

**Infrastructure Building and Construction Panel**

**Infrastructure Contract Conditions A2**

**November 2022**

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## **1 Contract documents**

### **1.1 Documents comprising the Contract**

- a) The Contract formed between the Customer and the Supplier comprises the following documents:
  - i. the Letter of Acceptance;
  - ii. any Special Conditions;
  - iii. these Infrastructure Contract Conditions A2;
  - iv. the Technical Specifications;
  - v. the Request for Quote (RFQ) Response Form submitted by the Supplier as amended pursuant to clause 9 of the RFQ (excluding any Special Conditions and any document which the RFQ Response Form states will form part of the Contract, or is otherwise expressly incorporated by reference in the Contract); and
  - vi. any document which the RFQ Response Form states will form part of the Contract, or is otherwise expressly incorporated by reference in the Contract.
- b) If there is an inconsistency between the documents in clause 1.1(a), the document higher in the list will prevail to the extent of the inconsistency.
- c) The Contract may consist of a number of counterparts and if so, the counterparts taken together shall constitute one document.

### **1.2 Interpretation**

Definitions and rules of interpretation for the Contract are set out in clause 26 of these Infrastructure Contract Conditions A2.

## **2 Term**

### **2.1 Contract Term**

The Contract commences on the Start Date and continues for the Contract Term, unless terminated earlier in accordance with these Infrastructure Contract Conditions A2.

### **2.2 Extension of Term**

The Customer may extend the Initial Term by the Further Term (if any) on the same terms and conditions by giving the Supplier written notice at least 30 days before the end of the Initial Term, or as otherwise agreed.

## **3 No exclusivity**

Unless expressly stated otherwise in the RFQ Response Form, the Customer may engage other Suppliers (or itself) to provide services the same as or similar to the Services.

## **4 Supplier obligations and warranties**

### **4.1 Performance obligations**

Without limiting any other provision of the Contract, the Supplier must:

- a) perform the Services with the standards of skill, care and diligence as is generally exercised by competent members of the Supplier's profession performing services of a similar nature at the time the contracted Services are provided;
- b) perform the Services in accordance with the Technical Specification is achieved;
- c) meet all Delivery Dates or as otherwise agreed in writing;
- d) supply the Services during Business Hours and as otherwise specified in the RFQ Response Form;
- e) promptly notify the Customer if it believes it will not be able to meet any Delivery Date;
- f) meet or exceed the Service Levels (if any);
- g) provide, manage and maintain sufficient resources, including Personnel, equipment and facilities, to enable it to fulfil its obligations under the Contract;
- h) comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract, and
- i) do anything and execute any document that the Customer reasonably requests, to give effect to the Contract.

### **4.2 No reliance on information and data supplied by Customer**

- a) The Supplier acknowledges and agrees that:
  - i. it has reviewed the Technical Specification and Customer Data and communicated to the Customer any errors or inconsistencies that could be reasonably detected by the Supplier in the Technical Specification and Customer Data exercising the standard of professional care, skill, judgment and diligence expected of a competent professional consultant experienced in providing the same or similar services to the Services;
  - ii. the Customer is relying on the skill and expertise of the Supplier in reviewing the Technical Specification and Customer Data; and
  - iii. the Fees will not be adjusted in respect of any services that relate to errors or discrepancies in the Technical Specification and Customer Data that should reasonably have been detected by the Supplier and communicated to the Customer.
- b) The Supplier must:
  - i. determine what information it needs from the Customer to ascertain in detail the Customer's requirements in relation to the Technical Specification;



- ii. make written requests of the Customer if the Supplier considers that any document or other information (including any of the Technical Specification and Customer Data) provided by or on behalf of the Customer is ambiguous or inaccurate or is insufficient to enable the Supplier to perform the Services or to understand the Customer's requirements; and
  - iii. satisfy itself that any information provided by the Customer, in response to a request by the Supplier, addresses the Supplier's concern.
- c) The Customer will not be bound by any information or data (including Customer Data) provided to the Supplier and the Supplier must not rely on such information unless:
- i. the Customer has stated in writing that the information and data is true and accurate and that the Supplier may rely on that information or data; or
  - ii. the Supplier has nominated information or data as relied upon in the RFQ Response Form, in which case the Supplier may rely on and use such information or data assuming it to be accurate and correct.

#### **4.3 Keep Customer informed**

- a) The Supplier must keep the Customer informed of the state and stages of the performance of the Services.
- b) If requested by the Customer and at the times requested by the Customer, the Supplier must provide the Customer with a detailed written report as to the status of the provision of the Services in the detail and format required by the Customer.

#### **4.4 Collaborative agreement**

The Supplier and the Customer agree that, during the Contract Term, they will use best endeavours to:

- a) cooperate to ensure timely progress and fulfilment of the Contract;
- b) act reasonably with respect to matters that arise out of, or in connection with, the Contract;
- c) to the extent that is reasonably possible, perform obligations so as to avoid hindering the performance of the other party;
- d) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to each other on a regular basis to ensure each party is fully informed of the progress of services required under the Contract; and
- e) perform obligations and responsibilities by the dates stated in the Contract.

#### **4.5 Warranties**

The Supplier represents and warrants, and it is a condition of the Contract, that the Supplier has the approvals, licences, accreditations, personnel, resources and equipment to perform the Services in accordance with the terms of the Contract.

#### **4.6 Compliance with Laws**

- a. The Supplier must:
  - (i) comply with all Laws in performing its obligations under the Contract;

- (ii) ensure that the Services comply in all aspects with:
    - A. all applicable Laws;
    - B. all applicable government codes, policies or guidelines; and
    - C. any current Australian / New Zealand Standard and where an Australian / New Zealand Standard does not exist, the relevant International Standard (ISO),  
which govern the provision of the Services under this Contract;
  - (iii) provide the Services in accordance with the professional standards applicable to the Services as specified in the RFQ Response Form;
  - (iv) obtain and maintain the authorisations described in the RFQ Response Form and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must, upon request, provide evidence that it has complied with this clause 4.6(a)(iv); and
  - (v) if the Supplier is a government-owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with any applicable competitive neutrality principles of the Supplier's jurisdiction.
- b. To the extent that a professional standard in the RFQ Response Form imposes a different standard to that which the Supplier is required to meet under this clause 4.6, the higher standard will prevail.

#### **4.7 Work health and safety**

Without limiting clauses 4.2, 5.1 or 5.2, the Supplier must:

- a) at all times comply, and ensure that the Supplier's Personnel comply, with all applicable work health and safety Laws;
- b) develop, maintain and implement a work health and safety management system that, as a minimum, complies with all work health and safety Laws applicable to the Supplier;
- c) provide copies of documents recording the system referred to in clause 4.7(b) to the Customer if requested; and
- d) not, and ensure that the Supplier's Personnel do not, at any time, cause the Customer to be in contravention of a work health and safety Law.

#### **4.8 Cooperation**

- a) The Supplier must cooperate with the Customer's Personnel and other Suppliers to the Customer who provide goods and services relating to the Services.
- b) The Supplier must not make any additional charge for cooperating with other Suppliers in accordance with this clause 4.8, where such cooperation is reasonably incidental to the performance of the Supplier's role as the Customer's provider of the Services.

#### **4.9 Ethical Supplier Threshold and Ethical Supplier Mandate**

- a) Where relevant, the Supplier must comply with the Ethical Supplier Threshold and the Ethical Supplier Mandate during the Contract Term.

- b) If the Customer reasonably suspects that the Supplier is not compliant with the Ethical Supplier Threshold and the Ethical Supplier Mandate, then the Customer may issue a written show cause notice to the Supplier.
- c) The Supplier must respond to any show cause notice given under clause 4.9(b) within 14 Business Days of receipt of the notice.

