



## GENERAL CONDITIONS OF CONTRACT FOR GOODS AND/OR SERVICES

### **1 CONSTRUCTION AND EVIDENCE OF CONTRACT**

- 1.1 A reference to a party to the Contract includes:
- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
  - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- (a) all of those persons collectively; and
  - (b) each of them as an individual.
- 1.3 A reference to:
- (a) the singular includes the plural, and vice versa;
  - (b) a gender includes each other gender;
  - (c) a person includes a corporation, a firm, and a voluntary association;
  - (d) an Act includes an Act that amends, consolidates or replaces the Act;
  - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
  - (f) money is a reference to Australian dollars and cents;
  - (g) a time of day is a reference to Australian Eastern Standard Time;
  - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.5 All information delivered as part of the Deliverables supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.6 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.
- 1.7 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within 14 calendar days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor.

## 2 DEFINITIONS

2.1 In the Contract, except where the context otherwise requires:

**‘Act’** means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

**‘Authorised Officer’** is the Officer identified at Item 3 of Schedule 1.

**‘Bank Guarantee’** means 1 or more irrevocable and unconditional written undertakings of a Licensed Bank:

- (a) in a form satisfactory to the Principal; and
- (b) securing payment of the Bank Guarantee Amount to the Principal:
  - (i) upon demand; and
  - (ii) without reference to the Contractor.

**‘Bank Guarantee Amount’** means the Bank Guarantee Amount specified at Item 13 of Schedule 1.

**‘Clause’** means a clause of the Contract.

**‘Contract’** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**‘Contract Commencement Date’** means the Contract Commencement Date specified at Item 1 of Schedule 1.

**‘Contract Expiry Date’** means the Contract Expiry Date specified at Item 2 of Schedule 1 or in the Purchase Order.

**‘Contract Material’** means New Contract Material and Existing Contract Material.

**‘Contract Price’** means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the supply of the Deliverables by the Contractor and the performance of the obligations of the Contractor under the Contract; and
  - (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and
  - (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),
- but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

**‘Contractor’** means the party:

- (a) whose Offer to supply the Deliverables is accepted by the Principal (by Letter of Acceptance) unless for the purpose of establishing a Register of Prequalified Suppliers or Preferred Supplier Arrangement; and
- (b) who is specified as the Contractor in the formal execution of the contract and Purchase Order.

**‘Defective Deliverables’** see Clause 11.3.

**‘Deliverables’** means the Goods and/or Services, the subject of the Contract which are:

- (a) generally described in the Specification; and
- (b) specifically described in 1 or more Purchase Orders; and
- (c) all variations to the Goods and/or Services provided for by the Contract or such of them as shall be specified in a Purchase Order, shall be agreed by both parties in writing as a contract variation.

**‘Dispute Notice’** see Clause 22.2.

**‘Existing Contract Material’** means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

**'Force Majeure'** means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

**'General Conditions of Contract'** means these General Conditions of Contract.

**'Goods'** means the Goods the subject of the Contract (if any) which are:

- (a) generally described in the Specification; or
- (b) specifically described in 1 or more Purchase Orders; and
- (c) all variations to the Goods, provided for by the Contract or such of them as shall be specified in writing or by issue of an amended Purchase Order.

**'GST'** means the goods and services tax under the GST Act.

**'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

**'Intellectual Property Rights'** means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract, but excluding Moral Rights.

**'Key Personnel'** means the representatives of the Contractor (if any) specified at Item 8 of Schedule 1.

**'Letter of Acceptance'** means:

- (a) a letter from the Principal to the Contractor advising the Contractor of the Principal's acceptance of the Offer; and
- (b) if the Request for Offers relates to the establishment of a register of pre-qualified suppliers—that the Contractor is registered on the register of pre-qualified suppliers for the supply of the Goods and/or Services specified in the Specification; and
- (c) if the Request for Offers relates to a preferred supplier arrangement—the acceptance by the Principal of the offer of the Contractor for the purposes of the preferred supplier arrangement.
- (d) a letter being issued pursuant to clauses (b) or (c) does not guarantee a contract to deliver goods and or services.

**'Licensed Bank'** means a bank, licensed as such under Commonwealth or Queensland legislation regulating banking.

**'Local Government'** means a local government for a local government area described by regulation under the *Local Government Act 2009*.

**'Moral Rights'** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968*, and rights of a similar nature anywhere in the world whether existing before commencement of the Term or which may come into existence on or after the date of the Contract.

**'New Contract Material'** means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

**'Obligor'** means the Licensed Bank providing the Bank Guarantee the subject of Clause 38.1.

**'Offer'** means the written offer (in the form of the Offer Response) submitted to the Principal by the Contractor to provide the Deliverables and, if applicable, as amended in writing by any post offer negotiations.

