

Comprehensive Contract Conditions

For General Goods and Services

These Comprehensive Contract Conditions (version 3.1 – published February 2023) are designed for procurements that are High Value and/or Risk.

1. The Contract

1.1. When a Contract is formed

A Contract will be formed between the Customer and the Supplier on the earlier of the date when:

- (a) the Customer communicates in writing its acceptance of the Supplier's offer; or
- (b) the authorised representatives of both parties have signed the appropriate section of the Details to indicate their acceptance and communicated that acceptance to the other party; or
- (c) if the Contract is formed under a SOA, the Contract is formed in accordance with the SOA Conditions.

This Contract may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

Where a Contract is formed under (b) above:

- (i) the parties consent to the use of electronic communications as a method for signing the Contract; and
- (ii) the parties may communicate their signature by providing a copy of the signed document by electronic means.

1.2. Interpretation

The definitions and rules of interpretation which apply to this Contract are those specified in the Definitions and Interpretation document, (version 3.1 published February 2023), available at www.forgov.qld.gov.au/general-goods-and-services-templates.

1.3. Documents making up the Contract and Hierarchy

- (a) Subject to clause 1.3(c), the Contract is made up of:
 - (i) the Details;
 - (ii) the Comprehensive Contract Conditions; and
 - (iii) any other document expressly incorporated by reference in the Details.
- (b) If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:
 - (i) the contract departures section of the Details;
 - (ii) the Schedules to the Details (excluding any document incorporated by reference);
 - (iii) the Comprehensive Contract Conditions;

- (iv) the Details (excluding those parts of the Details listed in (b)(i) and (b)(ii) above);
 - (v) any other document expressly incorporated by reference in the Details or Schedules.
- (c) A Contract formed under a SOA is made up of:
- (i) the documents making up the SOA as set out in clause 1.3 of the SOA Conditions; and
 - (ii) the documents in clause 1.3(a) above,
- in descending order of precedence. The Contract may include additional provisions to the extent they are additional to, and do not detract from these documents.

2. Non-exclusivity

The Supplier acknowledges that unless expressly stated otherwise in the Details, the Customer may engage other suppliers (or itself) to provide goods, services and other deliverables the same as or similar to the Deliverables.

3. Contract Term

- (a) The Contract Term starts on the start date in the Details and continues for the period set out in the Details, including any extension options which are exercised, unless earlier terminated in accordance with this Contract.
- (b) The Customer must give notice of its intention to exercise any extension option.

4. Supplier to provide Deliverables

The Customer appoints the Supplier to provide the Deliverables. The Supplier accepts the appointment.

5. Supplier obligations

The Supplier:

- (a) **(time)** must meet all due dates specified in the Details or otherwise agreed, and perform all other obligations promptly;
- (b) **(delay)** must promptly notify the Customer if it believes it will not be able to meet any due date;
- (c) **(Deliverables)** must provide the Deliverables in accordance with the Contract and all Laws;
- (d) **(requirements)** must meet, and ensure that the Deliverables meet, the Requirements, and meet or exceed the performance measures specified in the Details (if any);
- (e) **(standards)** must ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose and any other purpose disclosed by the Customer;
- (f) **(protection)** must protect people and property, avoid unnecessary interference with passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance;