## **5 Customer's Site and Customer Materials**

### **5.1 Compliance with policies**

- a) The Supplier must, where relevant to the Supplier's obligations under the Contract, comply with all:
  - i. Customer policies, codes of conduct, rules, standards and procedures (including in respect of work health and safety and security) which apply to the Site, the Customer's IT system, the Customer's Personnel or use of the Customer Materials; and
  - ii. all other Customer policies, codes of conduct, rules, standards and procedures listed in the RFQ Response Form.

Copies of the relevant policies are available on request.

- b) If the Customer amends a relevant, or introduces a new, policy, code of conduct, rule, standard or procedure relevant to the Supplier's obligations under the Contract, it will notify the Supplier and the Supplier must comply with the amended or new policy, code of conduct, rule, standard or procedure from the date of notification. Copies of the new and amended policies are available on request.

### **5.2 Access to Customer's Site**

- a) The Supplier must when present at the Site:
  - i. avoid unnecessary interference with the Customer's business and activities; and
  - ii. ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security.
- b) The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.

### **5.3 Customer Materials**

- a) The Customer must provide and maintain the Customer Materials at the times and in accordance with the requirements specified in the RFQ Response Form.
- b) The Supplier must:
  - i. take care of the Customer Materials;
  - ii. only use the Customer Materials for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the requirements specified in the RFQ Response Form;
  - iii. not part with possession of the Customer Materials unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any Customer Materials;

- iv. not modify any Customer Materials without the prior written consent of the Customer;
  - v. promptly inform the Customer of any loss, destruction or damage (other than fair wear and tear) to any Customer Materials;
  - vi. pay the costs, if any, stated in the RFQ Response Form for the Customer Materials; and
  - vii. comply with any instruction of the Customer for preserving, forwarding or disposing of any damaged Customer Materials at its own cost.
- c) If the Supplier loses or damages any Customer Materials (other than fair wear and tear), the Supplier must, at the election of the Customer, promptly replace such Customer Materials or pay the Customer the reasonable replacement cost of such Customer Materials.
- d) As between the Supplier and the Customer, the Customer retains all rights, title and interest (including all Intellectual Property Rights) in the Customer Materials.
- e) Provided the Supplier complies with its obligations under clause 5.3(b), the Customer must repair or replace the Customer Materials within a reasonable time of becoming aware that the Customer Materials no longer comply with the specifications, if any, specified in the RFQ Response Form.
- f) If any Customer Materials is no longer required for the purposes of the Contract, including on termination or expiry of the Contract, the Supplier must promptly cease using it and (as applicable) return or destroy it (at the Customer's option), unless the parties agree otherwise. Without limiting clause 12.5, the Supplier may retain a copy of any Customer Materials, that is, a document or record to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.
- g) clauses 5.3(b) - 5.3(f) do not apply to any Customer Materials which comprises Customer Data.

#### **5.4 Customer assistance**

During the Contract Term, the Customer must:

- a) make available to the Supplier all relevant instructions, information, data, documents, specifications, plans, drawings and other materials specified in the RFQ Response Form or as otherwise agreed in writing with the Supplier; and
- b) answer reasonable queries of the Supplier relating to the Customer's requirements in connection with the Contract.

## **6 Subcontracting and Personnel**

### **6.1 Subcontracting**

- a) The Supplier may only subcontract any part of its obligations under the Contract to Subcontractors identified in the RFQ Response Form, or with the Customer's prior written consent.
- b) The Customer will not unreasonably withhold consent to any subcontracting but may give consent subject to reasonable conditions.
- c) The Supplier:

- i. must ensure that each Subcontractor is aware of all the terms and conditions of the Contract that are relevant to the Subcontractor's performance of its work, and supplies the Services in accordance with the terms of the Contract;
  - ii. will not be relieved of any of its liabilities or obligations under the Contract arising out of, or in connection with, a Contract by subcontracting the supply of any Services; and
  - iii. is liable to the Customer for all acts and omissions of a Subcontractor, or any employees or agents of a Subcontractor, as fully as if they were acts or omissions of the Supplier.
- d) If specified in the RFQ Response Form, the Supplier must obtain from the Subcontractor a signed statutory declaration in a form reasonably acceptable to the Customer.

## **6.2 Supplier's Personnel**

- a) The Supplier must provide experienced and skilled Personnel to supply the Services.
- b) If specified in the RFQ Response Form or if the Customer reasonably requests at any time during the Contract Term, prior to permitting any Personnel to be involved in the supply of any Services under the Contract, the Supplier must either:
  - i. at its cost, perform contemporaneous criminal history checks specified by the Customer and on the Personnel specified by the Customer and inform the Customer whether any of those checks reveal any criminal charges or convictions of those Personnel (the Supplier must not provide a copy of the criminal history check document to the Customer unless requested by the Customer); or
  - ii. procure the consent of such Personnel for the Customer to conduct a criminal history check or any other checks required by the Customer.
- c) The Supplier must notify the Customer promptly if it becomes aware during the Contract Term that any of its Personnel involved in the supply of the Services have been charged or convicted of any criminal offence or any conduct which involves fraud, corruption or dishonesty.
- d) The Supplier is liable to the Customer for all acts and omissions of its Personnel, as fully as if they were acts or omissions of the Supplier.
- e) The Supplier is not, and its Personnel are not, employees of the Customer.

## **6.3 Removal of Supplier Personnel**

If:

- a) a Conflict of Interest arises or is disclosed with respect to any of the Supplier's Personnel which cannot be appropriately managed to the Customer's satisfaction;
- b) the Customer is not satisfied with the results of any of the Supplier's Personnel criminal history check or any other checks required by the Customer under clause 6.2(b) or notification provided by the Supplier under clause 6.2(c); or
- c) the Customer requires, at its discretion and without having to give reasons, the Supplier must:

- d) promptly remove from the Customer's premises and/or the performance of the Contract, any individual who is a member of the Supplier's Personnel (including Key Personnel), used in performance of the Contract; and
- e) in consultation with the Customer, replace them with another individual who is a member of the Supplier's Personnel acceptable to the Customer (acting reasonably), at no additional cost to the Customer.

#### **6.4 Key Personnel**

- a) In providing the Services, the Supplier must:
  - i. subject to this clause 6.4, ensure that the Key Personnel perform the roles allocated to them in the RFQ Response Form, and devote sufficient time to the role they are retained to perform, so that their role is performed efficiently, skilfully and in accordance with the Contract;
  - ii. promptly notify the Customer if any Key Personnel is or will be unavailable to perform his or her allocated role for any reason;
  - iii. not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, or the termination of such Key Personnel's employment or engagement with the Supplier; and
  - iv. ensure that any replacement Key Personnel have at least equivalent skills, qualifications and experience, and promptly provide information reasonably requested about any proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.
- b) The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

#### **6.5 Customer's Personnel**

The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Supplier have the requisite authority, skills and experience to perform the tasks allocated to them.

#### **6.6 Non-solicitation**

- a) Neither party may, without the prior written consent of the other party, during and for six months after the expiry or termination of the Contract, directly or indirectly engage, employ, solicit or otherwise retain any person who is an employee of or engaged by the other party and who is or was engaged in the performance of the Contract.
- b) Clause 6.6(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- c) The parties agree that the restrictions in this clause 6.6 are necessary to protect the legitimate interests of each party.

## **7 Project management**

### **7.1 Management committee**

- a) If specified in the RFQ Response Form, the parties must establish a management committee by the date specified in the RFQ Response Form.
- b) The management committee must consist of the party's project managers or such other persons specified in the RFQ Response Form.
- c) All members of the management committee or their Authorised Representatives, must attend each meeting of the management committee unless otherwise agreed between the parties.
- d) All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Contract.
- e) Any decision made by the management committee will not bind a party unless the decision is confirmed in writing by the party's Authorised Representative.
- f) The management committee must:
  - i. review and monitor progress under the Contract and report to a person nominated by the Customer from time to time; and
  - ii. carry out such other functions set out in the RFQ Response Form or agreed in writing between the parties.
- g) The management committee must meet at such intervals, times and locations specified in the RFQ Response Form or as agreed by the parties.
- h) At least one Business Day prior to a management committee meeting or such other timeframe agreed by the parties, the Supplier's project manager must submit to the Customer's project manager a report of progress under the Contract, including:
  - i. details (including dates) of Services commenced or completed, and Deliverables accepted;
  - ii. any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues; and
  - iii. such other supporting documentation including agendas and any reports or additional information as required by the Customer.
- i) Minutes of the management committee meeting will be recorded by one or both of the parties and in a format as agreed by the parties.

