptable to the Customer;
 - (b) any amendments, deletion, destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the entire discretion of the Customer;
 - (c) the publication or communication, in whole or in part of the Contract Material; and
 - (d) any other acts or omissions as specified in item 18 of Schedule A.
- 18.8 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:
- (a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under the Contract in full, without impediment or cost to the Customer; and
 - (b) without limiting clause 18.8(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the person's Moral Rights, including a consent to the acts or omissions specified in clause 18.7(a) to (d).
- 19. CONFIDENTIALITY**
- 19.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose any Confidential Information without the Customer's consent, other than in accordance with this clause 19.
- 19.2 The Contractor may disclose Confidential Information:
- (a) to its officers, employees, agents and sub-contractors to the extent necessary for the performance of the Contract, provided that the Contractor:
 - (i) makes such persons aware that the information is confidential; and
 - (ii) if specified in item 19 of Schedule A or directed by the Customer during the Contract Term, obtains from such persons a deed of confidentiality in a form acceptable to the Customer;
 - (b) where required by law; or
 - (c) where the Contract requires disclosure to a third party.
- 19.3 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 19.4 Subject to clause 19.6, upon receipt of a written request by the Customer either during the Contract Term or upon termination or expiration of the Contract, the Contractor must deliver to the Customer any Documents and/or Records in the Contractor's power, possession or control.
- 19.5 Subject to clause 19.4, the Contractor must:
- (a) return any Documents and/or Records to the Customer upon the completion of the Contract; and/or
 - (b) destroy its files and any copy (but not the original) of any Documents and/or Records held in its file in accordance with usual business practice and any applicable legislative requirements.
- 19.6 If the Contractor wishes to retain a copy of any Documents and/or Records in connection with the Contract for the purposes of the Contractor's own reasonable internal credit, risk, insurance, legal and professional responsibilities, the Contractor must notify the Customer in writing prior to the termination or expiration of the Contract, identifying the Documents and/or Records and the reasons for the request for retention.

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

20. PRIVACY AND PERSONAL INFORMATION

- 20.1 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must:
- (a) if the Customer is an "agency" other than the health department within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract, as if the Contractor was the Customer;
 - (b) if the Customer is the "health department" within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract, as if the Contractor was the Customer;
 - (c) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (d) not use Personal Information other than for the purposes of the supply of the Goods and/or performance of the Services, unless required or authorised by law;
 - (e) not disclose Personal Information without the consent of the Customer, unless required or authorised by law;
 - (f) not transfer Personal Information outside of Australia without the consent of the Customer;
 - (g) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under the Contract;
 - (h) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under the Contract;
 - (i) ensure that its agents and sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause 20;
 - (j) fully co-operate with the Customer to enable the Customer to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (k) comply with such other privacy and security measures as the Customer reasonably advises the Contractor in writing from time to time.
- 20.2 The Contractor must, if specified in item 20 of Schedule A, or if requested by the Customer during the Contract Term, obtain from its officers, employees, agent and/or sub-contractors engaged for the purposes of the Contract, an executed deed of privacy in a form acceptable to the Customer.
- 20.3 The Contractor must immediately notify the Customer on becoming aware of any breach of clause 20.1.

21. SECURITY AND ACCESS

- 21.1 The Contractor must, and must ensure that its officers, employees, agents and/or sub-contractors, when entering upon the Customer's premises, dealing with the Customer's employees or members of the public, or using the Customer's facilities, equipment or resources, comply with all applicable rules, policies, standards, codes of conduct, directions and procedures of the Customer, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Customer.
- 21.2 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.
- 21.3 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.

22. LIABILITY

- 22.1 The liability of a Party to the other Party under the Contract for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the Contract or otherwise at law.