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- (g) **(policies)** must comply with all policies, codes of conduct (including the Supplier Code of Conduct and the Ethical Supplier Threshold), rules, standards and procedures (policies) which apply to the Deliverables and/or the Supplier's obligations under this Contract. If any new policies are introduced, or amendments made to any existing policies, which apply to the Deliverables and/or the Supplier's obligations under this Contract, the Supplier must comply with the new or amended policies. Access to the relevant policies will be provided on request;
- (h) **(best practice principles)** must, and must ensure that its subcontractors, fulfil any commitments in relation to the Best Practice Principles made in their respective offers when performing the Contract and providing the Deliverables;
- (i) **(directions)** must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract;
- (j) **(Customer Inputs)** must take care of Customer Inputs, and only use Customer Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the Details. If the Supplier loses or damages any Customer Inputs, the Supplier will, at the election of the Customer, promptly replace such Customer Inputs or pay the Customer the reasonable replacement cost of such Customer Inputs. As between the Supplier and the Customer, the Customer retains all right, title and interest (including all Intellectual Property Rights) in Customer Inputs;
- (k) **(act reasonably)** must act reasonably in exercising all of its rights under the Contract;
- (l) **(cooperation)** must cooperate with the Customer's Personnel and other suppliers to the Customer who provide goods and services relating to the Deliverables;
- (m) **(Laws)** must comply with all Laws and ensure that the Deliverables and use of them by the Customer as contemplated in the Contract will comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), the *Modern Slavery Act 2018* (Cth) (where applicable to the Supplier) and the *Human Rights Act 2019* (Qld) (where applicable to the Supplier);
- (n) **(records)** must create and maintain records of its performance of this Contract in accordance with usual industry practice for provision of goods and services similar to the Deliverables. The Supplier will give the Customer reasonable access to records on reasonable request;
- (o) **(insurance)** must at its cost, by the start date of this Contract, take out and maintain during the Contract Term the insurances described in the Details, on reasonable commercial terms, with an insurer which, unless otherwise agreed by the Customer, is authorised and licensed to operate in Australia. The Supplier must immediately notify the Customer if any policy is cancelled or there is any significant change in any of those policies. Unless otherwise specified in the Details, the Supplier must maintain run-off insurance for a minimum period of 4 years after the Contract ends or such other period as specified in the Details, for all insurance policies which are maintained on a "claims made" basis.

The Supplier must on request, promptly provide to the Customer a certificate of currency for each policy or such other satisfactory evidence the Customer may reasonably require to demonstrate that the Supplier has in place the insurance policies required. If the Supplier does not take out or maintain these policies, the Customer

may take out those policies and the Supplier will be responsible for the Customer's cost of doing so;

- (p) **(authorisations)** must obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must provide evidence that it has complied with this clause, if the Customer asks;
- (q) **(further assurances)** must do anything and execute any document that the Customer reasonably asks, to give effect to this Contract;
- (r) **(reports)** must provide reports in the timeframe and format specified in the Details and such other reports as and when reasonably requested by the Customer;
- (s) **(modern slavery)** must not, and must take reasonable steps to ensure that its supply chain does not, undertake acts which could constitute an offence involving Modern Slavery;
- (t) **(modern slavery due diligence)** must implement due diligence procedures for its supply chain to ensure compliance with the *Modern Slavery Act 2018* (Cth), where that Act applies to the Supplier and must ensure its own due diligence obligations under the *Modern Slavery Act 2018* (Cth) are met;
- (u) **(competitive neutrality)** must, if the Supplier is a government owned business, local government, or Commonwealth, State or Territory authority, price its offer to comply with the competitive neutrality principles of the Supplier's jurisdiction;
- (v) **(expertise)** warrants that it has the necessary skills and expertise to properly perform the Contract, and all its Personnel performing duties in relation to this Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning this Contract;
- (w) **(access and inspection)** must, on reasonable prior written notice from the Customer, give the Customer or its nominated agent reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Customer or a third party engaged by the Customer to verify:
 - (i) the completeness and accuracy of information provided by the Supplier in connection with the Contract or the associated Invitation Process, and
 - (ii) the Supplier's compliance with its obligations under the Contract;and must, without limiting the Customer's other rights, promptly address any non-compliances notified by the Customer to the Supplier to rectify;
- (x) **(work health and safety)** without limiting the above, must at all times, comply and ensure that the Supplier's Personnel comply with all applicable work health and safety Laws and, if requested by the Customer, provide copies of documents recording any work health and safety management system that it implements to comply with those work health and safety Laws. The Supplier must ensure that it and its Personnel do not, at any time, cause the Customer to be in contravention of a work health and safety Law; and
- (y) **(financial viability)** must provide to the Customer or its nominated agent, upon request, all information as the Customer reasonably requires to satisfy itself that the

Supplier has the financial capability to meet its obligations under the Contract. The Customer reserves the right to engage an independent financial assessor as a nominated agent to conduct financial viability assessments in relation to the Supplier at reasonable times during the Contract Term. The Supplier is required to co-operate with the independent financial assessor during the conduct of the financial assessment.

6. Security

6.1. Provision of security

- (a) The Supplier must, if specified in the Details, provide a bank guarantee, performance guarantee and/or other specified security (security) to guarantee the proper performance of the Supplier's obligations under the Contract.
- (b) The security must:
 - (i) if it is a financial security, comply with the requirements of Part 2 Division 6 of the Financial and Performance Management Standard 2019 (Qld) (Standard);
 - (ii) be in a format acceptable to the Customer acting reasonably; and
 - (iii) meet all additional conditions specified in the Details.