### **7.2 Performance reviews**

- a) If specified in the RFQ Response Form, the parties must conduct a service and performance review of the Supplier's performance of the Contract at the intervals specified in the RFQ Response Form.
- b) All reviews must be undertaken by representatives of both parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review.

- c) Either party may initiate an additional review of the Contract by written notice to the other party.

### **7.3 Staged Implementation**

- a) The parties agree to perform the Contract in accordance with the Stages (if any) stated in the RFQ Response Form.
- b) If specified in the RFQ Response Form that staged implementation applies to the Contract, the Supplier must not commence any work in a Stage, until it receives prior written notice from the Customer to proceed with work in that Stage.
- c) The Customer must give written notice to the Supplier within the notice period stated in the RFQ Response Form, at the end of each Stage, as to whether it wishes the Supplier to commence the following Stage.
- d) The signing of the Contract is deemed to be sufficient notification to proceed with the work in the first Stage.
- e) Nothing in the Contract obliges the Customer to give notice to proceed under clause 7.3(b) in respect of any subsequent Stage, and without limiting the requirement to provide written notice under clause 7.3(c), the Customer is not liable to the Supplier in any way for not giving notice to proceed to any subsequent Stage.

### **7.4 Not used**

### **7.5 Changes**

- a) Unless otherwise agreed in writing, all Changes must be dealt with by the parties in accordance with this clause 7.5.
- b) If the Supplier wishes to request a Change, it must submit a Change Request to the Customer.
- c) If the Customer requests a Change, the Customer must provide to the Supplier details of the requested Change and the Supplier must prepare and submit to the Customer a Change Request within five Business Days of such request or as otherwise agreed.
- d) A Change Request must outline:
  - i. the options the Supplier considers suitable for implementing the Change;
  - ii. changes or modifications to, or additional, Services that are required as a result of the Change;
  - iii. the cost of the Change;
  - iv. if applicable, the date of expiry of the Change Request;
  - v. if applicable, the changes to the Service Standards or other documents comprising the Contract required as a result of the Change; and
  - vi. any other effects which compliance with the Change will have in respect of the Supplier's obligations under the Contract.
- e) The Customer may:
  - i. evaluate, analyse, discuss and negotiate the Change Request with the Supplier; and



- ii. before the expiry of the Change Request (if applicable):
  - A. reject a Change Request; or
  - B. accept the Change Request (with negotiated modifications, if any).
- f) If the Change Request is accepted by the Customer (including any negotiated modifications), both parties must sign the Change Request and the Contract will be varied as set out in the accepted Change Request.

## **8 Fees and payment**

### **8.1 Fees**

- a) Subject to the Supplier complying with the terms of the Contract, the Customer will pay the Fees to the Supplier.
- b) Unless otherwise stated in the RFQ Response Form, or as varied under the Contract, the Fees are:
  - i. with respect to the Services to be delivered under the Contract, fixed for the Contract Term;
  - ii. the total costs payable by the Customer for the Services; and
  - iii. inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.
- c) If the Contract requires the Supplier to do or provide anything, and there is no separate Fees specified for performing that obligation and no express right of the Supplier to charge the Customer an additional cost for performing that obligation, the Supplier must comply with the obligation at no additional cost.
- d) The Supplier must not invoice the Customer, and the Customer is not required to pay, any amount for the Services except for the Fees.
- e) The Supplier must, when submitting an invoice for Fees under the Contract, produce evidence to the reasonable satisfaction of the Customer that all Claims made against the Supplier by Subcontractors of the Supplier for work performed by those Subcontractors in connection with the Services have been paid by the Supplier. If such evidence is not produced, the Customer may withhold payment of the Fees claimed in the invoice until such evidence is produced.

### **8.2 Expenses**

The Customer will not reimburse any travel, accommodation or other expenses except where:

- a) the expenses are stated in the RFQ Response Form or the Customer has approved the expenses in writing before they are incurred;
- b) the Supplier provides satisfactory evidence of payment of the expenses; and
- c) in the case of travel or accommodation expenses:
  - i. the Customer requests that the Supplier travel away from the agreed service location; and
  - ii. the Supplier complies with the Customer's travel policy (a copy of which will be provided on request) or other reasonable directions in relation to travel.

### **8.3 Invoices**

- a) The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in the RFQ Response Form.
- b) The Supplier must ensure that each invoice is a Correctly Rendered Invoice, and the Customer is not required to pay any invoice that is not a Correctly Rendered Invoice.
- c) The Supplier must provide any further details in regard to an invoice that are reasonably requested by the Customer.
- d) Unless expressly stated otherwise in the RFQ Response Form, the Supplier may not:
  - i. invoice the Customer (and the Customer is not required to pay) for Services until the relevant Services have been provided and meet the Service Standards; or
  - ii. charge or pass through any Fees, costs or charges associated with a payment method.

### **8.4 Time for payment**

- a) Unless expressly stated otherwise in the RFQ Response Form, the Customer will pay each Correctly Rendered Invoice within 28 days of receipt.
- b) If the Supplier refuses, neglects or fails to perform an obligation to provide the Services in accordance with the Contract, the Customer may on written notice to the Supplier withhold payment associated with that failure, until the Supplier performs the relevant obligation in accordance with the Contract, unless the Contract entitles the Customer to some alternative specific financial remedy for such refusal, neglect or failure, for example liquidated damages or service credits, but not a general right to damages.

### **8.5 Disputed invoices**

- a) If the Customer disputes any invoiced amount, the Customer must:
  - i. provide the Supplier with written notice stating the amount it believes is due for payment and setting out the reasons for not paying the balance, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
  - ii. at the Customer's election, the Customer may:
    - A. withhold payment of the disputed amount until the dispute is resolved, and pay the amount it believes is due for payment by the date that payment must be made under the Contract; or
    - B. require the Supplier to cancel and re-issue the invoice for the amount which is not disputed by the Customer, and must pay the re-issued invoice in accordance with clause 8.4(a).
- b) Once the dispute about an invoice is resolved:
  - i. if the Customer withheld payment of the disputed amount under clause 8.5(a)(ii)(A), the Customer must promptly pay any disputed amount found to be correctly payable; or
  - ii. if the Supplier cancelled and re-issued an invoice under clause 8.5(a)(ii)(B), the Supplier must issue an invoice for any disputed amount found to be correctly payable and the Customer must pay the re-issued invoice in accordance with clause 8.4(a).

- c) The Supplier must continue to perform its obligations under the Contract, despite any dispute about an invoice, while that dispute is being resolved.

### **8.6 Underpayments and overpayments**

- a) If any part of an invoice is found to have been rendered incorrectly after payment has been made by the Customer, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be.
- b) Without limiting recourse to other available means, any overpayments by the Customer may be offset against any amount subsequently due by the Customer to the Supplier.

### **8.7 Set-off**

The Customer may, on prior written notice to the Supplier, set off any amounts payable by the Supplier to the Customer under the Contract, against any amounts payable to the Supplier by the Customer under the Contract.

## **9 GST**

### **9.1 Construction**

In this clause 9, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.

### **9.2 GST exclusive**

- a) Unless expressly stated, all moneys or other sums payable or consideration to be provided under the Contract are exclusive of GST.
- b) If GST is payable on any supply made under the Contract, the recipient will pay to the Supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under the Contract.