- 22.2 Unless otherwise agreed in writing between the Parties, the liability of a Party arising under and/or in connection with the Contract, will exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 22.3 The liability of a Party arising under and/or in connection with the Contract, will, except in relation to liability:
- (a) for personal injury (including sickness, injury, death);
 - (b) for loss of, or damage to, tangible property;
 - (c) for a breach of the Intellectual Property Rights and Moral Rights in accordance with clause 18; or
 - (d) under an indemnity provided by the Contractor in accordance with clause 23,
- be limited to the per Occurrence amount specified in item 21 of Schedule A.
- 22.4 If no amount, "nil" or an indication of \$0 is specified in item 21 of Schedule A, then the liability of a Party will be unlimited.
- 22.5 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of the Contract, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the Contract.
- 22.6 Despite any other provision of the Contract, the Contractor's liability under the Contract (including but not limited to any liability under this clause 22 and liability to indemnify in accordance with clause 23) is limited to the extent necessary to comply with a scheme that is in force and applies to the Contractor under the *Professional Standards Act 2004* (Qld).
- 23. INDEMNITY**
- 23.1 In this clause 23:
- "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.
- 23.2 The Contractor releases, discharges and indemnifies the Customer and each of its officers and employees ("the Indemnified Persons") from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:
- (a) negligent or unlawful act or omission of the Contractor, its officers, employees, agents or sub-contractors;
 - (b) breach of the Contract by the Contractor;
 - (c) contravention of any legislative requirement by the Contractor, its officers, employees, agents or sub-contractors; or
 - (d) infringement by the Contractor, its officers, employees, agents or sub-contractors of the Intellectual Property Rights or Moral Rights of any third party,
- except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.
- 24. INSURANCE**
- 24.1 The Contractor warrants that it will hold and maintain for the Contract Term the following insurances to cover its obligations under the Contract:
- (a) Workers' Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld);
 - (b) Public Liability insurance for the amount specified in item 22 of Schedule A;
 - (c) Professional Indemnity insurance if specified in item 23 of Schedule A for the amount specified in that Schedule in respect of each claim, and which must be maintained by the Contractor for a continuous period of four years, after the latter of the Completion Date or termination of the Contract, unless otherwise specified in item 23 of Schedule A; and
 - (d) any other insurances specified in item 24 of Schedule A.
- 24.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 24.3 The Contractor warrants if it is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld) that it will hold and maintain the minimum level of insurance as specified in item 23 of Schedule A.
- 24.4 The Contractor must, if requested by the Customer, promptly provide a certificate of currency for each insurance policy.
- 24.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause 24, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Customer's rights under the Contract.
- 24.6 The Contractor must immediately advise the Customer if any insurance policy, as required by this clause 24, is materially modified or cancelled.

25. LICENSING REQUIREMENTS

- 25.1 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.
- 25.2 The Contractor must, if requested by the Customer, provide evidence of compliance with its obligations under this clause to the satisfaction of the Customer.

26. INDUSTRIAL RELATIONS

- 26.1 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.
- 26.2 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.

27. RESOLUTION OF DISPUTES

- 27.1 If a dispute or difference arises between the Parties in relation to the Contract or concerning the performance or non-performance by a Party of its obligations under the Contract, whether raised during the performance of the Deliverables under the Contract or after the completion of the Deliverables, a Party may give Notice of the dispute to the other Party. The Parties must, if requested by either Party within ten (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.
- 27.2 The mediator, the mediator's fees and the mediation rules must be:
- (a) mutually agreed upon by the Parties in writing; or
 - (b) in the absence of agreement, within ten (10) Business Days from receipt of a Notice of a dispute, as determined by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.
- 27.3 The Parties agree to share the costs associated with the mediation in equal shares between them.
- 27.4 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under the Contract where practicable, unless otherwise directed by the Customer.

28. VARIATION

- 28.1 Except for the circumstances specified in clauses 28.2 and 28.6, the Contract may only be varied by written agreement between the Parties after the Party requesting the variation has given the other Party a Notice setting out the proposed variation. The Parties must act reasonably and within a reasonable time period in deciding whether to agree to a variation, as requested by the other Party.
- 28.2 The Customer may vary the terms and conditions of the Contract by Notice to the Contractor, when reasonably required as a result of changes in Government policy.
- 28.3 Where the terms and conditions of the Contract are varied as a result of clause 28.2, the Contractor must promptly submit in writing to the Customer any proposed variation to the Contract which is required as a result of this amendment. If the Parties are unable to reach agreement in relation to the Contractor's proposed variation, the provisions of clause 27 will apply to resolve the dispute.
- 28.4 Any variation proposed by the Contractor in accordance with clause 28.1 or 28.3 must be accompanied by evidence to substantiate such proposed variation.
- 28.5 Despite any other provision of this clause 28, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Customer in accordance with clause 33.11, will be deemed to be rejected by the Customer and the Contract will remain unvaried.
- 28.6 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.
- 28.7 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.
- 28.8 Where the supply of any part of the Goods and/or Services have been decreased or omitted in accordance with clause 28.6, the Customer will pay the Contractor:
- (a) for the Goods and/or Services supplied as varied by the Notice in accordance with clause 28.6; and
 - (b) any reasonable costs incurred by the Contractor which are directly attributable to the reduction in the Goods and/or Services. However, the Customer will not be liable to the Contractor for any loss of profits.