If the security is a financial security and the provider of a security stops being an approved security provider under the Standard, the Supplier must comply with a notice from the Customer under section 32(2) of the Standard. If the guarantor becomes Insolvent, ceases to exist, or the security otherwise becomes unenforceable, the Supplier must provide further security as required by the Customer.

6.2. Enforcement

- (a) If the Supplier fails to properly perform its obligations under the Contract and the Customer suffers loss or damage as a result, the Customer may claim upon and will be entitled to receive payment for such loss or damage under the security, subject to clause 12(c).
- (b) If the Customer makes any claim upon a financial security, the Supplier must, within 30 days of the claim being made, reinstate the financial security to the level required in the Details.
- (c) The Supplier agrees not to take, and will ensure that no guarantor takes, any action to obtain an injunction or otherwise prevent the Customer from making a claim upon or receiving a payment in connection with any security.
- (d) The Customer will not have any liability to the Supplier (whether in negligence or otherwise) in connection with the Customer's enforcement of any security in accordance with this clause.

6.3. Release of security

- (a) The Customer will release any security:
 - (i) in accordance with any applicable Law; or
 - (ii) otherwise, when the Supplier has fully performed or discharged its obligations under the Contract (excluding any obligations which survive termination in accordance with clause 25(i)), if in the reasonable opinion of the Customer the

Customer is not entitled to make a claim under the security and there is no reasonable prospect that the Customer will become entitled to make a claim under the security.

6.4. Adverse changes

- (a) Whether or not the Supplier is required to provide security, the Supplier must notify the Customer of any actual or reasonably anticipated significant adverse change in the financial position of the Supplier (and any guarantor) (Adverse Change) and will provide all documentation and information the Customer reasonably requests in relation to the Adverse Change.
- (b) If requested by the Customer, the parties will meet to discuss in good faith any changes to the Contract and/or any existing security, or any new security which the Customer may reasonably require to address any Adverse Change. If the parties agree any changes, the parties will promptly vary the Contract to document the agreed change.
- (c) If the parties are unable to address any Adverse Change to the Customer's reasonable satisfaction within 30 days of the Supplier's notice of the Adverse Change, or another period agreed by the parties, the Customer may elect to terminate the Contract. If the Customer terminates under this clause, the Customer will pay for any Deliverables properly performed or provided and any work in progress not yet delivered to the Customer, but the Customer will not be required to make any other payment in connection with the termination.

6.5. Costs

All charges incurred by the Supplier and any guarantor in obtaining, maintaining and releasing any security must be met by the Supplier or the guarantor (as applicable).

7. Terms and conditions specific to Goods and Deliverables

The following terms and conditions apply to the supply of Goods and to Deliverables which the Supplier develops or creates in performing the Services:

- (a) **(condition)** all Goods must be new, unused and of recent origin;
- (b) **(test)** the Supplier must inspect and test all Goods and other Deliverables that will be delivered in a material form to ensure that they comply with the Requirements, before delivery;
- (c) **(manufacturer warranties)** the Supplier must assign any manufacturer's warranty to the Customer, where possible to do so, and must inform the Customer where it is not possible to do so;
- (d) **(delivery)** the Supplier must deliver the Goods or other relevant Deliverables to the Site, in accordance with the Customer's instructions. If the Supplier asks, the Customer will confirm in writing that the Deliverables have been received;
- (e) **(acceptance)** acceptance of the Goods by the Customer does not relieve the Supplier of any of its obligations under the Contract;

- (f) **(packaging)** the Supplier must adequately pack and protect Goods to withstand transit and storage-
- (g) **(rejected Goods)** if the Customer rejects Goods for non-conformity with Requirements, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost. The Customer is under no obligation to pay for rejected Goods and the Supplier will promptly refund any amounts pre-paid for rejected Goods within 10 Business Days of the Customer's rejection;
- (h) **(risk)** risk in Goods and any other Deliverables which are provided in a material form will transfer to the Customer when delivered to the delivery address set out in the Details in accordance with the Customer's delivery instructions;
- (i) **(title)** title in Goods and any other Deliverables which are provided in a material form will transfer on the earlier of the delivery or payment of the applicable Price;
- (j) **(no encumbrance)** the Supplier warrants that the Goods and any other Deliverables will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract; and
- (k) **(associated information)** the Supplier must provide with the Goods any information, data or manuals required for the Customer to use, maintain, repair, install or operate the Goods.