### **9.3 Tax invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under clause 9.2(b). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

### **9.4 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under the Contract, the amount payable by the recipient under clause 9.2(b) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

### **9.5 Reimbursements**

Where a party is required under the Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

- b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## **10 Intellectual Property Rights**

### **10.1 Pre-Existing Material**

- a) All Intellectual Property Rights in:
  - i. any Pre-Existing Material remain vested in the party that owns the Intellectual Property Rights (**Owner**); and
  - ii. any adaptation, translation or derivative of that Pre-Existing Material vests in, or is transferred or assigned to, the Owner immediately on creation.
- b) The Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all Intellectual Property Rights in any Pre-Existing Material of the Supplier which is incorporated into a Deliverable for the purposes of using, supporting and/or modifying that Deliverable, in the course of the Customer's functions or activities, and for such other purposes specified in the RFQ Response Form.
- c) The licence to Pre-Existing Material in clause 10.1(b):
  - i. does not permit the Customer to manufacture, sell or otherwise commercially exploit any Pre-Existing Material of the Supplier unless otherwise specified in the RFQ Response Form; and
  - ii. permits the Customer to sub-license any of the rights in clause 10.1(b) to any:
    - A. department;
    - B. Contractor that is providing services to the Customer that includes the use of the Pre-Existing Material, provided that such sub-licence automatically terminates at the end of the period of the service arrangement between the Customer and Contractor; and
    - C. other entity specified in the RFQ Response Form,at no additional cost, unless the additional cost is specified in the RFQ Response Form.

### **10.2 Customer owned Deliverables**

- a) This clause 10.2 applies where the RFQ Response Form specifies the Customer will own the Intellectual Property Rights in some or all of the Deliverables.
- b) On creation of the relevant Deliverable:
  - i. all Intellectual Property Rights in the relevant Deliverable vests in or is assigned to the Customer; and
  - ii. the Customer grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, sub-licensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant Deliverable, for the Contract Term and only for the purposes of the Supplier performing its obligations under the Contract.

- c) If the Customer requests (including on expiry or termination of the Contract), the Supplier must promptly provide the Customer with a copy of the Deliverable in the format reasonably requested by the Customer, and the Customer must reimburse the Supplier for any reasonable and documented expenses incurred by the Supplier in complying with the Customer's request.

### **10.3 Supplier owned Deliverables**

- a) This clause 10.3 applies where the RFQ Response Form specifies the Supplier will own the Intellectual Property Rights in some or all of the Deliverables.
- b) On creation of the relevant Deliverable:
  - i. all Intellectual Property Rights in the relevant Deliverable vests in or is assigned to the Supplier; and
  - ii. the Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in the Deliverable, for the purposes of using, supporting and/or modifying the Deliverable, in the course of the Customer's functions or activities and for such other purposes specified in the RFQ Response Form.
- c) The licence to the Intellectual Property Rights in the Deliverables in clause 10.3(b):
  - i. does not permit the Customer to manufacture, sell or otherwise commercially exploit any Deliverables, unless otherwise specified in the RFQ Response Form; and
  - ii. permits the Customer to sub-license any of the rights in clause 10.3(b) to any:
    - A. department;
    - B. Contractor that is providing services to the Customer that includes the use of the Deliverable, provided that such sub-licence automatically terminates at the end of the period of the service arrangement between the Customer and Contractor; and
    - C. other entity specified in the RFQ Response Form,at no additional cost, unless the additional cost is specified in the RFQ Response Form.

### **10.4 Third Party Material**

If a Deliverable incorporates any Third Party Material, the Supplier must grant (or procure the grant by the applicable third party) to the Customer of a non-exclusive licence to exercise all Intellectual Property Rights in such Third Party Material for the purposes of using, supporting and/or modifying the Deliverable incorporating the Third Party Material, in the course of the Customer's functions or activities and for such other purposes specified in the RFQ Response Form, and subject to any terms and conditions (including licence terms and conditions) specified in the RFQ Response Form.

### **10.5 Moral Rights**

- a) If requested by the Customer, the Supplier must procure from all of the Supplier's Personnel involved in the creation of the Deliverables, a Moral Rights consent substantially in the form approved by the Customer.
- b) The Supplier must, at the Customer's request, provide to the Customer a copy of each Moral Rights consent procured by the Supplier.

## 11 Data, models and analytical tools

- a) As between the Customer and the Supplier, the Customer owns all Customer Data, including any Intellectual Property Rights in Customer Data, on and from creation.
- b) The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the Contract and in accordance with all applicable Laws.
- c) The Supplier must comply with clause 13 and all applicable Laws in relation to Customer Data Which is Personal Information.
- d) The Supplier must provide reasonable assistance to the Customer on request to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data, including identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Personal Information, public records, right to information and information standards.
- e) The Supplier acknowledges and agrees that, if it provides any model, formula or analytical tool under the Contract (including any Supplier Data) whether or not that model, formula or analytical tool is developed or based on any Customer Data or data of the Supplier or any other person, the Supplier must provide to the Customer all assumptions, data, logs, inputs, variables, formula and any other data or information requested by the Customer (**Validation Data**) for the sole purpose of enabling the Customer to test, validate and analyse the model, formula or analytical tool without the assistance or involvement of the Supplier. The use of any such Validation Data by the Customer is subject to the confidentiality terms in clause 12.
- f) The Supplier acknowledges and agrees that it must not:
  - i. disclose to;
  - ii. use for the benefit of; or
  - iii. permit to be used by,  
any third party or other customers of the Supplier:
  - iv. any information or data (including any Customer Data) provided by or on behalf of the Customer to the Supplier in connection with the Contract or any Contract; and
  - v. any Supplier Data that the Supplier is required to supply or develop exclusively for the Customer under the Contract or which forms part of the Deliverables,  
other than with the prior written consent of the Customer.
- g) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Data.

## 12 Confidentiality

### 12.1 Mutual obligations of confidentiality

Each party as recipient must:

- a) keep confidential all Confidential Information of the Discloser;
- b) not use the Confidential Information except for the purposes of the Contract; and

- c) not disclose the Confidential Information except:
  - i. to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract;
  - ii. with the Discloser's consent;
  - iii. to the extent required by Law;
  - iv. to its professional advisors;
  - v. in the case of the Customer:
    - A. to a Minister, their advisors or Parliament; or
    - B. as required under the Right to Information Act or the Information Privacy Act, or
  - vi. in the case of the Customer, it may disclose information about the Contract, including the terms of the Contract, to any Queensland Government Body, excluding any such Queensland Government Body that is a direct competitor of the Supplier.

### **12.2 Permitted disclosures**

- a) The Customer may publish information about the Contract on the Queensland Government's contract directory, where required or recommended by Queensland Government policy, excluding any such Queensland Government Body that is a direct competitor of the Supplier. Nothing in the Contract prevents the Customer from disclosing information about the Contract as necessary to comply with the Procurement Guidelines: *Contract Disclosure*.
- b) Nothing in this clause 12 prevents the Customer from disclosing information about the Supplier's compliance with the Ethical Supplier Threshold to other Queensland Government entities for inclusion in a register.
- c) Where the recipient discloses the Confidential Information to a third party as permitted under the Contract (other than disclosure by the Customer as permitted under clause 12.1(c)(v)), the recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the recipient's Personnel and professional advisors.

### **12.3 Publicity**

The Supplier must not make any public announcement or advertisement relating to the Contract, except where the Customer has approved the proposed public announcement or advertisement in writing.

### **12.4 Confidentiality and privacy deed**

If specified in the RFQ Response Form or if the Customer otherwise requests during the Contract Term, the Supplier must obtain from its Personnel (including Subcontractors) that are individuals a signed form prepared by the Customer whereby each such individual acknowledges the confidentiality obligations imposed on the Supplier.