**'Personal Information'** has the meaning given in the *Information Privacy Act 2009*.

**'Purchase Order'** means an official Noosa Shire the Principal purchase order for Deliverables specified in the specifications which includes Items listed in schedule 1.

**'PPS Act'** means the *Personal Property Securities Act 2009*.

**'Principal'** means Noosa Shire Council.

**'Register'**, a dealing concerning a personal property security interest, means recording the interest under the PPS Act and **Registration** has a corresponding meaning.

**'Request for Offers'**, means the Request for Offers or Request for Quote given to prospective offerors inviting offers for the supply of the Deliverables of which these General Conditions of Contract form part.

**'Request for Tender'** means the Request for Tender given to prospective Tenderers inviting offers for the supply of the Deliverables of which these General Conditions of Contract form part.

**'RTI Act'** means the *Right to Information Act 2009*.

**'Security Account'** means an interest-bearing account with a Licensed Bank.

**'Security Deposit'** means the cash sum specified as the Security Deposit at Item 13 of Schedule 1 or specified in the Purchase Order to be delivered by the Contractor to the Principal at the value stated at Item 13 of Schedule 1.

**'Services'** means the Services the subject of the Contract (if any) which are:

- (a) generally described in the Specification; or
- (b) specifically described in 1 or more Purchase Orders; and
- (c) all variations to the Goods, provided for by the Contract or such of them as shall be specified in writing or by issue of an amended Purchase Order.

**'Special Conditions of Contract'** means the Special Conditions of Contract attached to these General Conditions of Contract if applicable.

**'Specification'** means the agreed Specifications which describes in detail the requirements of the Principal for the Deliverables.

**'Term'** means the period for which the Contract will be in effect as specified in Clause 4.

### **3 APPLICABLE LAW**

- 3.1 The laws of the State of Queensland shall apply to the Contract. The courts of Queensland shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.
- 3.2 The Contractor shall, in the performance of the Contract, comply with and ensure its officers, employees, agents and Subcontractors comply with, the laws from time to time in force in the State of Queensland or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.
- 3.3 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

### **4 ENTIRE AGREEMENT**

- 4.1 The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 4.2 The Contract between the Principal and the Contractor is constituted by the following documents:  
Formal instrument of agreement or Purchase Order or Letter of Acceptance;
  - (a) Specification;
  - (b) Special Conditions of Contract;
  - (c) General Conditions of Contract;
  - (d) Any attachments or schedules other than the specifications; and
  - (e) any document incorporated by express reference as part of the Contract including correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Offers.
- 4.3 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from (a) to (e) in Clause 4.2.

## **5 TERM**

- 5.1 If the Principal gives a Purchase Order, awards a Contract or issues a Letter of Acceptance to the Contractor for the supply of Deliverables, the term of the Contract for the supply of the Deliverables shall begin on the Contract Commencement Date and, unless terminated earlier in accordance with the terms and conditions of the Contract, continue until whichever is the earlier of:
- (a) the Deliverables have been supplied or performed in accordance with the Contract and the Authorised Officer has given a certification for the Deliverables under Clause 15.1; and
  - (b) the Contract Expiry Date.

## **6 SUPPLY OF DELIVERABLES BY PURCHASE ORDER**

- 6.1 Where a Purchase Order is placed with the Contractor, the Contractor must supply Deliverables:
- (a) in accordance with the terms and conditions of Contract or Purchase Order; and
  - (b) that otherwise comply with the Specification.
- 6.2 The Contractor must supply all Deliverables identified in a Price and Delivery Schedule or on a Purchase Orders placed by the Principal during the Term.
- 6.3 The Principal may, by Purchase Order, require the supply of:
- (a) any 1 type or item of the Deliverables; and
  - (b) Deliverables in 1 lot or instalments or in such quantities as may be required from time to time.
- 6.4 Where the Contractor receives a Purchase Order or instructions from a person other than the Authorised Officer the Contractor must:
- (a) not supply the Deliverables identified in the Purchase Order; and
  - (b) refer the Purchase Order to the Authorised Officer.
- 6.5 The Contract does not confer on the Contractor an exclusive right to supply the Deliverables to the Principal.
- 6.6 The Principal may obtain the Deliverables or any part of the Deliverables from an alternate supplier at any time during the Term.

## **7 QUALITY OF DELIVERABLES**

- 7.1 The Contractor must ensure that:
- (a) if a key performance indicator or performance standard for the supply of the Deliverables is specified in the Specification - the Deliverables are supplied in accordance with the key performance indicator or performance standard detailed in the Specification; and
  - (b) all Deliverables comply in all respects with any applicable legislative requirement.
- 7.2 If no sample or standard for the Deliverables is stated in the Specification, the Deliverables must be:
- (a) of the highest standard; and
  - (b) carried out and supplied promptly and with all due skill, care and diligence; and
  - (c) supplied in a competent and professional manner; and
  - (d) fit for the purpose (if any) detailed in the Specification.
- 7.3 The Contractor must:
- (a) engage and retain personnel who are able to competently provide the Deliverables; and
  - (b) ensure that all personnel engaged in the supply of the Deliverables have all skills and qualifications necessary to supply the Deliverables; and
  - (c) consult regularly during the Term with the Principal (through the Authorised Officer and the Contractor's representative).