8. Subcontracting and Personnel

8.1 Subcontracting

- (a) The Supplier may only subcontract any part of its obligation under this Contract to subcontractors identified in the Details or with the Customer's prior written consent. The Customer will not unreasonably withhold consent but may give consent subject to reasonable conditions.
- (b) If the Customer agrees that the Supplier may subcontract its obligations under the Contract, the Supplier must implement an appropriate system of due diligence, designed to ensure the subcontractor takes reasonable steps to reduce the risk of Modern Slavery in the subcontractor's supply chains and in any part of the subcontractor's business. The Supplier must also take reasonable steps to ensure that the subcontractor complies with the Ethical Supplier Threshold.
- (c) The Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier from its liabilities and obligations under the Contract.

8.2 Personnel

- (a) **(background checks)** Unless otherwise specified in the Details, prior to permitting any Personnel to be involved in the supply of any Deliverables under the Contract, the Supplier must seek the prior written consent of such Personnel for:
 - (i) the Customer to conduct a criminal history check and/or any other checks required by the Customer and disclose the results to the Supplier; or

- (ii) the Supplier to conduct and provide to the Customer an original or certified copy of the results of, a criminal history check and/or any other checks required by the Customer for such Personnel.

If the Supplier is unable to obtain the consent of such Personnel for the purposes of clause 8.2(a), the Supplier must not allow those Personnel to be involved in the supply of any Deliverable under the Contract, unless the Customer otherwise consents.

- (b) **(responsibility)** The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under this Contract, and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier.
- (c) **(not Customer employees)** The Supplier is not, and Supplier Personnel are not, employees of the Customer.
- (d) **(convictions)** The Supplier must notify the Customer promptly if it becomes aware during the Contract Term that any of its Personnel have been convicted of an indictable offence, whether recorded in Queensland or elsewhere, to the extent permitted by Law.
- (e) **(removal)** If the Customer requires, at its discretion and without having to give reasons, the Supplier must not permit the Personnel to commence performance under the Contract, or if they have commenced, promptly remove them from the Customer's premises and/or the performance of this Contract, and replace them with other Personnel acceptable to the Customer, at no additional cost to the Customer.
- (f) **(industrial relations)** The Supplier must comply with all Laws, applicable awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions.

8.3 Key Personnel

In providing the Services the Supplier must:

- (a) ensure that the Key Personnel perform the roles allocated to them in the Details 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;
- (b) promptly provide information reasonably requested by the Customer about any Key Personnel;
- (c) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death;
- (d) promptly notify the Customer if any Key Personnel is unavailable to perform his or her allocated role, for any reason; and
- (e) ensure that any replacement Key Personnel have equivalent or superior skills, qualifications and experience, and promptly provide information reasonably requested about any Key Personnel or proposed replacement Key Personnel, including by providing the curriculum vitae for each relevant individual.

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

9. Price

9.1. Pricing all inclusive

Unless otherwise stated in the Details, the Price is to be provided in Australian dollars, inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If this Contract requires the Supplier to do or provide anything, and there is no separate Price 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. The Supplier must not invoice the Customer, and the Customer is not required to pay, any amount except for the Price.

9.2. Expenses

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

- (a) the Customer requests that the Supplier travel away from the agreed service location;
- (b) 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;
- (c) the Customer has approved the expenses in writing before they are incurred; and
- (d) the Supplier provides satisfactory evidence of payment.

9.3. Price review

The Supplier may review the Prices in accordance with any Price review mechanism in the Details. No other Price change or new Price will be effective unless the Customer agrees in writing.

10. Invoicing and payment

The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in the Details. The invoice must be a Correctly Rendered Tax Invoice.

The Customer is not required to pay any invoice that does not comply with this clause.

Unless expressly stated otherwise in the Details, the Supplier must not:

- (a) invoice the Customer (and the Customer is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
- (b) charge or pass through any fees, costs or charges associated with a payment method.

The Customer will pay each Correctly Rendered Tax Invoice within 30 days of receipt, except where a government policy applies which prescribes a different payment period (such as the Queensland Government On-time Payment Policy, which requires payment of eligible invoices to small business suppliers within 20 days).