### **12.5 Return or destruction of material**

- a) On termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer and will confirm to the Customer when this has been done.
- b) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

## **13 Privacy**

### **13.1 Supplier's privacy obligations**

- a) This clause 13 applies if the Supplier collects or has access to Personal Information in order to perform its obligations under the Contract.
- b) When performing the Contract the Supplier must:
  - i. if the Customer is an 'agency' for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act, comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Customer, as if the Supplier were the Customer; or
  - ii. otherwise, comply with the Australian Privacy Principles in the Privacy Act.
- c) The Supplier must:
  - i. ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - ii. not use Personal Information collected or accessed in connection with the Contract other than for the purpose of performing its obligations under the Contract;
  - iii. not disclose Personal Information without the prior written consent of the Customer, unless required or authorised by Law;
  - iv. not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except:
    - A. with the prior written consent of the Customer; or
    - B. where the Personal Information is about the Customer's ordering officer or other Personnel which is provided in connection with account management purposes or service delivery management under the Contract;
  - v. ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Contract;
  - vi. ensure that its Personnel are aware of the Supplier's obligations under this clause 13 and comply with the same obligations imposed on the Supplier under this clause;
  - vii. fully cooperate with the Customer to enable the Customer to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints; and



- viii. comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time.
- d) Nothing in this clause 13 is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable), that the Supplier may have as an organisation with respect to Personal Information.

### **13.2 Notification of breach**

The Supplier must immediately notify the Customer upon becoming aware of:

- a) any breach of this clause 13; or
- b) any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract.

## **14 Warranties**

### **14.1 Supplier warranties**

The Supplier warrants to the Customer that:

- a) the execution of the Contract (by signing the Supplier's RFQ Response Form) has been properly authorised;
- b) it is entitled to enter into the Contract, and to perform its obligations under the Contract;
- c) it has full corporate power to execute, deliver and perform its obligations under the Contract;
- d) it has all authorisations described in the RFQ Response Form and any other licences, permits, permissions and authorities necessary to perform the Contract;
- e) it will perform its obligations in compliance with all Laws, and any codes, policies, guidelines and standards specified in the RFQ Response Form;
- f) it has the necessary skills and expertise to properly perform the Contract;
- g) all of its Personnel performing duties in relation to the Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning the Contract; and
- h) the Services will be performed:
  - i. with due care and skill and in a timely manner; and
  - ii. by appropriately qualified and trained Personnel.

### **14.2 Intellectual Property Rights**

The Supplier warrants that:

- a) it is authorised to grant the rights that it purports to grant or assign in clause 10; and
- b) to the best of its knowledge and belief having made all reasonable enquiries, the Deliverables and the use of the Deliverables as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

## **15 Liability**

### **15.1 Limitation of liability**

- a) Subject to clause 15.2 and 16, and to the extent permitted by Law, the maximum liability of the Supplier to the Customer, whether in Contract, tort (including negligence) or otherwise in connection with the Services, is limited to the amount specified in the RFQ Response Form. If no cap on liability is specified in the RFQ Response Form, the Supplier's liability is not limited by the Contract.
- b) The maximum liability of the Customer to the Supplier, whether in Contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the total Fees payable to the Supplier under the Contract.

### **15.2 Exclusions from limitation of liability**

To the extent permitted by Law, clause 15.1(a) does not apply to liability under clause 16 or any liability that is, or arises from:

- a) personal injury, including sickness and death;
- b) loss of, or damage to, tangible property caused by the Supplier or its Personnel (to the extent that the Customer suffers loss or damage, including in connection with a Claim by a third party), other than when the loss of, or damage to tangible property is caused by the rendering, or failure to render, professional services by (or on behalf of) the Supplier;
- c) an infringement of Intellectual Property Rights or Moral Rights;
- d) any fraudulent act or omission of the Supplier or its Personnel; or
- e) any breach by the Supplier or its Personnel of any obligation under clauses 12 or 13.

### **15.3 Duty to mitigate**

- a) A party who suffers loss or damage must take reasonable steps to mitigate its loss.
- b) The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.

## **16 Indemnity by Supplier**

The Supplier indemnifies the Customer and its Personnel against any loss, damage, liability, cost or expense (including legal expenses a party and party basis) suffered or incurred by any of them, whether in Contract, tort (including negligence) or otherwise in connection with any:

- a) failure by the Supplier or its Personnel to comply with applicable Laws;
- b) fraudulent or unlawful act or omission of the Supplier or its Personnel
- c) act or omission (whether negligent or otherwise) of the Supplier or its Personnel resulting in or contributing to:
  - i. any death or injury to persons; or
  - ii. any loss or damage to real or tangible property;

- d) Claim by a third party that any Deliverable or the use of any Deliverable in accordance with the Contract infringes the Intellectual Property Rights or Moral Rights of that third party;
- e) breach by the Supplier or its Personnel of any obligation under the Contract, including (but not limited to) clause 12 or 13; or
- f) Claim by a third party arising out of a breach by the Supplier of the Contract or any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the Contract,

except to the extent that the relevant loss, damage, liability, cost or expense was caused or contributed to by the Customer.

## 17 Insurance

- a) Subject to clause 17(f), the Supplier must, at its cost and by the Start Date, take out and maintain or be insured under, the insurance policies described in the RFQ Response Form with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercially available.
- b) The Supplier must promptly notify the Customer if any required insurance policy is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under the Contract.
- c) The Supplier must maintain all required insurance policies which are maintained on a 'Claims made' basis for a minimum period of seven years after the Contract ends, or such other period specified in the RFQ Response Form.
- d) The Supplier must, on request, promptly provide to the Customer an insurance certificate of currency confirming that the Supplier has effected and renewed or is insured under the insurance policies described in the RFQ Response Form.
- e) If specified in the RFQ Response Form, the Supplier must notify the Customer in writing of any exclusions and deductibles relevant to the insurance policies that the Supplier is required to have in place under clause 17(a).
- f) The Customer may at its sole discretion, agree to the Supplier being self-insured provided that the Supplier provides the Customer with such supporting documentation as may be required by the Customer, including the Supplier's financial records (limited to publicly available financial records where the Supplier or its Related Body Corporate is publicly traded).
- g) The Supplier must ensure that the Customer's rights and interests under the Contract are noted under its public liability and products liability insurance policy described in the RFQ Response Form.
- h) To the extent permitted by Law, where multiple insured parties are insured under a public liability insurance policy required under this clause 17, the Supplier must:
  - i. ensure that the public liability policy of insurance held, or required to be held, by the Supplier under this clause 17 contains a cross liability clause, a non-vitiation clause and a waiver of subrogation by the insurer(s) in favour of the Customer; and
  - ii. the Customer is an additional insured under the public liability policy of insurance,

regardless of any negligence by the Customer.

## **18 Not used**

## **19 Anti-competitive conduct, conflict of interest and criminal organisations**

### **19.1 Anti-competitive conduct**

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in breach of any Law in connection with the Contract (including any related procurement process) or any actual or potential Contract with any entity for services similar to the Services.

### **19.2 Conflict of Interest**

- a) The Supplier warrants that it and its Personnel:
  - i. do not hold any office or possess any property;
  - ii. are not engaged in any business or activity; or
  - iii. do not have any obligations,where a Conflict of Interest is created, or might appear to be created, in conflict with the Supplier's obligations under the Contract, except as disclosed in the RFQ Response Form.
- b) If, during the Contract Term, a Conflict of Interest arises, or appears likely to arise, the Supplier must notify the Customer promptly and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Customer.
- c) If the Customer requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Customer.

### **19.3 Criminal organisation**

The Supplier warrants that neither the Supplier and, to the best of its knowledge and belief having made all reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

### **19.4 Warranties are ongoing**

- a) The warranties in this clause 19 are provided as at the date of the Contract and on an ongoing basis.
- b) The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 19 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

## **20 Modern Slavery**

### **20.1 Compliance**

The Supplier will comply with the obligations and requirements of the Modern Slavery Act (where applicable to the Supplier) and will take all reasonable steps to ensure that there is no Modern Slavery in its operations and supply chain, or that of its Subcontractors and suppliers.

## **20.2 Provision of assistance**

The Supplier must provide all reasonable assistance (including the provision of information and access to documents) that the Customer reasonably requires to enable the Customer to comply with its obligations under the Modern Slavery Act.