- 7.4 The Contractor must document its compliance with its obligations under the Contract and use a Quality Assured System to assist in this compliance where relevant. The Contractor is not released or discharged from its obligations under the Contract from use of a Quality Assured System.
- 7.5 If relevant, the Contractor shall allow access to the Contractor's Quality Assured System by the Principal to enable effective monitoring of the Contractor's compliance in the supply of the Deliverables under the Contract.

## **8 PERFORMANCE OF THE DELIVERABLES BY KEY PERSONNEL**

- 8.1 This Clause 8 applies if the Offer identifies Key Personnel of the Contractor who will be responsible for the performance of the Deliverables.
- 8.2 The Deliverables must be performed by the Key Personnel and must not be performed by a person other than the Key Personnel without the prior written consent of the Principal. If the Principal consents to the performance of the Deliverables by a person other than the Key Personnel, the other person will be considered to be Key Personnel during the performance of the Deliverables by the other person.
- 8.3 The Contractor must not, without the prior written consent of the Principal:
- (a) allow any of the Key Personnel to delegate the performance of any part of the Deliverables; or
  - (b) allocate to any of the Key Personnel who are engaged in the performance of the Deliverables on a full time basis, any task not connected with the performance of the Deliverables.
- 8.4 If any of the Key Personnel are unable to perform the Deliverables, or any part of a Deliverable allocated to the Key Personnel, the Contractor must:
- (a) promptly notify the Principal that the Key Personnel are not available; and
  - (b) subject to the prior written consent of the Principal, arrange for a replacement for the Key Personnel who is satisfactory to the Principal acting reasonably, at no cost to the Principal.
- 8.5 The Principal may give written notice requiring the Contractor to remove 1 or more Key Personnel from the performance of the Deliverables. The Principal must not give notice unreasonably. The Contractor must, promptly after receipt of notice, remove the Key Personnel from the performance of the Deliverables and arrange for the replacement of the Key Personnel with a person satisfactory to the Principal acting reasonably, at no cost to the Principal.

## **9 SUPPLY OF DELIVERABLES**

- 9.1 The Contractor must supply the Deliverables punctually. However:
- (a) if a time for the supply of part or the whole of the Deliverables is stated at Item 19 of schedule 1 or in the Purchase Order, the part or the whole of the Deliverables, as the case may be, must be supplied within the time stated at Item 19 of schedule 1 or in the Purchase Order or the Contract, as the case may be; and
  - (b) if 1 or more milestone dates for the supply of part or the whole of the Deliverables are the part or the whole of the Deliverables, as the case may be, must be supplied by the milestone dates stated at Item 18 of Schedule 1 or in the Purchase Order, as the case may be; and
  - (c) if a Purchase Order or the Contract provides that the Deliverables are to be supplied on a periodic or recurrent basis, the Deliverables must be supplied at the times, intervals and frequency stated at Item 17 of Schedule 1 or as otherwise stated in a Purchase Order, as the case may be.
- 9.2 Time shall be of the essence in all cases.



- 9.3 Upon it becoming evident to the Contractor that supply of the Deliverables is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the Deliverables by the due date or from any other obligation under the Contract, unless the Principal agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 9.4 The Contractor shall not be entitled to any extension of time for supply of the Deliverables except with the prior written consent of the Principal. The Principal may in its sole discretion:
- (a) grant its consent; or
  - (b) refuse its consent.
- 9.5 Unless otherwise provided in the Contract, the Contractor must pay all packaging, handling, freight, insurance, and other duties, taxes and charges whatsoever, in connection with each of:
- (a) the delivery of Deliverables; and
  - (b) the return of Goods wrongly supplied.
- 9.6 Delivery and receipt of Deliverables shall not of itself constitute acceptance of the Deliverables by the Principal, with acceptance being subject to the giving of a certification by the Authorised Officer under Clause 14.1.
- 9.7 Where it is a term of the Contract that Deliverables must be installed or commissioned, the Principal shall not be deemed to have accepted the Deliverables unless the Deliverables are satisfactorily installed or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 9.8 The Principal may conduct any examination or testing of the Deliverables. If the testing shows that the Deliverables do not comply with the Specification, the Purchase Order or the Contract or are otherwise defective, the cost of the testing shall be a debt due and payable by the Contractor to the Principal.
- 9.9 The risk of any damage, deterioration, theft or loss of the Deliverables after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or any agent or employee of the Principal.
- 9.10 All Deliverables supplied or delivered by the Contractor must be free of any encumbrance, charge or interest.
- 9.11 If the Goods, or any part of the Goods, is a chemical and the Goods are supplied to a workplace, the Contractor must ensure that a current safety data sheet for the chemical is provided to the Principal with the chemical:
- (a) when the chemical is first supplied to the workplace; and
  - (b) if the safety data sheet for the chemical is amended—when the chemical is first supplied to the workplace after the safety data sheet is amended.
- 9.12 If the Goods, or any part of the Goods, is a hazardous chemical and the Goods are supplied to a workplace, the Contractor must:
- (a) ensure that a current safety data sheet for the hazardous chemical is provided to the Principal with the hazardous chemical:
    - (i) when the hazardous chemical is first supplied to the workplace; and
    - (ii) if the safety data sheet for the hazardous chemical is amended—when the hazardous chemical is first supplied to the workplace after the safety data sheet is amended; and
  - (b) if the Contractor is a manufacturer, importer or supplier of a hazardous chemical—otherwise comply with the obligations of the Contractor as a manufacturer, importer or supplier of a hazardous chemical under the Work Health and Safety Regulation 2011.