The Customer may set off any amounts payable by the Supplier to the Customer against amounts payable to the Supplier by the Customer. If the moneys payable to the Supplier are insufficient to discharge the amounts payable by the Supplier to the Customer, the Customer may have recourse to any security provided in accordance with clause 6. Nothing in this clause will affect the Customer's right to recover from the Supplier the whole amount owing by the Supplier to the Customer, or any balance that remains owing after set off.

The Customer may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.

11. GST

- (a) **(construction)** In this clause 11, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) **(GST exclusive)** Unless expressly stated, all moneys or other sums payable or consideration to be provided under this Contract are exclusive of GST.
- (c) **(payment of GST)** If GST is payable on any supply made under this 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 this Contract.
- (d) **(tax invoice)** The supplier must deliver a Correctly Rendered Tax Invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11(c). The recipient can withhold payment of the amount until the supplier provides a Correctly Rendered Tax Invoice or adjustment note as appropriate.
- (e) **(adjustment event)** If an adjustment event arises in respect of a taxable supply made by a supplier under this Contract, the amount payable by the recipient under clause 11(c) 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.
- (f) **(reimbursements)** Where a party is required under this 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:
 - (i) 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
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12. Liability

- (a) **(Contribution)** Neither party will be liable to the other, whether in contract, tort (including negligence) or otherwise, in connection with the Contract, for loss or damage to the extent that the other party contributed to the loss or damage.
- (b) **(Consequential loss)** Subject to clause 12(d), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Contract.
- (c) **(Cap/s on liability)** The maximum aggregate liability of a party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the amount of the cap/s on liability in the Details. If no cap on liability is specified in the Details, the party's liability is not limited by the Contract.
- (d) **(No limitation)** The exclusion of liability for Consequential Loss in clause 12(b) and the cap/s on liability in clause 12(c) do not apply to liability in relation to:

- (i) personal injury, including sickness, injury or death;
- (ii) loss of, or damage to, tangible property;
- (iii) Intellectual Property Rights or Moral Rights infringement;
- (iv) any breach by the Supplier or its Personnel of any obligation under clause 17 (confidentiality) or clause 18 (privacy); or
- (v) an indemnity;

and any payments in relation to those forms of liability will not deplete the cap on liability.

- (e) **(Mitigation)** A party who suffers loss or damage must mitigate its loss. 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.
- (f) **(Binding scheme)** Despite any other condition of the Contract, the Supplier's liability under the Contract is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the *Professional Standards Act 2004* (Qld) as specified in the Details.

13. Indemnity

- (a) The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any Claim that may be brought against or made upon or incurred by any of them, whether in contract, tort (including negligence) or otherwise in connection with any:
 - (i) failure to comply with applicable Law by the Supplier or its Personnel;
 - (ii) Wilful Default or Wilful Misconduct by the Supplier or its Personnel;
 - (iii) Claim of Intellectual Property Rights or Moral Rights infringement relating to this Contract or the Deliverables;
 - (iv) breach by the Supplier or its Personnel of any obligation under clause 17 (confidentiality) or 18 (privacy);
 - (v) breach of any warranty given in this Contract; or
 - (vi) Claim by a third party arising out of 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 Customer or its Personnel caused or contributed to the Claim.

14. Reliable Information

- (a) The Supplier is responsible for making its own investigation and assessment about all matters relevant to the Contract, including the Requirements, the accuracy of all information and documents provided by or on behalf of the Customer, and all other matters relevant to the Supplier's decision to enter the Contract, and will not have any

Claim against the Customer if any information or documents provided by the Customer is incomplete, inaccurate, out of date or misleading in any way.

- (b) The Supplier may only rely on Reliable Information, and only for the nominated purpose and nominated validity period.
- (c) The Customer must inform the Supplier if it becomes aware of any material inaccuracies or omissions in any information provided to the Supplier, including Reliable Information.

15. Intellectual Property Rights

15.1. Existing Intellectual Property Rights

- (a) Each party retains all its Intellectual Property Rights which existed at the Contract start date, or which are developed independently of the Contract.
- (b) The Supplier grants (and must ensure that relevant third parties grant) the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to exercise all such Intellectual Property Rights which are incorporated into any Goods, Services and Deliverables provided to a Customer under the Contract, for any purpose of the Customer, as part of those Goods, Services and Deliverables and future development of those Goods, Services and Deliverables.