## **21 Disputes**

- a) If any dispute arises concerning the Contract, it must be resolved according to this clause 21.
- b) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute. Within five Business Days after the date on which a party gives the other party a dispute notice (**dispute notice date**), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- c) If the dispute is not resolved under clause 21(b), senior management representatives of the parties must, within 10 Business Days after the dispute notice date, meet and use reasonable endeavours to resolve the dispute.
- d) If the dispute is not resolved under clause 21(c), the dispute must be referred to each party's Director-General / Chief Executive Officer (or their nominee) for resolution.
- e) If the dispute is not resolved under clause 21(d) within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 21(f).
- f) Where the dispute is referred to mediation, the parties:
  - i. will conduct the mediation in Brisbane;
  - ii. will jointly appoint the mediator, or if the parties cannot agree on the mediator within five Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia will determine the mediator;
  - iii. may be legally represented at the mediation;
  - iv. will each bear their own costs concerning the mediation, the mediation venue and the mediator; and
  - v. will continue to perform their obligations under the Contract notwithstanding the existence of a dispute.

## **22 Termination**

### **22.1 For cause – by Customer**

- a) The Customer may terminate the Contract in whole or part immediately on written notice if:
  - i. the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within 14 days (or such longer period stated in the notice in writing) of the Customer issuing a notice of the breach to the Supplier;
  - ii. a Conflict of Interest arises and has not been, or in the Customer's view cannot be appropriately managed, to the Customer's satisfaction;

- iii. the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
  - iv. to the extent permitted by Law, an Insolvency Event happens to the Supplier;
  - v. the Customer believes the Supplier has breached any warranty in clause 19.1, 19.2 or 19.3;
  - vi. the Supplier is unable to comply with its obligations in clause 20; or
  - vii. having issued a show cause notice in accordance with clause 4.9, the Customer believes that the Supplier does not comply with the Ethical Supplier Threshold.
- b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates the Contract under clause 22.1(a), the Customer may obtain from any other source a reasonably similar alternative to the Services in which case the Supplier is liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Services and the similar alternative) or suffered by the Customer.

### **22.2 For cause – by Supplier**

The Supplier may terminate the Contract immediately on written notice only if the Customer has:

- a) not paid any amount which is undisputed and properly payable, and:
  - i. the Supplier has notified the Customer of the outstanding amount stating that it will terminate the Contract if the Customer does not pay such amount within 30 days (or such longer period stated in the notice in writing); and
  - ii. the period specified in the notice given under clause 22.2(a)(i) expires without the Customer disputing the amount or making payment;
- b) committed a breach of the Contract which prevents the Supplier from substantially performing its obligations under the Contract and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach; or
- c) the Customer breaches its obligations under:
  - i. the Contract regarding the Supplier's Intellectual Property Rights; or
  - ii. clause 12,and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach.

### **22.3 For convenience**

- a) The Customer may terminate the Contract in whole or part at its absolute discretion by giving the Supplier at least 30 days written notice. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination.
- b) If the Customer terminates the Contract under clause 22.3(a), the Customer will pay:
  - i. the Supplier for the Services performed and Deliverables supplied in accordance with the Contract but not yet invoiced, substantiated to the reasonable satisfaction of the Customer; and

- ii. either:
  - A. the Supplier's reasonable and documented expenses incurred directly relating to the termination; or
  - B. any amount specified in the RFQ Response Form.
- c) The Customer will have no other liability to the Supplier relating to the termination under this clause 22.3. In no case will the compensation payable as a consequence of termination by the Customer under clause 22.3(b) exceed the Fees that would have been payable if the Contract had not been terminated.
- d) The Supplier must take reasonable steps to minimise its expenses relating to the termination.

#### **22.4 Suspension**

- a) In addition to the Customer's termination rights under this clause 22, the Customer may suspend the Contract in whole or part immediately on written notice to the Supplier for the period specified in the notice:
  - i. at its absolute discretion; or
  - ii. in any circumstances described in clause 22.1, provided that if the Customer seeks to suspend the Contract in the circumstances described in clause 22.1(a)(i):
    - A. the Customer has issued a notice of the breach to the Supplier; and
    - B. if the breach described in clause 22.1(a)(i) was capable of being remedied, the Supplier has not remedied the breach within 14 days (or such longer period stated in the notice in writing).
- b) Where the Contract is suspended in accordance with clause 22.4(a), prior to the suspension expiring, the Customer must notify the Supplier in writing that either:
  - i. the period of the suspension will cease to be effective from the date specified in the notice and each party must recommence performance under the Contract from the date specified in the notice; or
  - ii. the period of the suspension will be extended for a further period.
- c) If the Customer fails to notify the Supplier in writing under clause 22.4(b), the period of suspension will expire at the end of the period set out in the suspension notice provided under clause 22.4(a) and each party must recommence performance under the Contract.
- d) Without limiting clause 22.4(b), the Customer may otherwise end the suspension on written notice. The Supplier must re-commence performance as soon as reasonably practicable after receiving the Customer's notice ending the suspension.
- e) If the Customer suspends the Contract under clause 22.4(a)(i):
  - i. the Customer will pay the Supplier's reasonable and documented expenses directly resulting from the suspension; and
  - ii. where the suspension continues for 30 days or more, the Supplier may remove or replace any Key Personnel provided that, where the Customer ends the suspension under clause 22.4(d), the Supplier must provide replacement Key Personnel approved by the Customer with at least equivalent skills, qualifications and experience. The

Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

- f) The Customer will have no other liability to the Supplier relating to the suspension.
- g) The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

## **22.5 Consequences**

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

## **23 Contract Administration**

### **23.1 Reporting**

The Supplier must provide the reports in the timeframe and format specified in the RFQ Response Form and such other reports as and when reasonably requested by the Customer.

### **23.2 Records**

- a) The Supplier must create and maintain records of its performance of the Contract in accordance with applicable Laws and usual industry practice for the provision of services similar to the Services.
- b) The Supplier will give the Customer reasonable access to and copies of such records within a reasonable time of a written request from the Customer.

### **23.3 Authorised Representatives**

- a) Each party may nominate one or more employee(s) as its nominated representative(s) in the RFQ Response Form (Authorised Representative).
- b) Each party warrants to the other party that its Authorised Representative(s) have the authority to provide such consents and approvals as are required for the purposes of the Contract and to issue instructions and directions as are necessary for the purposes of the Contract, on behalf of that party.
- c) The parties will direct all enquiries relating to the Contract to the other party's Authorised Representative, or to another person if the other party directs.
- d) Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the direction is confirmed in writing by that party's Authorised Representative.
- e) A party may notify the other party of any replacement of its Authorised Representative from time-to-time (subject to clause 6.4 where the Supplier's Authorised Representative is Key Personnel).

### **23.4 Inspections**

The Supplier must, on reasonable prior written notice from the Customer, give the Customer reasonable access during Business Hours to the Supplier's premises where the Services are being performed, and to the Supplier's documentation, records and Personnel, to enable the Customer to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non-compliance identified by the Customer and notified to the Supplier. Nothing in this clause 23.4



requires the Supplier to provide the Customer with access to any documents or records of or in respect of a third party other than any Subcontractors.

### **23.5 Notice of Change in Control**

The Supplier must promptly provide the Customer with notice in writing of any Change in Control during the Contract Term.

### **23.6 Material Adverse Events**

The Supplier must provide the Customer with notice in writing immediately upon becoming aware of the existence or possibility of a Material Adverse Event.