- 9.13 In Clause 9.12:
- (a) the expressions “first supplied”, “hazardous chemical” and “safety data sheet” have the meaning given in the *Work Health and Safety Regulation 2011*; and
  - (b) the expressions “importer”, “manufacturer”, “supplier” and “workplace” have the meaning given in the *Work Health and Safety Act 2011*.

## **10 INSURANCE**

- 10.1 The Contractor must have and maintain the following insurances:
- (a) *Workers Compensation and Rehabilitation Act 2003* insurance requirement— the Contractor must ensure, where applicable, they have and maintain insurance under the *Workers’ Compensation and Rehabilitation Act 2003* to cover workers, eligible persons, self-employed contractors, directors, trustees and partners; and
  - (b) Public liability insurance requirement—public liability insurance in an amount specified at Item 9 of Schedule 1 in respect of any 1 occurrence and for an unlimited number of claims; and
  - (c) Product liability insurance requirement—product liability insurance in an amount specified at Item 10 of Schedule 1 in respect of any 1 occurrence and for an unlimited number of claims; and
  - (d) Professional indemnity insurance requirement—professional indemnity insurance in an amount specified at Item 11 of Schedule 1 in respect of any 1 occurrence and for an unlimited number of claims; and
  - (e) Any other insurance requirement—insurance in an amount specified at Item 12 of Schedule 1 in respect of any 1 occurrence and for an unlimited number of claims
- 10.2 The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 10 have been effected and maintained.
- 10.3 Each public liability insurance policy must either insure the Principal and the Contractor severally, for their respective entitlements and interests under the Contract, and for this purpose accept that the insured comprises at least the Principal and the Contractor as if a separate insurance policy were issued to each of them (but not so as thereby to increase the sum insured) or be endorsed to note the interest of the Principal under the Contract.
- 10.4 Each public liability insurance policy must contain a cross liability provision waiving the insurer's right of subrogation at least against the Principal save in relation to damage intentionally caused by the Principal.
- 10.5 Each insurance policy must:
- (a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
  - (b) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
  - (c) contain no exclusions, endorsements or alterations not approved in writing by the Principal (that approval not to be unreasonably withheld); and
  - (d) contain an undertaking by the insurer to notify the Principal in writing not later than 30 calendar days before it terminates or materially alters the policy; and
  - (e) otherwise contain provisions acceptable to, or required by the Principal (but the Principal may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
  - (f) remain current at all times during the Term.
- 10.6 If the Contractor is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Contractor and its servants and agents for liability under the Contract for the amount specified in Clause 10.1. The Contractor must maintain the professional indemnity insurance on terms and conditions no less favourable to the Principal than those approved under this Clause 10, for the Term and, after expiry or termination of the Contract upon request in writing.



- 10.7 If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.
- 10.8 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 10.
- 10.9 The Contractor must give the Principal upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this Clause 10.
- 10.10 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 10 within 7 calendar days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 10.11 This Clause 10 shall survive termination or expiration of the Contract.