15.2. New Intellectual Property Rights

- (a) Subject to clause 16 (Customer Data) new Intellectual Property Rights created or developed in performing the Contract will be owned by the party specified in the Details and if no party is specified, will be owned by the Customer.
- (b) If the Customer owns the new Intellectual Property Rights, the Customer grants the Supplier:
 - (i) If specified in the Details, an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sub-licensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose, including commercial purposes, subject to the Supplier removing any of the Customer's Confidential Information, Customer Data and Personal Information incorporated or otherwise contained in the material incorporating the new Intellectual Property Rights prior to exercising its rights under this clause and the Supplier must confirm to the Customer when this has been done; or
 - (ii) such other licence as specified in the Details.
- (c) If the Details specify no licence is granted to the Supplier, or the Details do not specify, no licence is granted to the Supplier in relation to the new Intellectual Property Rights.
- (d) If the Supplier owns the new Intellectual Property Rights, the Supplier grants (and must ensure that relevant third parties grant) the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sub-licensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose of the Customer, as part of those Deliverables, and future development of those Deliverables.

15.3. Warranty of authorisation

- (a) The Supplier warrants that it is authorised to grant the rights in this clause.
- (b) The Supplier warrants that the Deliverables and the use of the Deliverables as permitted by this Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

16. Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, will vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel or to others as specified in the Contract on a need to know basis to perform the Contract and in accordance with all Laws.

The Supplier must comply with clauses 17 and 18 and all applicable Laws in relation to Customer Data which is Confidential Information or Personal Information. 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 (without limitation) identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Confidential Information or Personal Information, public records, right to information and information standards.

17. Confidentiality

- (a) Each party will keep confidential all Confidential Information which it obtains from the Discloser, or creates in relation to the Contract, not use it except for the purposes of the Contract, and not disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract, or with the Discloser's consent, or to the extent required by Law, or to its professional advisors, or in the case of the Customer:
 - (i) to a Minister, their advisors or Parliament; or
 - (ii) as required under the *Right to Information Act* or the *Information Privacy Act*.
- (b) The Customer may publish information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under this Contract (other than disclosure by the Customer as set out in clause 17(a)(i) and (ii)), 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.
- (d) If the Customer requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to the Customer.
- (e) If requested by the Customer, on termination or expiry of the Contract, the Supplier must, at the Customer's option promptly

- (i) return; or
- (ii) destroy,

all Customer Data, Confidential Information and Personal Information of the Customer, and a copy of all documents and records created by the Supplier in the performance of the Contract. The Supplier must provide written confirmation to the Customer when this has been done. Unless otherwise directed by the Customer, these obligations do not apply to any computer records or files which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot be reasonably deleted.

- (f) Notwithstanding (e), 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.

18. Privacy

- (a) If the Supplier collects or has access to Personal Information in order to perform the Contract, when performing this Contract, the Supplier must if the Customer is an 'agency' for the *Information Privacy Act*, other than for chapter 3 of the *Information Privacy Act*:
 - (i) 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 otherwise
 - (ii) comply with the Australian Privacy Principles in the *Privacy Act*.
- (b) 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 and comply with the same obligations imposed on the Supplier under this clause;
 - (vii) immediately notify the Customer if:

- (A) it will need to take any action under Part IIIC (Notification of eligible data breaches) of the *Privacy Act*;
 - (B) it becomes aware that a disclosure of Personal Information is, or may be, required by Law; or
 - (C) any Law prevents, or may prevent, the Supplier from complying with any of its obligations under this clause;
- (viii) if the Customer requests, obtain from its Personnel a signed privacy deed in a form acceptable to the Customer;
- (ix) 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;
- (x) comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time; and
- (xi) immediately notify the Customer upon becoming aware of:
- (A) any breach of this clause or
 - (B) any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract.
- (c) Nothing in this clause 18 is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable).

19. Warranties

19.1. Anti-competitive conduct

The Supplier warrants that neither it, nor, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated Invitation Process or any actual or potential contract with any entity for goods and services similar to the Goods and Services. In addition to any other remedies available to it under Law or contract, the Customer may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in collusive or anti-competitive conduct.

19.2. Conflict of interest

The Supplier warrants that it and, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, do not have a Conflict of Interest in the performance of the Contract, except as disclosed in the Details and which has been and continues to be appropriately resolved to the satisfaction of the Customer.

If the Customer requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Customer.