### **23.7 Notices**

- a) Each party must send all notices relating to the Contract to the other party's Authorised Representative (or as updated under clause 23.3(e)).
- b) Notices may be given by being:
  - i. posted to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
  - ii. delivered by hand at the party's current address for notices;
  - iii. sent by email to the party's current email address for notices; or
  - iv. given in any other way permitted by Law.
- c) A notice will be deemed to be given:
  - i. if posted:
    - A. within Australia to an Australian postal address – five Business Days after the date of posting; or
    - B. outside of Australia to an Australian postal address or within Australia to an address outside of Australia – 10 Business Days after posting;
  - ii. if delivered by hand during a Business Day – on the date of delivery;
  - iii. if emailed – subject to clause 23.7(d) below, 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 or email received after 5:00 pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- d) Any notice under clause 21 or 22 which is sent via email must also be sent by post, hand delivery or in any other way permitted by Law. In such circumstances, a notice will be deemed to be given on the earlier of when the email is opened by the receiving party or at the time that the notice is otherwise brought to the attention of the receiving party by post, hand delivery or in any other way permitted by Law.

### **23.8 Force Majeure Events**

- a) A party will not be liable for any delay in or for any failure to perform its obligations under the Contract to the extent that it is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.

- b) A party prevented from performing any of its obligations under the Contract by a Force Majeure Event, must:
  - i. notify the other party, as soon as it is affected by the Force Majeure Event, of
    - A. the details of the Force Majeure Event;
    - B. anticipated duration of any delay arising from the Force Majeure Event;
    - C. obligations it is prevented and/or likely to be prevented from performing under the Contract; and
    - D. its plans to work-around or minimise the impact of the Force Majeure Event; and
  - ii. make all reasonable efforts to minimise the effects of the Force Majeure Event.
- c) If the affected party is prevented from performing its obligations under the Contract for 30 days or such other period agreed in writing, then the other party may terminate the Contract by notice in writing to the affected party.

## **24 Assignment and novation**

### **24.1 By Supplier**

- a) The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Customer's prior written consent.
- b) The Supplier acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Contract before determining whether or not to give consent to the assignment or novation.

### **24.2 By Customer**

- a) The Customer may assign, transfer or novate any of its rights or obligations under the Contract:
  - i. with the Supplier's prior written consent; or
  - ii. on written notice to the Supplier, in connection with a Machinery of Government Change.
- b) For clarity, transfer of the Customer's rights and obligations within the same legal entity is not an assignment or novation.
- c) The Contract is for the benefit of, and will bind the parties and their successors and permitted assigns.

### **24.3 Acting reasonably**

Both parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

### **24.4 Transferability and portability of Services**

- a) Notwithstanding any other provision of the Contract, the Supplier agrees that the Customer is entitled to transfer any Service to other Queensland Government Bodies, on the same terms and conditions, but only as a consequence of a Machinery of Government Change.

- b) If the Services are transferred in accordance with clause 24.4(a), the Supplier:
  - i. must immediately notify the Customer of any proposed reduction in costs which may occur; and
  - ii. may notify the Customer of any proposed additional Fees for any additional costs directly incurred as a result of the provision of additional overall Services.
- c) The Supplier agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
  - i. adjust the Fees as a result of notice of the matters raised in clause 24.4(b); and/or
  - ii. comply with any specific requirements of the Queensland Government Body to which the Contract is transferred following the Machinery of Government Change.
- d) Any agreement that arises from clause 24.4(c) must be documented via a Change Request under clause 7.5.

## **25 General**

### **25.1 Entire agreement**

- a) The Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.
- b) The *Sale of Goods (Vienna Convention) Act 1986 (Qld)* does not apply to the Contract, to the extent that the parties are permitted by Law to exclude it.

### **25.2 Waiver**

- a) Clauses and rights in the Contract can only be waived in writing signed by the waiving party.
- b) Failure or delay of a party in exercising a right under the Contract does not waive the party's rights.
- c) A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.

### **25.3 Rights cumulative**

Except as expressly stated otherwise in the Contract, the rights of a party under the Contract are cumulative and are in addition to any other rights of that party.

### **25.4 Variations**

The Contract may only be varied (including as a result of any Change agreed under clause 7.5) by written agreement between the parties signed by Authorised Representatives of the parties.

### **25.5 Relationship of the parties**

- a) Nothing in the Contract is intended to create any partnership, joint venture, agency or employment relationship between the parties.
- b) The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Customer.

## 25.6 Survival

Clauses 1.2, 6.6, 8.5, 8.6, 8.7, 10, 11, 12, 13, 14, 15, 16, 17(c), 21, 22.5, 23.2, 23.7, 24.4, 25 and any other clause in the Contract which is expressed to survive or by its nature survives, will survive termination or expiry of the Contract for any reason.

## 25.7 Costs

Each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations.

## 25.8 Joint and several liability

- a) The obligations of the Supplier, if more than one person, under the Contract, are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of the Contract) of the other as if those acts or omissions were its own and the Customer may proceed against any one or all of them.
- b) The rights of the Supplier, if more than one person, under the Contract (including the right to payment) jointly benefit each person constituting the Supplier (and not severally or jointly and severally).
- c) Any payment by the Customer under the Contract to any account nominated in writing by the Supplier, or failing such nomination, to any one or more persons constituting the Supplier, will be deemed to be payment to all persons constituting the Supplier.

## 25.9 Governing Law

- a) The Contract is governed by and is to be construed in accordance with the Laws applicable in Queensland.
- b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland.

## 26 Definitions and Interpretation

### 26.1 Definitions

#### Table 26.1 – Definition of terms

In this document, these terms have the following meanings:

Terms	Definition
Authorised Representative	Has the meaning given in clause 23.3(a).
Business Day	Any day other than a Saturday, Sunday or public holiday at the Customer's address.
Business Hours	Between 9.00 am and 5.00 pm on Business Days, unless otherwise specified in the RFQ Response Form.
Claim	Any Claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a Claim.
Change	A change (including addition or deletion) to the scope of the Services to be supplied under the Contract, or the Service Standards applying to such Services.

Terms	Definition
Change in Control	<p>In relation to a Supplier, that is:</p> <ul style="list-style-type: none"> <li>a) a company within the meaning of the Corporations Act – a change in the identity of a person who, as at the start date of the Contract, is able to be in Control of an Entity (including a corporation defined in the Corporations Act), or</li> <li>b) not a company within the meaning of the Corporations Act – a circumstance in which effective control is or may be exercised over the Supplier.</li> </ul>
Change Request	A written request for a Change raised by either the Customer or the Supplier, described in clause 7.5(d) substantially in the form reasonably acceptable to the Customer.
Confidential Information	<p>All information disclosed by or on behalf of the Customer or the Supplier (<b>Discloser</b>) to the other party (<b>Recipient</b>) in connection with the Contract or created using that information, which is <b>confidential</b> in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:</p> <ul style="list-style-type: none"> <li>a) is or becomes public, except through breach of a confidentiality obligation</li> <li>b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient, or</li> <li>c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.</li> </ul>
Conflict of Interest	Includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.
Consequential Loss	<ul style="list-style-type: none"> <li>(a) Indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party, and</li> <li>(b) any loss of profits, loss of revenue, loss of any Contract value, loss of anticipated profit or damages for lost opportunity.</li> </ul>
Contract	The agreement between the Customer and the Supplier, made up of the documents specified in clause 1.1(a).
Infrastructure Contract Conditions A2	This document titled 'Infrastructure Contract Conditions A2'.
Contract Term	The term of the Contract, determined by clause 2.
Control of an Entity	Includes the definition of 'Control' in Section 50AA of the Corporations Act and in the case of a corporation includes the power (whether legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Correctly Rendered Invoice	<p>A tax invoice (as defined by the GST Law) in which:</p> <ul style="list-style-type: none"> <li>a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars</li> <li>b) the invoice is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable</li> </ul>

Terms	Definition
	<ul style="list-style-type: none"> <li>c) the invoice is accompanied, where necessary, by documentation that provides evidence that the amount specified in the invoice is in accordance with the Contract, and</li> <li>d) the invoice is addressed to the Authorised Representative or the officer specified in the RFQ Response Form to receive invoices.</li> </ul>
Criminal Code	The Criminal Code set out in Schedule 1 of the <i>Criminal Code Act 1899</i> (Qld).
Customer	The entity specified in the RFQ Response Form.
Customer Data	Any information, material, data, dataset or database to the extent provided by or on behalf of the Customer to the Supplier under the Contract. Customer Data does not include any Pre-Existing Material or Deliverables owned by the Supplier.
Customer Materials	The Customer's materials, Customer Data, equipment, premises, documents and any other resources that the Customer provides or makes available to the Supplier, as set out in the RFQ Response Form.
Deliverables	All materials, documents, information and other items that are created, written, developed or otherwise brought into existence by or on behalf of the Supplier for the Customer in the course of the Supplier performing its obligations under the Contract in any form whatsoever (including electronic form), including the Supplier Data and any items specified as 'Deliverables' in the RFQ Response Form.
Delivery Date	Any date and time for delivery of the Services as stated in the RFQ Response Form.
Department	Any entity declared to be a department of government by the Governor in Council by gazette notice.
Discloser	Has the meaning given in the definition of Confidential Information.
Ethical Supplier Mandate	The Queensland Government policy titled ' <i>Buy Queensland: Ethical Supplier Mandate</i> ', as amended or replaced by the Queensland Government.
Ethical Supplier Threshold	The Ethical Supplier Threshold described in paragraph 2.3 of the <i>Queensland Procurement Policy</i> .
Fees	For the Services, the price or prices described in the RFQ Response Form or calculated using a calculation method specified in the RFQ Response Form.
Force Majeure Event	<p>Any of the following events provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party by reasonable diligence or reasonable precautions:</p> <ul style="list-style-type: none"> <li>a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, tsunami, explosion or fire;</li> <li>b) strikes or other industrial action, other than strikes or other industrial action of some or all of the Supplier's Personnel; and</li> <li>c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic, but excludes any act or omission of a Subcontractor (except where that act or omission was caused by a Force Majeure Event).</li> </ul>

Terms	Definition
Further Term	The period specified in the RFQ Response Form.
GST	Has the meaning given in the GST Law and includes an amount payable under or in accordance with Section 5 of the <i>GST and Related Matters Act 2000</i> (Qld) or equivalent legislation.
GST Law	Has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Initial Term	The period specified in the RFQ Response Form.
Information Privacy Act	The <i>Information Privacy Act 2009</i> (Qld).
Insolvency Event	<p>In relation to a party, any of the following:</p> <ul style="list-style-type: none"> <li>a) the party is or states that it is unable to pay from its own money all its debts as and when they become due and payable;</li> <li>b) the party is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;</li> <li>c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party;</li> <li>d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of the party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;</li> <li>e) a receiver or receiver and manager is appointed in respect of any property of the party;</li> <li>f) the party is deregistered under the Corporations Act or notice of its proposed deregistration is given to the party;</li> <li>g) the party enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the party's creditors or members or a moratorium involving any of them; or</li> <li>h) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of the party.</li> </ul>
Intellectual Property Rights	Includes all copyright, trade mark, design, patents, semi-conductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract, but excludes Moral Rights.
Key Personnel	The people identified in the RFQ Response Form.
Laws	<p>All:</p> <ul style="list-style-type: none"> <li>a) acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time;</li> <li>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Services; and</li> <li>c) the requirements of any authority with jurisdiction in respect of the Services and/or the Site, as applicable.</li> </ul>
Letter of Acceptance	The document titled 'Letter of Acceptance' issued by the Customer to the Supplier accepting the offer made by the Supplier in its RFQ Response Form that the Supplier submitted in response to the Request for Quote.

Terms	Definition
Machinery of Government Change	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.
Material Adverse Event	<p>Any matter that:</p> <ul style="list-style-type: none"> <li>a) substantially and adversely affects the Supplier's ability to perform any of its material obligations under the Contract, which may result from: <ul style="list-style-type: none"> <li>i. any material litigation or proceeding against the Supplier;</li> <li>ii. the existence of any material breach or default of any agreement, or of any order or award that is binding on the Supplier;</li> <li>iii. matters relating to the commercial, technical or financial capacity of the Supplier; or</li> <li>iv. any obligation under another Contract the compliance with which may place the Supplier in breach of the Contract; or</li> </ul> </li> <li>b) the Supplier knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Customer as a result of the Customer's association with the Supplier.</li> </ul>
Modern Slavery	As defined in the <i>Modern Slavery Act 2018</i> (Cth).
Modern Slavery Act	The <i>Modern Slavery Act 2018</i> (Cth).
Moral Rights	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.
Personal Information	<p>Has the meaning given:</p> <ul style="list-style-type: none"> <li>a) for the purpose of the Information Privacy Act – in that Act; or</li> <li>b) for the purposes of the Privacy Act – in that Act.</li> </ul>
Personnel	Officers, directors, employees and agents, and in the case of the Supplier, includes any Subcontractor and the Subcontractor's officers, directors, employees and agents.
Pre-Existing Material	All materials, documents and other items which existed at the Start Date or which are developed independently of the Contract. Pre-Existing Material includes any adaptation, translation or derivative of the Pre-Existing Material, but does not include any Third Party Material.
Principal	The entity specified in the RFQ Response Form.
Privacy Act	The <i>Privacy Act 1988</i> (Cth).
Procurement Guidelines: Contract Disclosure	The Procurement Guidelines: <i>Contract Disclosure</i> issued by the Director-General, Department of Communities, Housing and Digital Economy.



Terms	Definition
Professional Standards Legislation	A Law providing for the limitation of liability of certain Suppliers by reference to schemes that are approved in accordance with applicable Federal and State and Territory legislation as set out on the Professional Standards Councils' website at <a href="https://www.psc.gov.au/legislation">https://www.psc.gov.au/legislation</a> .
Queensland Government Body	Any of: <ul style="list-style-type: none"> <li>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);</li> <li>b) a body established by the State of Queensland through the Governor or a Minister; or</li> <li>c) an incorporated or unincorporated body over which the State of Queensland exercises control.</li> </ul>
Queensland Procurement Policy	The <i>Queensland Procurement Policy</i> published by the Queensland Government, as amended or replaced by the Queensland Government.
Recipient	Has the meaning given in the definition of Confidential Information.
Related Body Corporate	Has the meaning given in the Corporations Act.
Request for Quote	The request for quote issued by the Customer, inviting offers to deliver the Services to the Customer.
Right to Information Act	The <i>Right to Information Act 2009</i> (Qld).
RFQ Response Form	The response form submitted by the Supplier in response to the Request for Quote, as amended through any negotiations between the Supplier and the Customer pursuant to clause 8.3 of the Request for Quote.
Service Levels	The service levels specified in the RFQ Response Form.
Service Standards	The standards and other requirements for the Services specified in the RFQ Response Form.
Services	The Services specified in the Technical Specifications and any services incidental or necessary to complete the performance of those services.
Site	Each of the Sites or premises at which the Services are to be provided, as specified in the RFQ Response Form.
Special Conditions	Any terms and conditions specified by the Customer in the RFQ Response Form.
Start Date	The date specified in the RFQ Response Form.
Stage	One or more milestones that are identified as a stage in the RFQ Response Form.
Subcontractor	A third party to whom the Supplier subcontracts the performance or supply of any Services in accordance with clause 6.1.
Supplier	The entity specified in the RFQ Response Form.
Supplier Data	Any information, models, formula, calculation, material, data, dataset or database disclosed or provided by or on behalf of the Supplier to the Eligible Customer under the Contract, including where such information, models, formula, calculation, material, data, dataset or database includes some or all of the Customer Data.
Technical Specifications	Part C of the Request for Quote.

Terms	Definition
Third Party Material	All materials, documents and other items in which the Intellectual Property Rights are owned by a party other than the Supplier or the Customer.

## 26.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- a) a reference to an agreement includes any variation or replacement of the agreement;
- b) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- c) all currency amounts are in Australian dollars;
- d) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;
- e) 'include', 'includes' and 'including' must be read as if followed by the words 'without limitation';
- f) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- g) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- h) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- i) a person includes the person's executors, administrators and permitted novatees and assignees;
- j) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
- k) if any part of the Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