## **11 GUARANTEES/WARRANTIES/DEFECTIVE DELIVERABLES**

- 11.1 The Contractor guarantees that all Deliverables provided in accordance with the Specifications or on the Purchase order conform to the standards specified in the Specifications or on the Purchase Order are of merchantable quality and are fit for the intended purpose for which they are sold.
- 11.2 The Contractor shall further guarantee all Deliverables provided in accordance with the Specifications or against a Purchase Order against all defects arising from faulty materials, workmanship or design for a minimum period of twelve (12) months from date of acceptance after delivery by the Contractor and any defective supplies shall be immediately repaired or replaced at Contractor's cost under Clause 11.6
- 11.3 Where, at any time during the supply of the Deliverables or any part of the Deliverables pursuant to a Contract or Purchase Order, or after the supply of the Deliverables pursuant to a Contract or Purchase Order, an Authorised Officer determines, acting reasonably, that the Deliverables or a part of the Deliverables do not comply with the Specification, the Purchase Order or the Contract ("Defective Deliverables"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the Deliverables or such part of the Deliverables as do not comply.
- 11.4 The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Deliverables until the Authorised Officer has certified that the resupplied Deliverables comply with the Specification, the Purchase Order or the Contract, as the case may be.
- 11.5 If the Contractor fails to comply with a requirement of a notice given under Clause 11.3, the Principal reserves the right to arrange for the supply of the Deliverables from another supplier.
- 11.6 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 11.4 in excess of the Contract Price shall be a debt due and payable by the Contractor to the Principal. Costs shall include any freight, packaging and any other associated charges.

## **12 OBLIGATIONS OF CONTRACTOR**

- 12.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Deliverables.
- 12.2 The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the Deliverables.
- 12.3 The Contractor must permit the Authorised Officer, and any other person authorised in writing by the Principal acting reasonably:
- (a) to access premises occupied by the Contractor where the Deliverables are being produced or undertaken; and
  - (b) to inspect any materials used, or to be used, in the supply of the Deliverables.

- 12.4 The Contractor must:
- (a) hold and maintain, for the Term of the Contract, each licence, permit, permission and authority necessary for the supply of the Deliverables; and
  - (b) if requested by the Principal acting reasonably, deliver to the Principal evidence of compliance with the obligations of the Contractor under Clause 12.4(a).
- 12.5 If the Deliverables, or any part of the Deliverables is the subject of a manufacturers or suppliers warranty, the Contractor must ensure that the warranty is transferred to the Principal, at no cost to the Principal, on the supply of the Deliverables to the Principal.
- 12.6 If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.
- 12.7 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.
- 12.8 The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.
- 12.9 For the purposes of this Clause 12, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

### **13 VARIATION OF DELIVERABLES**

- 13.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Deliverables in nature, scope or timing.
- 13.2 Without limiting the generality of Clause 13.1, the Principal may direct the Contractor to:
- (a) increase, decrease or omit any part of the Deliverables; or
  - (b) change the character or content of any part of the Deliverables; or
  - (c) change the direction or dimensions of any part of the Deliverables; or
  - (d) perform additional work.
- 13.3 Where the Principal requires a variation to the Deliverables, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Deliverables and failing agreement, either party may invoke the dispute resolution procedure in Clause 22.
- 13.4 The Contractor must not commence work on the variation to the Deliverables unless and until the variation is agreed in writing by the Principal and the Contractor.

### **14 INVOICING**

- 14.1 The Contractor must submit invoices to the Authorised Officer at the times specified in Item 23 at Schedule 1 via email to [accountspayable@noosa.qld.gov.au](mailto:accountspayable@noosa.qld.gov.au) The Principal will not have any obligation to pay the Contractor for Deliverables until the Authorised Officer has been given a correctly rendered invoice.
- 14.2 A correctly rendered invoice **must**:
- (a) identify the Deliverables the subject of the invoice; and
  - (b) specify the Contract number allocated to the Contract by the Principal (or any other number as the Principal may specify in writing to the Contractor for the purposes of the Contract)(if any); and
  - (c) specify the title of the Contract; and
  - (d) specify the Purchase Order number; and
  - (e) where Services are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Authorised Officer; and
  - (f) specify details of the Purchase Order; and
  - (g) specify details of the Contract Price requested by the Principal; and

- (h) specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
  - (i) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Purchase Order or the Specification; and
  - (j) specify the Australian Business Number of the Contractor; and
  - (k) specify the address for payment of the Contractor; and
  - (l) specify the date of supply of the Deliverables identified in the invoice; and
  - (m) specify the Contractor's invoice number and invoice date; and
  - (n) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- 14.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

## **15 PAYMENT**

- 15.1 Subject to the Authorised Officer's certification that:
- (a) the Deliverables supplied by the Contractor comply with the relevant Purchase Order, the Specification and the Contract; and
  - (b) the Deliverables supplied by the Contractor are complete; and
  - (c) the Contractor's invoice is in accordance with the Contract,
- the Principal must pay the amount due to the Contractor by the specified timeframe at Item 24 of Schedule 1 of receipt of an invoice or, if additional information is required by the Authorised Officer, within the timeframe specified at Item 24 of Schedule 1 after receipt of the additional information.
- 15.2 If the Principal pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Principal may deduct any overpaid amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Contract, recover the amount from the Contractor as a debt due and payable to the Principal.
- 15.3 Payment of money to the Contractor does not constitute an admission by the Principal that Deliverables have been supplied in accordance with the Contract.
- 15.4 Title in the Deliverables shall pass to the Principal:
- (a) if the Deliverables are Goods – on delivery of the Goods to the Principal;
  - (b) otherwise – upon the giving of a certification under Clause 15.1 for the Deliverables.
- 15.5 Payment shall include credit by way of set off.
- 15.6 Failure by the Principal to pay the amount payable by the due time will not be grounds to invalidate or avoid the Contract.
- 15.7 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.
- 15.8 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any security held by the Principal under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

## **16 TEMPORARY SUSPENSION OF SUPPLY**

- 16.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Deliverables for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Deliverables.

- 16.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Deliverables suspended by written notice given under Clause 16.1.
- 16.3 Where the Contractor is required to suspend the supply of the Deliverables pursuant to Clause 16.1:
- (a) the Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and
  - (b) any previously agreed date for completion of the supply of the Deliverables will be postponed by a period equal to the duration of the suspension; and
  - (c) the Contractor must promptly take all steps necessary to minimize the loss suffered by the Contractor as a result of the suspension.
- 16.4 The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the Deliverables. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 22.
- 17 VARIATION OF PRICE**
- 17.1 The Contract Price is firm and not subject to rise or fall unless otherwise negotiated in specific Contract conditions. If rise and fall is used then the price variation will be determined by the relevant CPI out of Brisbane.
- 17.2 The rates submitted shall be firm for the first twelve (12) months of the Contract and then subject to rise or fall annually by applying the formula:
- Contract Price x  $\frac{\text{Index 2}}{\text{Index 1}}$**
- 17.3 For the purposes of this clause:
- (d) "Index 1" means the CPI published with respect to the quarter year last expiring before the Contract Commencement Date;
  - (e) "Index 2" means the CPI published with respect to the quarter year last expiring before the relevant Adjustment Date;
  - (f) "Adjustment Date" means each anniversary of the Contract Commencement Date during the term;
  - (g) "CPI" means the Consumer Price Index (All Groups) Brisbane figure published from time to time by the Australian Bureau of Statistics or, if no Consumer Price Index (All Groups) Brisbane figure is published at the relevant time by the Australian Bureau of Statistics, an index that the Australian Statistician nominates as appropriate (whether by public notice or by specified advice to the Principal or the Contractor).
- 18 DUTY**
- 18.1 The Contractor must pay all duty imposed under the Duties Act 2001 on the Contract.
- 19 GOODS AND SERVICES TAX**
- 19.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 19.2 The Contract Price includes the Principal's liability for GST on the supply of the Deliverables. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Deliverables.
- 19.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this Clause 19.3 does not apply if the supply of the Deliverables is not a taxable supply.

- 19.4 If the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor under the GST Act then:
- (a) the Contractor must issue an appropriate GST adjustment note to the Principal; and
  - (b) the difference must be paid by or to the Principal, as the case may be.

## **20 TERMINATION GENERALLY**

- 20.1 If the Contractor:
- (a) breaches any Clause of the Contract; or
  - (b) suspends payment of its debts or is unable to pay its debts; or
  - (c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 calendar days; or
  - (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
  - (e) has a receiver appointed for all or any part of the assets of the Contractor; or
  - (f) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
  - (g) ceases to carry on business,
- the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.
- 20.2 If within 14 calendar days of receiving a notice under Clause 20.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.
- 20.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 20.2, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with Clause 20.2:
- (a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
  - (b) suspend or cease all payments otherwise due to the Contractor.
- 20.4 This Clause 20 shall survive termination or expiration of the Contract.
- 20.5 Upon termination of the Contract pursuant to Clause 20.2, all money which has been paid and all money to be paid for Deliverables supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

## **21 TERMINATION FOR CONVENIENCE**

- 21.1 The Principal may terminate the Contract, in whole or in part, for convenience, by:
- (a) giving 30 calendar days written notice to the Contractor; or
  - (b) giving such other period of written notice as is determined by the Principal acting reasonably.
- 21.2 If the Contract is terminated in accordance with Clause 20.1:
- (a) the Contractor must, promptly after receipt of a notice given under Clause 21.1, take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and sub-contractors; and
  - (b) subject to compliance by the Contractor with its obligations under Clause 21.2(a) and (c), the Principal must pay to the Contractor, costs and expenses reasonably incurred by the Contractor in carrying out the Contract to the date of termination, together with any costs and expenses reasonably incurred by the Contractor which are directly attributable to the termination under Clause 21.1; and

- (c) The Principal will not be liable for payment to the Contractor of any compensation relating to loss of profit, revenue, goodwill or business opportunity, damage to reputation or indirect or consequential loss, or for any other reason in relation to termination and the Principal will not be liable to pay to the Contractor an amount greater than the amount that the Principal would have been obliged to pay to the Contractor had the Contract been completely performed.

## **22 DISPUTE RESOLUTION**

- 22.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 22.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 22.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.
- 22.4 Within 7 calendar days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 22.5 If the dispute has not been resolved within 28 calendar days of the giving of the Dispute Notice, the dispute may be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.
- 22.6 Notwithstanding the existence of the dispute, each party must continue to perform its obligations under the Contract.
- 22.7 Nothing in this Clause 22 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 22 or any matter arising under the Contract.

## **23 CLAUSES TO SURVIVE EXPIRATION OR TERMINATION**

- 23.1 The following Clauses survive the expiration or termination of the Contract:
- (a) Clause 24 – Intellectual Property Rights; and
  - (b) Clause 25 – Release and Indemnity; and
  - (c) Clause 27 – Confidentiality; and
  - (d) Clause 36 – Right to Information and Disclosure; and
  - (e) Clause 37 – Information Privacy; and
  - (f) Clause 38 – Security (Bank Guarantee).

## **24 INTELLECTUAL PROPERTY RIGHTS**

- 24.1 The Contractor warrants that the supply of the Deliverables by the Contractor to the Principal and the use of the Contract Material by the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.
- 24.2 The Contractor must indemnify the Principal against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Deliverables by the Contractor to the Principal under the Contract.
- 24.3 In respect of the supply of the Deliverables by the Contractor under the Contract, the Contractor must at all times indemnify and keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against the Principal where the loss or liability arose out of, or in connection with, or in respect of, the supply of the Deliverables by the Contractor under the Contract.
- 24.4 The indemnities in Clause 24.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.



- 24.5 Unless otherwise specified in Item 21 of Schedule 1, title to and Intellectual Property Rights in all New Contract Material provided to the Principal, including each and every stage of design and production of all New Contract Material, will upon its creation vest in the Principal.
- 24.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:
- (a) to use, reproduce, communicate to the public and adapt for its own use; and
  - (b) to perform any other act with respect to copyright; and
  - (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
- the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 24.7 Where specified in Item 22 of Schedule 1, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Contractor and the Contractor grants to the Principal, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Special Conditions of Contract.
- 24.8 Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Contractor.
- 24.9 Without limiting Clause 24.8, the Contractor consents, in relation to the Contract Material:
- (a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
  - (b) to the specific acts or omissions set out in the Contract.
- 24.10 Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:
- (a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 24; and
  - (b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

## **25 RELEASE AND INDEMNITY**

- 25.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Deliverables under the Contract.
- 25.2 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from any of the following:
- (a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
  - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
  - (c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.

- 25.3 In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of Deliverables supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.
- 25.4 Each of the Principal and the Contractor must use all reasonable endeavours to mitigate its loss or damage arising under, or in connection with, any:
- (a) breach of the Contract; or
  - (b) tort; or
  - (c) other common law or legislative cause of action arising under, or in connection with, the Contract.

## **26 CONFLICT OF INTEREST**

- 26.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than the Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 26.2 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Deliverables to the Principal. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 26.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 20.1.

## **27 CONFIDENTIALITY**

- 27.1 The Contractor must, and must ensure that its employees, agents and subcontractors, keep confidential any information obtained in the course of performing the Contract.
- 27.2 If required by the Special Conditions of Contract, the Contractor's employees, agents and subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 27.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 27.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 27.4 However, the Contractor may disclose any information:
- (a) which it is legally required or entitled to disclose; or
  - (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

## **28 ASSIGNMENT**

- 28.1 The Contractor must not assign or subcontract any of the rights or obligations of the Contractor under the Contract (either for the supply of the Deliverables or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:
- (a) may be conditional; and
  - (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 28.2 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.

## **29 NEGATION OF EMPLOYMENT AGENCY ETC**

- 29.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 29.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 29.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

## **30 NOTICES**

- 30.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand or by facsimile transmission or by email. Notices are deemed given 7 calendar days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. If notices are given by email the notices are deemed given 3 calendar days after sending if sent after close of business on the last working day of a working week, or the second working day after a break. The addresses for service of notices to the Principal are listed at Item 4 and the addresses for service of notices to the Contractor are listed at Item 7 of Schedule 1:
- 30.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.
- 30.3 If the Contractor is a corporation then a notice may be served on the Contractor by leaving it at, or posting it to, the registered office of the corporation.

## **31 FORCE MAJEURE**

- 31.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:
  - (a) is caused by Force Majeure; or
  - (b) continues for less than 5 calendar days.
- 31.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 calendar days, the Principal may terminate the Contract by giving written notice to the Contractor.

## **32 THE PRINCIPAL AUTHORISED OFFICER**

- 32.1 The Principal's Authorised Officer is listed at Item 3 of Schedule 1.
- 32.2 The Principal must, by giving written notice to the Contractor, appoint a representative (the "Authorised Officer" listed at ) who shall be responsible for administering the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.
- 32.3 For the avoidance of doubt, the Principal may appoint more than 1 Authorised Officer. If the Principal appoints more than 1 Authorised Officer:
  - (a) each Authorised Officer must be responsible for administering a specified part of the Contract on behalf of the Principal; and
  - (b) the Principal may not appoint more than 1 Authorised Officer to administer a specified part of the Contract; and
  - (c) the Principal must give written notice to the Contractor detailing which part of the Contract is to be administered by each Authorised Officer.

### **33 CONTRACTOR AUTHORISED OFFICER**

- 33.1 Not later than 14 calendar days after the Contract Commencement Date the Contractor must appoint a representative, to be listed at Item 6 of Schedule 1, who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor's representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor's representative from time to time.
- 33.2 The Contractor's representative must have a detailed knowledge of all activities associated with the supply and performance of the Deliverables and be authorised by the Contractor to make decisions and act on behalf of the Contractor.
- 33.3 The Contractor's representative must:
- (a) liaise with and report to the Authorised Officer about the supply of the Deliverables; and
  - (b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
  - (c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract; and
  - (d) if required, provide written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.

### **34 SECURITY AND ACCESS**

- 34.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or an Authorised Officer, including those relating to security and work health and safety which are in effect at the premises or facility.

### **35 INDUSTRIAL DISPUTES**

- 35.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

### **36 RIGHT TO INFORMATION AND DISCLOSURE**

- 36.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 36.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 36.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 36.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information, this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

### **37 INFORMATION PRIVACY**

- 37.1 Where the Contractor or its subcontractors have access to or are responsible for holding Personal Information, the Contractor must:
- 37.2 comply with parts 1 and 3 of chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
- (a) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
  - (b) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
  - (c) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and

- (d) not transfer the Personal Information outside Australia without the consent of the Principal; and
  - (e) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
  - (f) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
  - (g) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
  - (h) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.
- 37.3 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 37 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.
- 38 SECURITY (BANK GUARANTEE)**
- 38.1 Where required, the Contractor must deliver the Bank Guarantee to the Principal not later than 14 calendar days after the Principal delivers the Letter of Acceptance to the Contractor.
- 38.2 The Security Deposit amount required to be supplied by the Contractor is stated at Item 13 of Schedule 1.
- 38.3 The Principal may apply the Bank Guarantee to:
- (a) remedy Contractor defaults under the Contract; and
  - (b) compensate the Principal for loss or expense resulting from Contractor defaults under the Contract.
- 38.4 If the Contractor defaults under the Contract, the Principal may demand from the Obligor under the Bank Guarantee:
- (a) the money, including accrued interest (if any), owing by the Contractor (where the default is constituted by non-payment of money);
  - (b) the money the Principal has expended to remedy the default, rectify the damage resulting from the default and reimburse itself money otherwise lost or expended because of the default (where the default is failure to discharge a non-money obligation).
- 38.5 The Principal may demand payment under the Bank Guarantee by delivering to the Obligor a notice, signed by the Principal or 1 of its Authorised Officers:
- (a) certifying that the sum specified in the notice is owing by the Contractor to the Principal under the Contract; and
  - (b) requesting payment of that sum without reference to the Contractor.
- 38.6 If the Principal receives payment upon a demand made under the Bank Guarantee, the Contractor must deliver to the Principal, in exchange for the Bank Guarantee under which the payment was made, a new Bank Guarantee securing payment of the whole of the Bank Guarantee Amount.
- 38.7 The Principal may exercise its entitlements under this Clause 38 against either or both of the Contractor and the Obligor.
- 38.8 The Principal must apply the money received from the Obligor in response to a notice under Clause 38.5, so far as the money will extend, to:
- (a) discharging outstanding obligations of the Contractor under Contract; and
  - (b) doing anything else that the Principal reasonably considers necessary to mitigate the damaging effects of incomplete or Defective Deliverables supplied by the Contractor; and

- (c) compensating itself for damages suffered as a result of the Contractor's breach of covenant.
- 38.9 If money received from the Obligor in response to a notice under Clause 38.5 is insufficient to permit full discharge of the outstanding Contractor obligation/s, the Principal may:
  - (a) discharge the obligation/s to the extent the money received from the Obligor permits; or
  - (b) discharge fully the outstanding obligations, and recover from the Contractor as a liquidated debt the difference between the money actually expended by the Principal and the money received from the Obligor.
- 38.10 If the requirements of this Clause 38 are met, the Principal must return to the Contractor the Bank Guarantee identified in Clause 38.1 not later than 30 calendar days after the end of the Term.

## **39 MISCELLANEOUS**

- 39.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Deliverables.
- 39.2 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.
- 39.3 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 39.4 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 39.5 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.

## **40 USE BY OTHER LOCAL GOVERNMENTS**

- 40.1 A Local Government other than the Principal (an "Other Local Government") may access the Contract subject to mutual agreement in writing of the Principal, the Contractor and the Other Local Government.
- 40.2 Responsibility for establishing and managing any contract between the Contractor and the Other Local Government rests with the Other Local Government.