If a Conflict of Interest or risk of it arises during the Contract Term, the Supplier must notify the Customer immediately. Upon receipt of such a notice, or upon the Customer otherwise identifying a Conflict of Interest or a risk of it, the Customer may, without limiting its rights under clause 21, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

19.3. Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) 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. Supplier Information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Contract or the associated Invitation Process (Supplier Information) are complete, accurate, up to date and not misleading in any way. The Supplier acknowledges that the Customer is relying on the information provided by the Supplier. The Supplier acknowledges that the Customer may suffer damage if any of the information referred to in this clause is incomplete, inaccurate, out of date or misleading in any way.

19.5. Modern Slavery

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain have not been convicted of any offence involving Modern Slavery.

The Supplier must immediately notify the Customer if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain.

The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

19.6. Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 19:

- (a) was inaccurate, incomplete, out of date or misleading in any way when made, or
- (b) becomes inaccurate, incomplete, out of date or misleading in any way.

20. Where Requirements not met

If any Requirements for Goods or Services are not met, the Supplier must promptly (at the Customer's option):

- (a) refund to the Customer any monies paid for the relevant Goods or Services; or
- (b) resupply the relevant Goods, or re-perform the relevant Services, so that the Goods and or Services comply with the Requirements.

This does not limit the Customer's other rights or the Supplier's responsibility if there is any non-compliance with the Contract, and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.

If the Supplier fails to comply with its obligations under this clause, the Customer may have the Goods supplied or Services performed by others, and the Supplier must pay to the Customer on demand any costs incurred by the Customer in doing so.

21. Termination or Suspension

21.1. For Cause – by Customer

The Customer may terminate the Contract in whole or in part immediately on written notice if:

- (a) the Customer is satisfied that the Supplier has breached any warranty in this Contract;
- (b) a Conflict of Interest exists or arises and has not been, or in the Customer's view cannot be, appropriately resolved to the Customer's satisfaction;
- (c) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
- (d) 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 a reasonable period nominated by the Customer in its written notice to remedy; or
- (e) the Supplier is or becomes Insolvent, except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies.

Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 21.1, the Supplier must pay or reimburse the Customer's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

21.2. Show Cause – Supplier Code of Conduct and Ethical Supplier Threshold

Where the Customer reasonably suspects that the Supplier is not complying with the Supplier Code of Conduct or the Ethical Supplier Threshold, the Customer may by notice require the Supplier to show cause, by the date specified in the notice (which must not be less than 10 Business Days), why the Customer should not terminate the Contract.

If the Supplier fails to show reasonable cause by the date specified by the Customer, then the Customer may, by notice in writing to the Supplier, terminate the Contract.

21.3. For Cause – by Supplier

The Supplier may terminate the Contract immediately on written notice only if the Customer has not paid any amount which is undisputed and properly payable, 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 a reasonable time set out in the notice, and the reasonable time expires without the Customer disputing the amount or making payment.

21.4. For Convenience

The Customer may terminate the Contract in its absolute discretion without giving reasons by giving at least 30 days' written notice. If the Customer does so, the Customer will pay the Supplier for the work performed and Deliverables supplied, which it can substantiate to the Customer, but not yet invoiced on a pro rata basis, and the Supplier's reasonable and documented expenses directly relating to the termination.

The Customer will have no other liability to the Supplier relating to the termination under this clause 21.4. In no case will the compensation payable as a consequence of termination by

the Customer under this clause exceed the Price that would have been payable if the Contract had not been terminated. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination and must take reasonable steps to minimise its expenses relating to the termination.

21.5. If a Contract is under a SOA

- (a) If this Contract is entered pursuant to a SOA the Customer may terminate the Contract for cause immediately on written notice to the Supplier if:
 - (i) the Principal is entitled to terminate the SOA; or
 - (ii) any customer (including the Customer) is entitled to terminate for cause any other contract entered under the SOA.
- (b) Unless otherwise specified in the Details, all the terms and conditions of this Contract (including this clause) will survive termination or expiry of the SOA, for any reason.

21.6. Suspension

In addition to the Customer's termination rights, the Customer may suspend the Contract in whole or part immediately on written notice to the Supplier for the period specified in the notice in its absolute discretion, or in any circumstances when it is entitled to terminate under this clause 21. The Customer may end the suspension on written notice. The Supplier will promptly re-commence performance after receiving the Customer's notice ending the suspension.