29. SUSPENSION OF PAYMENT

- 29.1 The Customer may suspend payments to the Contractor without penalty if the Contractor refuses, neglects or fails to supply and/or perform any part of the Contract, until the Goods are supplied and/or the Services performed in the manner acceptable to the Customer and in accordance with the Contract.

30. SUSPENSION

- 30.1 The Customer may at any time by Notice, direct the Contractor to:
- (a) suspend work on the supply of all or any part of the Goods and/or Services for a specified period; or
 - (b) recommence work on the supply of all or any part of the suspended Goods and/or Services.
- 30.2 Where the Customer suspends the supply of the Goods and/or Services by Notice in accordance with clause 30.1(a):
- (a) the Contractor must, following receipt of that Notice, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the suspension, including taking all reasonable steps to prevent or minimise its liabilities to its suppliers, contractors and sub-contractors;
 - (b) the Contractor and the Customer must negotiate in good faith as to reasonable compensation payable to the Contractor for any additional costs that were reasonably and properly incurred by the Contractor as a direct result of the suspension but the compensation must not include loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss, and, where the suspension is the result of any act or omission of the Contractor, the Contractor will not be entitled to payment by the Customer of any costs, expenses or any other compensation arising out of such suspension; and
 - (c) any previously agreed completion dates for the Goods and/or Services will be postponed by a period equivalent to the duration of the suspension.
- 30.3 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.
- 30.4 The Contractor must immediately comply with any reasonable directions given by the Customer, in accordance with clause 30.3(b).
- 30.5 Prior to the period of suspension expiring, the Customer may notify the Contractor in writing that the:
- (a) period of suspension will cease to be effective from the date specified in the Notice based on the Customer being satisfied that the issues/concerns which gave rise to the suspension have been resolved, upon which, each Party must resume its performance under the Contract from that date;
 - (b) period of suspension will be extended for a further period of time specified in the Notice; or
 - (c) Contractor must show cause, pursuant to a Notice issued by the Customer, why the Customer should not terminate the Contract from the date specified in the Notice.
- 30.6 If the Customer fails to notify the Contractor in writing, in accordance with clause 30.5, the period of suspension will expire at the end of the nominated period and each Party must then resume its performance under the Contract.

31. TERMINATION

- 31.1 The Customer may terminate the Contract, in whole or in part, for convenience by giving 30 days Notice or such other reasonable period as determined by the Customer, to the Contractor.
- 31.2 If the Contract is terminated in accordance with clause 31.1:
- (a) the Contractor must, following receipt of that Notice from the Customer, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and sub-contractors;
 - (b) subject to clause 31.2 (c), the Customer must pay to the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Contract to the date of termination together with any costs and expenses reasonably incurred by the Contractor which are directly attributable to the termination; and
 - (c) the Customer will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss, or any other reason in relation to termination nor will the Customer be liable for payment to the Contractor for any amount greater than the amount that the Customer would have paid to the Contractor had the Contract been completely performed.

- 31.3 Without limiting clause 31.5, where the Contractor commits any breach of the Contract, the Customer may by Notice, require the Contractor to show cause by the date specified in the Notice, why the Customer should not terminate the Contract.
- 31.4 If the Contractor fails to show reasonable cause by the date specified in the Notice, then the Customer is entitled, upon Notice to the Contractor, to terminate the Contract.
- 31.5 The Customer may immediately terminate the Contract by Notice to the Contractor if:
- (a) the Contractor gives Notice in accordance with clause 17.2 or 17.3(b) or the Customer otherwise identifies a Conflict of Interest;
 - (b) the Customer is satisfied that the Contractor has breached any part of clause 16;
 - (c) the Contractor fails to provide the Performance Guarantee in accordance with clause 14 or Financial Security in accordance with clause 15;
 - (d) the Contractor breaches any part of clause 24 or 25; or
 - (e) the Contractor:
 - (i) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
 - (ii) has a receiver or a receiver and manager appointed or a mortgage goes into possession of any of its assets or becomes subject to any form of external administration;
 - (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (iv) is wound up, voluntarily or involuntarily; or
 - (f) the Contractor indicates that it is unable or unwilling to complete the Contract.
- 31.6 If the Customer terminates the Contract in accordance with clause 31.4 or 31.5, the termination is without prejudice to any rights of the Customer under the Contract or at common law, including the right to claim damages for breach of the Contract.
- 32. NOTICES**
- 32.1 Any Notice which may be given to or served on either Party under the Contract must be sent or delivered to the following respective addresses:
- (a) for the Customer - as specified in item 25 of Schedule A; or
 - (b) for the Contractor - as specified in item 26 of Schedule A,
- or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.
- 32.2 Notwithstanding clause 32.1, if the Contractor is a company then the Customer may serve a Notice at any time on the Contractor's registered office.
- 32.3 A Notice to be given or served in accordance with clause 30 or 31 must not be sent via email.
- 32.4 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 recorded on the device from which the Party sent the email, unless the sending Party receives an automated message that the email has not been delivered,
- except that a delivery by hand, fax or email received after 5:00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.
- 33. GENERAL PROVISIONS**
- 33.1 Relationship of the Parties**
- 33.1.1 The relationship of the Parties under the Contract is one of principal and contractor and the Contractor is not by virtue of the Contract in partnership or joint venture with the Customer and must not represent itself or allow itself to be represented as a partner, joint venturer, officer or employee of the Customer.
- 33.2 No Advertising**
- 33.2.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, make any public announcement or advertisement in any medium in relation to the Contract without the consent of the Customer.

33.3 Waiver

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

33.4 No Sub-contracting

- 33.4.1 The Contractor must not sub-contract the provision of any Goods and/or Services under the 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 sub-contractor; and
 - (c) will not relieve the Contractor from any of its liabilities or obligations under the Contract.

33.5 Governing Law

- 33.5.1 The 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.
- 33.5.2 Notwithstanding clause 33.5.1, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* (Qld) to the Contract to the fullest extent permitted by law.

33.6 Compliance with all Laws

- 33.6.1 The Contractor must comply with all relevant laws in performing its obligations under the Contract.

33.7 Severability

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

33.8 Further Assistance

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

33.9 No Assignment

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

33.10 Disclosure by Customer

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

33.11 Right to Information and Disclosure

- 33.11.1 The *Right to Information Act 2009* (Qld) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 33.11.2 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.
- 33.11.3 Information relating to the Contract is potentially subject to disclosure to third parties.
- 33.11.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Customer. The Customer cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

- 33.11.5 Despite any other provision of the Contract, the Customer is entitled to publish on the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under '*eTendering website for Government Suppliers*' or by any other means, the following details:
- (a) the name and address of the Customer;
 - (b) a description of the Goods and/or Services;
 - (c) Commencement Date or award date;
 - (d) value of the Contract;
 - (e) name and address of the Contractor;
 - (f) procurement method used; and
 - (g) where the total value of the Goods and/or Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - (i) Invitation details;
 - (ii) Contract overview; and
 - (iii) reasons for non-disclosure of procurement results (if applicable).

34. CLAUSES TO SURVIVE TERMINATION

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

- clause 1 Definitions and Interpretation
- clause 4 Transferability/Portability of Goods and/or Services
- clause 14 Performance Guarantee;
- clause 15 Financial Security;
- clause 18 Intellectual Property Rights and Moral Rights;
- clause 19 Confidentiality;
- clause 20 Privacy and Personal Information;
- clause 22 Liability;
- clause 23 Indemnity;
- clause 24.1(c) Insurance;
- clause 33.2 No Advertising;
- clause 33.3 Waiver;
- clause 33.5 Governing Law;
- clause 33.10 Disclosure by Customer; and
- clause 33.11 Right to Information and Disclosure.