

# Conditions

## 1. SUPPLY OF ICT DELIVERABLES

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- (a) The Contract starts on the start date and continues until the end date, each as specified in the Work Order (**Term**).
- (b) The Customer may extend the Term on the same terms and conditions for the extension specified in the Work Order by giving the Supplier written notice at least 30 days before expiry of the then current Term.
- (c) The total duration of the Term, inclusive of all extensions, must not exceed 12 months.
- (d) The Supplier will supply, and the Customer will acquire and pay for, the Deliverables in accordance with this Contract.
- (e) The Supplier must, in supplying the Products or performing the Services, be aware of and comply with, and ensure that the Deliverables and Supplier's employees, agents and contractors are aware of and comply with:
  - (1) all applicable laws; and
  - (2) the policies, standards, procedures or codes of conduct listed in the Work Order (as updated or amended over time) (**Policies**),which apply to the Deliverables or the Supplier's obligations under this Contract.
- (f) Access to the Policies will be provided on request. The Customer may require the Supplier to provide confirmation of its compliance with clause 1(e).
- (g) The Supplier must notify the Customer in writing within 14 days of becoming aware that it is not compliant with the Policies. If the Customer reasonably suspects that the Supplier is not compliant with the Policies, it may issue a written show cause notice to the Supplier to which the Supplier must respond within 14 days of receipt.
- (h) The Supplier must attend any meetings, and provide such documentation, reports and data, in relation to this Contract and its performance, as and when required by the Customer.

## 2. ICT PRODUCTS

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- (a) The Supplier must deliver the Products to the Delivery Point by the Delivery Date, along with any documentation required to enable the Products to be used by the Customer.
- (b) Ownership of the Products will pass to the Customer upon the earlier of delivery or payment by the Customer. Before then, the Products will remain at the risk of the Supplier.
- (c) The passing of ownership or the delivery of the Products to the Customer does not constitute acceptance of the Products by the Customer and does not affect any of the Customer's rights in the Contract in relation to Defective Products.

## 3. ICT SERVICES

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- (a) The Supplier must perform the Services by the Due Date specified in the Work Order with due care and skill and diligence, and otherwise in the manner the Customer reasonably requires.
- (b) The Supplier must always:
  - (1) ensure that it assigns and maintains suitably qualified personnel with suitable training, experience and skills; and
  - (2) provide all necessary equipment (including the certification of equipment, where required) and facilities to perform the Services.

## 4. PRICE

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- (a) The Customer must pay the Supplier the Price for the Deliverables which are supplied or performed in accordance with this Contract.
- (b) Unless expressly provided otherwise, all amounts and other consideration payable under or in connection with this Contract (including the Price) are exclusive of GST.

## 5. INVOICING AND PAYMENT

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- (a) Upon completion and acceptance (if applicable) of the Deliverables, the Supplier may invoice the Customer.

- (b) A tax invoice is correctly rendered if:
  - (1) it only contains the Price for Deliverables actually supplied to the Customer in accordance with the Contract;
  - (2) the specified Price is correctly calculated and due for payment;
  - (3) the invoice is accompanied (where necessary or reasonably requested by the Customer) by verifying documentation; and
  - (4) it is a tax invoice which meets the requirements of a valid tax invoice for the purposes of the GST Law.
- (c) The Customer will pay all tax invoices that comply with clause 5(a) within 30 days of receipt (or such other period agreed by the parties), except where the Customer queries or disputes the tax invoice, in which case the Customer is not required to pay the relevant portion of the tax invoice until the query or dispute is resolved.

## 6. **GST**

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- (a) Terms defined in the GST Law have the same meaning in this clause 6 unless the context otherwise requires.
- (b) If GST is payable on a taxable supply made by a party (the **GST Supplier**) to another party (the **GST Recipient**), the GST Supplier may recover from the GST Recipient the amount of that GST (**GST Amount**) in addition to any consideration otherwise payable or provided for the supply.
- (c) The GST Recipient must make the payment of the GST Amount at the same time and in the same manner as it provides the consideration for the relevant supply subject to the GST Recipient receiving a tax invoice before the due date for payment.

## 7. **WARRANTY**

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The Supplier warrants that:

- (a) during the Warranty Period the Products are not Defective;
- (b) the Products are new and have not been previously used;
- (c) the Deliverables comply, and enable the Customer to comply, with applicable laws;

- (d) the Customer's use of the Deliverables do not infringe another person's Intellectual Property Rights or Moral Rights; and
- (e) the Deliverables will be Fit for Purpose.

## 8. **DEFECTIVE DELIVERABLES**

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- (a) The parties must comply with the procedures for acceptance of the Deliverables as set out in the Work Order.
- (b) Where the Deliverables are Defective, the Customer may, without prejudice to the Customer's other rights and remedies, at its option: (1) reject the Deliverables; (2) require the Supplier to re-supply or re-perform the Deliverables; or (3) accept the Deliverables on terms acceptable to the Customer (including a reasonable reduction to the Price). If rejected, the Supplier will promptly collect any rejected Products and refund all amounts paid by the Customer in respect of rejected Deliverables.

## 9. **INTELLECTUAL PROPERTY RIGHTS**

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- (a) The ownership of Customer Material and Customer Data, including any Intellectual Property Rights in Customer Data, vests in the Customer on creation. The Supplier has no right, title or interest in Customer Material or Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Material or Customer Data to any person, except to its officers, agents, employees, professional advisers, insurers or subcontractors on a need to know basis to perform this Contract and in accordance with all applicable laws.
- (b) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Material or Customer Data.
- (c) Title to, and Intellectual Property Rights in, New Material vests in the Supplier on creation. The Supplier grants, and will ensure relevant third parties grant, to the Customer an irrevocable, unconditional, royalty-free, non-exclusive, worldwide and non-transferable perpetual licence to exercise the Intellectual Property Rights in:

- (1) New Material for the purposes of using, supporting and/or modifying the Deliverables incorporating the New Material, in the course of the Customer's functions or activities; and
  - (2) Supplier Material to the extent necessary to obtain the benefit of the Deliverables,
- (and to sublicense these rights).

#### 10. **CONFIDENTIALITY**

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- (a) The Recipient must keep the Discloser's Confidential Information confidential, during and after the Term, and must not disclose it or allow it to become available to any third party, except:
  - (1) with the Discloser's prior written approval;
  - (2) as required by, or under, law or relevant stock exchange authority;
  - (3) in the case of the Customer, to a Minister, their advisor or Parliament; or
  - (4) to its officers, agents, employees, professional advisers, insurers and subcontractors on a need to know basis for the purposes of performing its obligations, or exercising its rights, under this Contract.
- (b) Nothing in the Contract prevents the Customer from disclosing information about:
  - (1) the Contract as necessary to comply with the Procurement Guidelines: Contract Disclosure; or
  - (2) the Supplier's compliance with the Policies to other Queensland Government entities for inclusion in a register.
- (c) If the Recipient becomes aware of a suspected or actual breach of this clause or clause 11, the Recipient must (1) immediately notify the Discloser of that suspected or actual breach and (2) take reasonable steps and do all things necessary as directed by the Discloser, at its own expense, to limit, prevent or stop the suspected or actual breach.

#### 11. **PRIVACY**

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If the Supplier collects or has access to Personal Information in order to perform the Contract, then the Supplier must:

- (a) if the Customer is an 'agency' for the *Information Privacy Act 2009* (Qld) (other than for Chapter 3 of that Act), comply with those parts of Chapter 2 of that Act which are applicable to the Customer, as if the Supplier were the Customer; or
- (b) otherwise comply with the Australian Privacy Principles in the *Privacy Act 1988* (Cth); and
- (c) not transfer any Personal Information outside of Australia; and
- (d) take any steps to prevent unauthorised use or disclosure of Personal Information that are reasonably notified by the Customer.

#### 12. **LIABILITY**

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- (a) Subject to clause 12(b), to the extent permitted by law and whether in contract, tort (including negligence) or otherwise in connection with the Contract:
  - (1) neither party will be liable to the other party for any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity; and
  - (2) the maximum aggregate liability of a party to the other party, is limited to the amount specified in the Work Order.
- (b) Clause 12(a) does not apply to liability in relation to personal injury (including sickness and death) or loss of, or damage to, tangible property.

#### 13. **INSURANCE**

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The Supplier will maintain during the Term workers compensation as required by law and the insurance policies described in the Work Order with reputable and substantial insurers. The Supplier will maintain any professional indemnity insurance for 4 years after the expiry or termination of the Contract.

#### 14. TERMINATION

- (a) Either party may terminate this Contract in whole or in part by notice in writing immediately, if:
  - (1) the other party commits a breach of the Contract and the breach cannot be remedied, or where the breach is capable of remedy, the other party has not done so within 30 days of the party's request to remedy the breach;
  - (2) the other party becomes, threatens to become, or is in jeopardy of becoming, insolvent; or
  - (3) this Contract is or becomes contrary to any law.
- (b) The Customer may terminate this Contract in whole or in part:
  - (1) if, having complied with clause 1(g), the Customer believes that the Supplier does not comply with the Policies; or
  - (2) for convenience,
 by written notice to the Supplier specifying the date of termination (which will not be earlier than the date the Supplier receives the notice).
- (c) Where the Customer terminates this Contract under clause 14(b)(2), the Customer will (1) pay the Supplier a reasonable price for the Products delivered or Services performed (as at the termination date) in accordance with this Contract and (2) reimburse the Supplier's reasonable and documented expenses incurred directly from the termination (which collectively, together with any amounts already paid, will not exceed the Price).

#### 15. GENERAL

- (a) The parties may vary this Contract by written agreement, provided that the variation does not result in the total duration of the Term extending beyond 12 months.
- (b) The Supplier will not assign its rights, or subcontract its obligations, under this

Contract without the Customer's prior written consent.

- (c) If the Supplier becomes aware of a matter which is likely to affect materially the ability of the Supplier to perform this Contract, it will immediately notify the Customer of it.
- (d) At the start date of this Contract, the parties contemplate that due to the World Health Organisation Pandemic alert for COVID-19, there may be delays in the performance of this Contract (**Pandemic**). The parties acknowledge and agree that, if either party suffers any delays in the performance of the Contract due to the Pandemic, the parties shall enter into good faith negotiations and mutually agree any revised dates for performance of the Contract.
- (e) The Customer may, on prior written notice to the Supplier, set off any amounts payable by the Supplier to the Customer against any amounts payable to the Supplier by the Customer under this Contract.
- (f) If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Contract.
- (g) Clauses 8 (*Defective Deliverables*), 10 (*Confidentiality*), 11 (*Privacy*), 12 (*Liability*), 13 (*Insurance*), 14 (*Termination*) and this clause 15 (*General*) will survive the termination or completion of this Contract.
- (h) This Contract constitutes the entire agreement between the Customer and the Supplier in relation to its subject matter. Any terms printed on the Supplier's invoice or other documentation do not apply unless agreed to in writing by the Customer.
- (i) This Contract is governed by and construed in accordance with the laws of Queensland and the parties submit to the jurisdiction of the Courts of Queensland. The United Nations Convention on Contracts for the International Sale of Products (Vienna 1980) is excluded.
- (j) In the event of a dispute, the parties will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation.

## 16. DEFINITIONS

The following definitions apply in the Contract:

**Confidential Information** means any document, materials, information, data or item that:

- (a) is made available by or on behalf of the Discloser to the Recipient, or is otherwise obtained by or on behalf of the Recipient; and
- (b) is by its nature confidential, or the Recipient knows, or ought to know, is confidential to the Discloser,

and, in the case of the Customer, includes the terms and existence of this Contract, Personal Information and Customer Data. Confidential Information does not include any document, materials, information, data or item that:

- (a) is in or enters the public domain through no fault of the Recipient;
- (c) is or was made available to the Recipient by a person (other than the Discloser) who is not, or was not then, under an obligation of confidence to the Discloser in relation to that document, material, information, data or item; or
- (d) is or was developed by the Recipient independently of the Discloser and this Contract.

**Contract** means the agreement between the Customer and the Supplier which comprises the Conditions, a Work Order, cover page, any documents attached to this Contract and any documents expressly incorporated by reference in the Work Order. To the extent of any inconsistency between those documents, the documents listed earlier in this definition prevail over those listed later.

**Customer** means the entity specified on the cover page.

**Customer Data** means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Deliverables; and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Deliverables.

**Customer Material** means material that is provided by or on behalf of the Customer to the Supplier for the purposes of this Contract.

**Defect** or **Defective** means an aspect of a Product or Service that: (1) does not comply with the Specifications; or (2) has an error, defect, fault, omission or malfunction.

**Deliverable** means the ICT products described, including quantity, in the Work Order and/or services described in the Work Order.

**Delivery Date** means the date identified as the delivery date for Products in the Work Order.

**Delivery Point** means the place identified as the delivery point for Products in the Work Order.

**Discloser** means a party providing or disclosing Confidential Information.

**Due Date** means the date identified as the due date for Services in the Work Order.

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

**Fit for Purpose** means, in relation to a Product or Service, that it: (1) is safe and of good and merchantable quality; (2) is fit for and meets each of the purposes, standards and requirements set out in, or which can reasonably be ascertained from, this Contract; (3) is not Defective; and (4) is free from any risk of pollution, contamination, nuisance, interference or hazard in accordance with environmental laws.

**GST Law** is defined in the *A New Tax System (Products and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all existing and future rights throughout the world, including copyright, trade marks, designs, circuit layouts, plant varieties, business and domain names, trade secrets, patent rights and rights to require that know how be kept confidential, whether created before or after the 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 or after the date of Contract.

**New Material** means material that is created, collected, recorded, written, developed or otherwise brought into existence by or on behalf

of the Supplier in the performance of this Contract.

**Personal Information** has the meaning given, for the purposes of the *Information Privacy Act 2009* (Qld), in that Act, or, for the purposes of the *Privacy Act 1988* (Cth), in that Act.

**Price** means the firm price in Australian dollars set out in the Work Order which is exclusive of GST, but is inclusive of all other costs and charges.

**Policies** is defined in clause 1(e)(2).

**Procurement Guidelines: Contract Disclosure** means the Procurement Guidelines: Contract Disclosure issued by the Queensland Government.

**Queensland Procurement Policy** means the Queensland Procurement Policy as published by the Queensland Government.

**Recipient** means a party that acquires Confidential Information from the Discloser.

**Specifications** means: (1) the specifications in these Conditions; (2) any specifications in, or referred to in, the Work Order; (3) in the case of Products, the documentation provided under clause 2(a); and (4) the current applicable specifications published generally by the manufacturer of the Products. To the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later.

**Supplier** means the entity specified on the cover page.

**Supplier Code of Conduct** means the Queensland Government Supplier Code of Conduct as published by the Queensland Government.

**Supplier Material** means material, other than New Material, that is incorporated in New Material by or on behalf of the Supplier or that is supplied or required to be supplied by the Supplier under this Contract.

**Term** is defined in clause 1(a).

**Warranty Period** means the period commencing on delivery of the Products to the Customer and continuing for the duration specified in the Work Order.

**Work Order** means the Work Order for Deliverables completed by the parties and containing, amongst other things, a description of the Deliverables.