If the Customer suspends the Contract for any reason which is not due to the act, default or omission of the Supplier, the Customer will pay the Supplier's reasonable and documented expenses directly resulting from the suspension. The Customer will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

The Customer may suspend payments under the Contract during any period that the Supplier is in breach of the Contract.

21.7. Consequences

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

In no case will the compensation payable as a consequence of termination or suspension (for any reason) exceed the Price that would have been payable if the Contract had not been terminated.

21.8. Transition Out

The Customer may request the Supplier to assist with transition out at any time before the expiry of the Contract or after receiving or issuing a notice of termination under this clause 21. Upon receiving such a request, the Supplier must provide all services reasonably necessary to effect transition out, as requested by the Customer (**transition out services**). Transition out services may include:

- (a) transferring data and documentation to the Customer or a third party as the Customer directs;
- (b) continued provision of the Deliverables after the Contract ends; and

(c) any other services agreed in writing between the Supplier and the Customer.

If this Contract is terminated under clause 21.1 or clause 21.2, the Supplier will bear its own costs of providing the transition out services. Otherwise, the costs of providing the transition out services are to be agreed between the parties.

Unless otherwise agreed in writing, the Supplier must provide the transition out services to the Customer for a period of 3 months before, and 6 months after the effective date of termination or expiry.

22. Assignment and novation

The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Customer's prior written consent. The Supplier acknowledges that the Customer may conduct financial or 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.

The Customer may assign, transfer or novate any of its rights or obligations under the Contract:

- (a) on written notice to the Supplier, in connection with a Machinery of Government Change; and
- (b) in all other cases, with the Supplier's prior written consent.

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

For clarity, transfer of the Customer's rights and obligations within the same legal entity is not an assignment.

The Contract is for the benefit of and will bind the parties and their successors and permitted assigns.

23. Disputes

- (a) Neither party may commence court proceedings or action against the other party under or in connection with the Contract (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute under this clause 23.
- (b) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute. Within 5 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 23(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 23(c), the dispute must be referred to each party's chief executive or equivalent position (or their nominee) for resolution.
- (e) If the dispute is not resolved under clause 23(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 23(f).

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- (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 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Resolution Institute will determine the mediator;
 - (iii) may be legally represented at the mediation;
 - (iv) will each bear their own costs concerning the mediation and will bear the costs of the mediation venue and the mediator equally; and
 - (v) will continue to perform their obligations under the Contract notwithstanding the existence of a dispute to the extent practicable having regard to the nature of the dispute, unless the parties agree otherwise in writing.
- (g) If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.
- (h) This clause does not apply in relation to the exercising by the Customer of any rights under clause 21.

24. Variation

- (a) Save for clause 24(b) below, the Contract may only be varied by written agreement of authorised representatives of the parties.
- (b) The Customer may vary the Contract by notice to the Supplier when reasonably required as a result of changes in Government policy.

25. General

The parties agree that:

- (a) (**communications**) they will direct all communications (other than notices addressed at Clause 25 (b)) relating to the Contract to the other party's nominated contact person in the Details, or to another person if the other party directs.
- (b) (**notices**) they will send all notices relating to the Contract to the other party at the address listed in the Details, with a copy to the nominated contact person in the Details (or as updated under the above clause 24). Notices will be deemed to be given in accordance with Part C of the Definitions and Interpretations (version 3.1 – published February 2023), which is available via www.forgov.qld.gov.au/general-goods-and-services-templates.
- (c) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply.
- (d) (**severability**) if any part of this Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract (and any parts of the Contract which are dependent on those parts) will not apply but the other parts of the Contract will not be affected.

- (e) (**waiver**) clauses and rights in this Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. 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.
- (f) (**no advertising**) the Supplier will not and must ensure that its Personnel do not, make any public announcement or advertisement in any medium in relation to the Contract without the consent of the Customer.
- (g) (**relationship**) their relationship is of Customer and Supplier. This Contract does not create any partnership, joint venture, agency or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint ventures, agent, officer or employee of the Customer.
- (h) (**exclude implied terms**) the *Sale of Goods (Vienna Convention) Act 1986* (Qld) does not apply, to the extent that the parties are permitted by Law to exclude it.
- (i) (**survival**) clauses 1.2, 1.3, 5(o), 11, 12, 13, 15, 16, 17, 18, 21.7, 21.8, 23 and 25 and any other clauses which are expressed to survive or by its nature survives, will survive termination or expiry of the Contract for any reason.
- (j) (**costs**) each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations.