

**Infrastructure Building and Construction Panel**

**Infrastructure Contract Conditions A1**

**February 2026**

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## **1 Contract documents**

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

- a) The Contract formed between the Customer and the Supplier comprises the following documents:
  - i. the Letter of Acceptance;
  - ii. any Special Conditions;
  - iii. these Infrastructure Contract Conditions A1;
  - iv. the Technical Specifications;
  - v. the RFQ Response Form submitted by the Supplier as amended pursuant to Clause 9 of the RFQ (excluding any Special Conditions and any document which the RFQ states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract); and
  - vi. any document which the RFQ states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract.
- b) If there is an inconsistency between the documents in Clause 1.1(a), the document higher in the list will prevail to the extent of the inconsistency.
- c) The Contract may consist of a number of counterparts and if so, the counterparts taken together shall constitute one document.

### **1.2 Interpretation**

Definitions and rules of interpretation for the Contract are set out in Clause 23 of these Infrastructure Contract Conditions A1.

## **2 Term**

- a) The Contract commences on the Start Date and continues for the Contract Term, unless terminated earlier in accordance with these Infrastructure Contract Conditions A1.
- b) The Customer may extend the Initial Term by the Further Term (if any) on the same terms and conditions by giving the Supplier written notice at least 30 days before the end of the Initial Term or as otherwise agreed.

## **3 No exclusivity**

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

## **4 Supplier obligations**

### **4.1 Warranties**

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

### **4.2 Performance**

- a) The Supplier must:
  - i. perform the Services with the standards of skill, care and diligence as is generally exercised by competent members of the Supplier's profession performing services of a similar nature at the time the contracted Services are provided;
  - ii. perform the Services in accordance with the Technical Specification;
  - iii. meet all Delivery Dates or as otherwise agreed in writing;
  - iv. ensure that the Services comply in all aspects with:
    - A. all applicable Laws;
    - B. all applicable Government codes, policies or guidelines; and
    - C. any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant International Standard (ISO), which govern the provision of the Services under the Contract.
  - v. supply the Services during Business Hours and as otherwise specified in the RFQ;
  - vi. promptly notify the Customer if it believes it will not be able to meet any Delivery Date;
  - vii. meet or exceed the Service Levels (if any);
  - viii. ensure that all of its Personnel that perform any duties in relation to the Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning the Contract; and
  - ix. ensure that the Services are performed:
    - A. with due care and skill and in a timely manner; and
    - B. by appropriately qualified and trained Personnel.

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

- a) The Supplier acknowledges and agrees that:

- i. it has reviewed the Technical Specification and Customer Data and communicated to the Customer any errors or inconsistencies that could be reasonably detected by the Supplier in the Technical Specification and Customer Data exercising the standard of professional care, skill, judgment and diligence expected of a competent professional consultant experienced in providing the same or similar services to the Services;
  - ii. the Customer is relying on the skill and expertise of the Supplier in reviewing the Technical Specification and Customer Data; and
  - iii. the Fees will not be adjusted in respect of any services that relate to errors or discrepancies in the Technical Specification and Customer Data that should reasonably have been detected by the Supplier and communicated to the Customer.
- b) The Supplier must:
- i. determine what information it needs from the Customer to ascertain in detail the Customer's requirements in relation to the Technical Specification;
  - ii. make written requests of the Customer if the Supplier considers that any document or other information (including any of the Technical Specification and Customer Data) provided by or on behalf of the Customer is ambiguous or inaccurate or is insufficient to enable the Supplier to perform the Services or to understand the Customer's requirements; and
  - iii. satisfy itself that any information provided by the Customer in response to a request by the Supplier addresses the Supplier's concern.
- c) The Customer will not be bound by any information or data (including Customer Data) provided to the Supplier and the Supplier must not rely on such information unless:
- i. the Customer has stated in writing that the information and data is true and accurate and that the Supplier may rely on that information or data; or
  - ii. the Supplier has nominated information or data as relied upon in the RFQ, in which case the Supplier may rely on and use such information or data assuming it to be accurate and correct.

#### **4.4 Collaborative agreement**

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

- a) cooperate to ensure timely progress and fulfilment of the Contract;

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

#### **4.5 Keep Customer informed**

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

#### **4.6 Compliance and cooperation**

The Supplier must:

- a) comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract;
- b) obtain and maintain the approvals necessary for the Supplier to perform the Contract. The Supplier must, upon request, provide evidence that it has complied with this Clause 4.6(b);
- c) where relevant to the Supplier's obligations under the Contract, comply with all Customer policies, codes of conduct, rules, standards and procedures (including in respect of work health and safety and security) which apply to the Site, the Customer's IT system, the Customer's Personnel or use of the Customer Materials, and all other Customer policies, codes of conduct, rules, standards and procedures listed in the RFQ. If the Customer amends a relevant, or introduces a new, policy, code of conduct, rule, standard or procedure relevant to the Supplier's obligations under the Contract, it will notify the Supplier and the Supplier must comply with the amended or new policy, code of conduct, rule, standard or procedure from the date of notification. Copies of the relevant policies are available on request; and
- d) cooperate with the Customer's Personnel and other suppliers to the Customer who provide goods and services relating to the Services.

#### **4.7 Safety, access and security**

- a) The Supplier must:
- i. when present at the Site, avoid unnecessary interference with the Customer's business and activities and ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security;
  - ii. take care of any Customer Materials, and only use the Customer Materials for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the requirements specified in the RFQ;
  - iii. promptly inform the Customer of any loss, destruction or damage (other than fair wear and tear) to any Customer Materials. If the Supplier loses or damages any Customer Materials (other than fair wear and tear), the Supplier must, at the election of the Customer, promptly replace such Customer Materials or pay the Customer the reasonable replacement cost of such Customer Materials. As between the Supplier and the Customer, the Customer retains all right, title and interest (including all Intellectual Property Rights) in the Customer Materials; and
  - iv. as soon as practicable after termination or expiry of the Contract, return to the Customer all equipment, records, documents and materials (including Customer Materials) provided by the Customer for the purposes of the Contract, except to the extent that such documents and records are required by Law to be retained, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.
- b) Clauses 4.7(a)(ii) to 4.7(a)(iv) do not apply to any Customer Materials which comprise Customer Data.
- c) Without limiting any other clause of the Contract, the Supplier must:
- i. at all times comply, and ensure that the Supplier's Personnel comply, with all applicable work health and safety Laws;
  - ii. develop, maintain and implement a work health and safety management system that as a minimum complies with all work health and safety Laws applicable to the Supplier;
  - iii. provide copies of documents recording the system referred to in Clause 4.7(c)(ii) to the Customer if requested; and
  - iv. not, and ensure that the Supplier's Personnel do not, at any time, cause the Customer to be in contravention of a work health and safety Law.

## **4.8 Insurance**

- a) The Supplier must:
  - i. subject to Clause 4.8(b), at its cost and by the Start Date, take out and maintain or be insured under, the insurance policies described in the RFQ with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercially available;
  - ii. the Supplier must promptly notify the Customer if any required policy is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under the Contract;
  - iii. maintain all required insurance policies which are maintained on a 'claims made' basis for a minimum period of 7 years after the Contract ends, or such other period specified in the RFQ;
  - iv. the Supplier must ensure that the Customer's rights and interests under the Contract are noted under its public liability and products liability insurance policy described in the RFQ; and
  - v. on request, provide to the Customer an insurance certificate of currency confirming that the Supplier has effected and renewed or is insured under the insurance policies described in the RFQ.
- b) The Customer may at its sole discretion, agree to the Supplier being self-insured provided that the Supplier provides the Customer with such supporting documentation as may be required by the Customer, including the Supplier's financial records (limited to publicly available financial records where the Supplier or its Related Body Corporate is publicly traded).
- c) To the extent permitted by Law, where multiple insured parties are insured under a public liability insurance policy required under this Clause 4.8, the Supplier must:
  - i. ensure that the public liability policy of insurance held, or required to be held, by the Supplier under this Clause 4.8 contains a cross liability clause, a non-vitiation clause and a waiver of subrogation by the insurer(s) in favour of the Customer; and
  - ii. the Customer is an additional insured under the public liability policy of insurance.

#### **4.9 Records, reports and meetings**

The Supplier must:

- a) provide reports in the timeframe and format specified in the RFQ and such other reports as and when reasonably requested by the Customer;
- b) create and maintain records of its performance of the Contract in accordance with applicable Laws and usual industry practice for provision of services similar to the Services; and
- c) attend the meetings at the frequency set out in the RFQ and at such other reasonable times, if the Customer requests.

#### **4.10 Inspections**

The Supplier must, on reasonable prior written notice from the Customer, give the Customer reasonable access during Business Hours to the Supplier's premises where the Services are being performed, and to the Supplier's documentation, records and Personnel, to enable the Customer to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non compliance identified by the Customer and notified to the Supplier. Nothing in this Clause 4.10 requires the Supplier to provide the Customer with access to any documents or records of or in respect of a third party other than any Subcontractors.

#### **4.11 Queensland Procurement Policy and Queensland Government Supplier Code of Conduct**

- a) The Supplier:
  - i. must, and must ensure its subcontractors adhere to the *Queensland Procurement Policy* (where applicable) and the *Queensland Government Supplier Code of Conduct* for the Contract Term;
  - ii. warrants that it and its subcontractors adhere to the *Queensland Government Supplier Code of Conduct*; and
  - iii. acknowledges that its failure or any of its subcontractors' failure to adhere to the *Queensland Government Supplier Code of Conduct* is a breach of contract.
- b) The Supplier acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Supplier's obligations under the Contract may result in:
  - i. consequences under the Procurement Assurance Model; and

- ii. the imposition of a demerit or sanction under the *Queensland Government Supplier Code of Conduct*,

in addition to any other remedies available to the Customer under this Contract.

- c) The Supplier acknowledges that the Customer may:
  - i. obtain information about the Supplier relevant to the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* which may be held by any Queensland Government Body; and
  - ii. access all information relevant to assessing the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* and take the information into account in assessing the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct*.

#### **4.12 Purposeful Public Procurement**

The Supplier will support the Customer in its 'purposeful public procurement' (as defined in the *Queensland Procurement Policy*) outcomes, as advised by the Customer from time to time, and will maintain any tender commitments in respect of such outcomes.

#### **4.13 Cyber Security Risk Management**

The Supplier must, at its own cost and expense:

- a) maintain effective cyber and information security measures to protect all information (including Customer Data) from unauthorised access, modification, use, copying, loss or disclosure;
- b) promptly notify the Customer in writing if the Supplier becomes aware of any Data Breach, and take all reasonable steps required to prevent or stop, and mitigate the effects of, that Data Breach; and
- c) reasonably assist the Customer in connection with any action or investigation regarding any Data Breach, and provide any information reasonably requested by the Customer in connection with the Data Breach.

#### **4.14 Performance reviews**

- a) If specified in the RFQ, the parties must conduct a service and performance review of the Supplier's performance of the Contract at the intervals specified in the RFQ.

- b) All reviews must be undertaken by representatives of both parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review.
- c) Either party may initiate an additional review of the Contract by written notice to the other party.

## **5 Subcontracting and Personnel**

### **5.1 Subcontracting**

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

### **5.2 Supplier's Personnel**

- a) The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under the Contract, and the Supplier is liable to the Customer for all acts and omissions of its Personnel, as fully as if they were acts or omissions of the Supplier.
- b) The Supplier is not, and its Personnel are not, employees of the Customer.
- c) If the Customer reasonably requests, the Supplier must promptly remove from the Customer's premises and/or the performance of the Contract, any individual who is a member of the Supplier's Personnel used in performance of the Contract, and in consultation with the Customer replace them with another individual who is a member of the Supplier's Personnel acceptable to the Customer (acting reasonably), at no additional cost to the Customer.
- d) If specified in the RFQ or if the Customer reasonably requests at any time during the Contract Term, prior to permitting any Personnel to be involved in the supply of any Services under the Contract, the Supplier must either:
  - i. at its cost, perform contemporaneous criminal history checks specified by the Customer and on the Personnel specified by the Customer and inform the Customer whether any of those checks reveal any criminal charges or convictions of those Personnel (the Supplier must not provide a copy of the criminal history check document to the Customer unless requested by the Customer); or
  - ii. procure the consent of such Personnel for the Customer to conduct a criminal history check or any other checks required by the Customer.

- e) The Supplier must notify the Customer promptly if it becomes aware during the Contract Term that any of its Personnel involved in the supply of the Services have been charged or convicted of any criminal offence or any conduct which involves fraud, corruption or dishonesty.

### **5.3 Key Personnel**

- a) In providing the Services, the Supplier must:
  - i. subject to this Clause 5.3, ensure that the Key Personnel perform the roles allocated to them in the RFQ;
  - ii. promptly notify the Customer if any Key Personnel is or will be unavailable to perform his or her allocated role for any reason;
  - iii. not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, or the termination of such Key Personnel's employment or engagement with the Supplier; and
  - iv. ensure that any replacement Key Personnel have at least equivalent qualifications and experience, and promptly provide information reasonably requested about any proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.
- b) The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

### **5.4 Non-solicitation**

- a) Neither party may, without the prior written consent of the other party, during and for 6 months after the expiry or termination of the Contract, directly or indirectly engage, employ, solicit or otherwise retain any person who is an employee of or engaged by the other party and who is or was engaged in the performance of the Contract.
- b) Clause 5.4(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- c) The parties agree that the restrictions in this Clause 5.4 are necessary to protect the legitimate interests of each party.

## **6 Fees and payment**

### **6.1 Fees**

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

### **6.2 Expenses**

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

- a) the expenses are stated in the RFQ or the Customer has approved the expenses in writing before they are incurred;
- b) the Supplier provides satisfactory evidence of payment of the expenses; and

- c) in the case of travel or accommodation expenses:
  - i. the Customer requests that the Supplier travel away from the agreed service location; and
  - ii. the Supplier complies with the Customer's travel policy (a copy of which will be provided on request) or other reasonable directions in relation to travel.

### **6.3 Invoices**

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

### **6.4 Time for payment**

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

### **6.5 Disputed invoices**

- a) If the Customer disputes any invoiced amount, the Customer must:
  - i. provide the Supplier with written notice stating the amount it believes is due for payment and setting out the reasons for not paying the balance, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and

- ii. at the Customer's election, the Customer may:
  - A. withhold payment of the disputed amount until the dispute is resolved, and pay the amount it believes is due for payment by the date that payment must be made under the Contract; or
  - B. require the Supplier to cancel and re-issue the invoice for the amount, which is not disputed by the Customer and must pay the re-issued invoice in accordance with Clause 6.4(a).
- b) Once the dispute about an invoice is resolved:
  - i. if the Customer withheld payment of the disputed amount under Clause 6.5(a)(ii)(A), the Customer must promptly pay any disputed amount found to be correctly payable; or
  - ii. if the Supplier cancelled and re-issued an invoice under Clause 6.5(a)(ii)(B), the Supplier must issue an invoice for any disputed amount found to be correctly payable and the Customer must pay the re-issued invoice in accordance with Clause 6.4(a).
- c) The Supplier must continue to perform its obligations under the Contract despite any dispute about an invoice, while that dispute is being resolved.

## **6.6 Underpayments and overpayments**

Without limiting recourse to other available means, any overpayments by the Customer may be offset against any amount subsequently due by the Customer to the Supplier.

## **6.7 Set-off**

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

# **7 GST**

## **7.1 Construction**

In this Clause 7, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.

## **7.2 GST exclusive**

- a) Unless expressly stated, all moneys or other sums payable or consideration to be provided under the Contract are exclusive of GST.

- b) If GST is payable on any supply made under the Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under the Contract.

### **7.3 Tax invoice**

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under Clause 7.2(b). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

### **7.4 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a supplier under the Contract, the amount payable by the recipient under Clause 7.2(b) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

### **7.5 Reimbursements**

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

- a) the amount of the expense or outgoing, less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## **8 Intellectual Property Rights**

### **8.1 Pre-Existing Material**

- a) All Intellectual Property Rights in:
  - i. any Pre-Existing Material remain vested in the party that owns the Intellectual Property Rights (Owner); and
  - ii. any adaptation, translation or derivative of that Pre-Existing Material vests in, or is transferred or assigned to, the Owner immediately on creation.

- b) The Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in any Pre-Existing Material of the Supplier which is incorporated into a Deliverable for the purposes of using, supporting and/or modifying that Deliverable, in the course of the Customer's functions or activities, and for such other purposes specified in the RFQ.
- c) The licence to Pre-Existing Material in Clause 8.1(b):
  - i. does not permit the Customer to manufacture, sell or otherwise commercially exploit any Pre-Existing Material of the Supplier unless otherwise specified in the RFQ; and
  - ii. permits the Customer to sub-license any of the rights in Clause 8.1(b) to any:
    - A. Department;
    - B. contractor that is providing services to the Customer that includes the use of the Pre-Existing Material, provided that such sub-licence automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
    - C. other entity specified in the RFQ,at no additional cost, unless the additional cost is specified in the RFQ.

## **8.2 Customer owned Deliverables**

- a) This Clause 8.2 applies where the RFQ specifies the Customer will own the Intellectual Property Rights in some or all of the Deliverables.
- b) On creation of the relevant Deliverable:
  - i. all Intellectual Property Rights in the relevant Deliverable vests in or is assigned to the Customer; and
  - ii. the Customer grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, sub-licensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant Deliverable, for the Contract Term of the Contract and only for the purposes of the Supplier performing its obligations under the Contract.
- c) If the Customer requests (including on expiry or termination of the Contract), the Supplier must promptly provide the Customer with a copy of the Deliverables in the format reasonably requested by the Customer, and the Customer must reimburse the Supplier for any reasonable and documented expenses incurred by the Supplier in complying with the Customer's request.

### **8.3 Supplier owned Deliverables**

- a) This Clause 8.3 applies where the RFQ specifies the Supplier will own the Intellectual Property Rights in some or all of the Deliverables.
- b) On creation of the relevant Deliverable:
  - i. all Intellectual Property Rights in the relevant Deliverable vests in or is assigned to the Supplier; and
  - ii. the Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in the Deliverable, for the purposes of using, supporting and/or modifying the Deliverable, in the course of the Customer's functions or activities and for such other purposes specified in the RFQ.
- c) The licence to the Intellectual Property Rights in the Deliverable in Clause 8.3(b):
  - i. does not permit the Customer to manufacture, sell, or otherwise commercially exploit any Deliverables unless otherwise specified in the RFQ; and
  - ii. permits the Customer to sub-license any of the rights in Clause 8.3(b) to any:
    - A. department;
    - B. contractor that is providing services to the Customer that includes the use of the Deliverable, provided that such sub-licence automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
    - C. other entity specified in the RFQ,at no additional cost unless the additional cost is specified in RFQ.

### **8.4 Third Party Material**

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

## 9 Data, models and analytical tools

- a) As between the Customer and the Supplier, the Customer owns all Customer Data, including any Intellectual Property Rights in Customer Data, on and from creation.
- b) The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the Contract and in accordance with all applicable Laws.
- c) The Supplier must comply with Clause 11 and all applicable Laws in relation to Customer Data which is Personal Information.
- d) The Supplier must provide reasonable assistance to the Customer on request, to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data, including identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Personal Information, public records, right to information and information standards.
- e) The Supplier acknowledges and agrees that, if it provides any model, formula or analytical tool under the Contract (including any Supplier Data) whether or not that model, formula or analytical tool is developed or based on any Customer Data or data of the Supplier or any other person, the Supplier must provide to the Customer all assumptions, data, logs, inputs, variables, formula and any other data or information requested by the Customer (**Validation Data**) for the sole purpose of enabling the Customer to test, validate and analyse the model, formula or analytical tool without the assistance or involvement of the Supplier. The use of any such Validation Data by the Customer is subject to the confidentiality terms in Clause 10.
- f) The Supplier acknowledges and agrees that it must not:
  - i. disclose to;
  - ii. use for the benefit of; or
  - iii. permit to be used by,  
any third party or other customers of the Supplier:
  - iv. any information or data (including any Customer Data) provided by or on behalf of the Customer to the Supplier in connection with the Contract or any Contract;  
and
  - v. any Supplier Data that the Supplier is required to supply or develop exclusively for the Customer under the Contract or which forms part of the Deliverables,  
other than with the prior written consent of the Customer.

- g) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Data.

## 10 Confidentiality

- a) Each party as Recipient must:
- i. keep confidential all Confidential Information of the Discloser;
  - ii. not use the Confidential Information except for the purposes of the Contract; and
  - iii. not disclose the Confidential Information except:
    - A. to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract;
    - B. with the Discloser's consent;
    - C. to the extent required by Law;
    - D. to its professional advisors;
    - E. in the case of the Customer:
      1. to a Minister, their advisors or Parliament; or
      2. as required under the *Right to Information Act* or the *Information Privacy Act*; or
    - F. in the case of the Customer, it may disclose information about the Contract, including the terms of the Contract, to any Queensland Government Body, excluding any such Queensland Government Body that is a direct competitor of the Supplier.
- b) The Customer may publish information about the Contract on the Queensland Government's contract directory, where required or recommended by Queensland Government policy, excluding any such Queensland Government Body that is a direct competitor of the Supplier. Nothing in the Contract prevents the Customer from disclosing information about the Contract as necessary, to comply with the Procurement Guidelines: *Contract Disclosure*.
- c) Where the Recipient discloses the Confidential Information to a third party as permitted under the Contract (other than disclosure by the Customer as permitted under Clause 10(a)(iii)(E), 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 (including Subcontractors) that are individuals a signed form prepared by the Customer whereby each such individual acknowledges the confidentiality obligations imposed on the Supplier.
- e) The Supplier must not make any public announcement or advertisement relating to the Contract, except where the Customer has approved the proposed public announcement or advertisement in writing.
- f) On termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer and will confirm to the Customer when this has been done.
- g) 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.

## 11 Privacy

- a) If the Supplier collects or has access to Personal Information as part of or in connection with this Contract, the Supplier must comply with Parts 1 and 2 of Chapter 2 and Section 41 of the *Information Privacy Act* in relation to the discharge of its obligations under the Contract, as if the Supplier was the Customer.
- b) Further, the Supplier must:
  - i. not use the Personal Information other than in connection with performing its obligations under the Contract;
  - ii. not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Customer, unless required or authorised by law;
  - iii. ensure that its personnel do not access, use or disclose Personal Information other than in connection with performing its obligations under the Contract;
  - iv. comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time;
  - v. comply with the reasonable directions of the Customer in relation to any privacy breach referred to in Clause 11(c), and
  - vi. fully cooperate with the Customer to enable the Customer to take any action required of it under Chapter 3A (Mandatory notification of data breaches) of the *Information Privacy Act*.

- c) The Supplier must immediately notify the Customer on becoming aware of:
  - i. any breach of Clause 11;
  - ii. any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract;
  - iii. any loss of Personal Information collected or accessed in connection with the Contract in circumstances where unauthorised access, use, modification, disclosure or other misuse of the Personal Information by a third party is likely to occur; or
  - iv. anything that would constitute an eligible data breach (as defined in the *Information Privacy Act*) relating to the Personal Information collected or accessed in connection with the Contract.
- d) The Supplier acknowledges that the Supplier is a Bound Contracted Service Provider and the Information Commissioner's (as defined under the *Information Privacy Act*) functions include conducting reviews into Personal Information handling practices of Bound Contracted Service Providers and monitoring and auditing compliance with the *Information Privacy Act*.
- e) The Supplier must promptly advise the Customer of any:
  - i. enforcement of the Supplier's obligations under the *Information Privacy Act* in connection with the Contract, including enforcement through Compliance Notices (as defined in the *Information Privacy Act*) given to the Supplier, and
  - ii. Privacy Complaints (as defined in the *Information Privacy Act*) in connection with the Supplier's discharge of its obligations under the Contract, including the Privacy Complaints to which the Supplier is a respondent.
- f) The Supplier must take any actions reasonably required by the Customer in connection with the matters referred to in Clause 11(d), including steps to comply with any Compliance Notice.
- g) The Supplier must keep the Customer informed about actions of the Information Commissioner in connection with the Contract of which the Supplier becomes aware.
- h) The Supplier must immediately notify the Customer if the Supplier becomes aware that disclosure of Personal Information held in relation to this Contract is, or may be, required or authorised by law.

- i) Where:
  - i. an individual makes an application to the Customer for access to, or amendment of, a Document containing the individual's Personal Information, whether the application is made under the *Right to Information Act* or otherwise, or
  - ii. a Privacy Complaint is made to the Customer, including any Privacy Complaints to which the Customer is a respondent, the Supplier must, as soon as possible following the Customer's request, but no later than 2 Business Days after such request from the Customer:
    - a) submit to the Customer any Document (as defined in the *Information Privacy Act*) specified by the Customer;
    - b) amend or notate any Document specified by the Customer;
    - c) provide information to the Customer concerning the Supplier's discharge of its obligations under this Clause 13, and
    - d) take other reasonable actions required by the Customer.
- j) The Customer may request the Supplier to comply with privacy and security measures under the *Information Privacy Act* and the *Right to Information Act 2009* (Qld). Such request will be in writing.
- k) In relation to this Clause 11, the Administrator must act as an agent of the Customer.
- l) On termination or expiry of the Contract, the Supplier must forward any Personal Information on members of the community held by the Supplier to the Customer. Following confirmation of receipt by the Customer, the Supplier must destroy all such information in the Supplier's possession.
- m) This Clause 11 survives termination or expiry of the Contract.

Nothing in this clause is intended to limit any obligation of the Supplier under the *Information Privacy Act* or *Privacy Act* (as applicable).

## **12 Warranties**

### **12.1 Supplier warranties**

The Supplier warrants to the Customer that:

- a) the execution of the Contract (by signing the Supplier's RFQ Response Form) has been properly authorised;

- b) it is entitled to enter into the Contract, and to perform its obligations under the Contract;
- c) it has full corporate power to execute, deliver and perform its obligations under the Contract
- d) it has all authorisations described in the RFQ and any other licences, permits, permissions and authorities necessary to perform the Contract; and
- e) it will perform its obligations in compliance with all Laws, and any codes, policies, guidelines and standards specified in the RFQ.

## ***12.2 Intellectual Property Rights***

The Supplier warrants that:

- a) it is authorised to grant the rights that it purports to grant or assign in Clause 8; and
- b) to the best of its knowledge and belief having made all reasonable enquiries, the Deliverables and the use of the Deliverables as permitted by the Contract, will not infringe the Intellectual Property Rights or Moral Rights of any person.

## **13 Liability**

### ***13.1 Limitation of liability***

- a) Subject to Clause 13.2, and to the extent permitted by Law the maximum liability of the Supplier to the Customer, whether in contract, tort (including negligence) or otherwise in connection with the Services, is limited to the amount specified in the RFQ. If no cap on liability is specified in the RFQ, the Supplier's liability is not limited by the Contract.
- b) The maximum liability of the Customer to the Supplier, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the total Fees payable to the Supplier under the Contract.

### ***13.2 Exclusions from limitation of liability***

To the extent permitted by Law, Clause 13.1(a) does not apply to any liability, loss or damage (including under Clause 14 or otherwise) that is liability, loss or damage:

- a) that is:
  - i. personal injury, including sickness and death;

- ii. loss of, or damage to, tangible property caused by the Supplier or its Personnel (to the extent that the Customer suffers loss or damage, including in connection with a claim by a third party), other than where the loss of, or damage to tangible property is caused by the rendering, or failure to render, professional services by (or on behalf of) the Supplier;
- b) that arises directly or indirectly from:
- i. an infringement of Intellectual Property Rights or Moral Rights by the Supplier or its Personnel;
  - ii. any fraudulent act or omission of the Supplier or its Personnel;
  - iii. any breach by the Supplier or its Personnel of any obligation under Clauses 10 or 11;
  - iv. any wilful default of the Supplier; or
  - v. any wilful breach of statute, contract (including this Agreement) or duty by the Supplier.

### **13.3 Duty to mitigate**

A party who suffers loss or damage must take reasonable steps to mitigate its loss.

## **14 Indemnity by Supplier**

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

- a) failure by the Supplier or its Personnel to comply with applicable Laws;
- b) fraudulent or unlawful act or omission of the Supplier or its Personnel;
- c) act or omission (whether negligent or otherwise) of the Supplier or its Personnel resulting in or contributing to:
  - i. any death or injury to persons; or
  - ii. any loss or damage to real or tangible property;
- d) Claim by a third party that any Deliverable or the use of any Deliverable in accordance with the Contract infringes the Intellectual Property Rights or Moral Rights of that third party;
- e) breach by the Supplier or its Personnel of any obligation under the Contract, including (but not limited to) Clause 10 or 11; or

- f) Claim by a third party arising out of a breach by the Supplier of the Contract or any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the Contract,

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

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

### ***15.1 Anti competitive conduct***

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

### ***15.2 Conflict of Interest***

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

### ***15.3 Criminal organisation***

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

### **15.4 Warranties are ongoing**

The warranties in this Clause 15 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 15 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

## **16 Modern Slavery**

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

## **17 Disputes**

- a) If any dispute arises concerning the Contract, it must be resolved according to this Clause 17.
- 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 17(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 17(c), the dispute must be referred to each party's Director-General / Chief Executive Officer (or their nominee) for resolution.
- e) If the dispute is not resolved under Clause 17(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 17(f).
- f) Where the dispute is referred to mediation, the parties:
  - i. will conduct the mediation in Brisbane;
  - ii. will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia will determine the mediator;

- iii. may be legally represented at the mediation;
- iv. will each bear their own costs concerning the mediation, the mediation venue and the mediator; and
- v. will continue to perform their obligations under the Contract notwithstanding the existence of a dispute.

## **18 Termination**

### **18.1 For cause – by Customer**

- a) The Customer may terminate the Contract in whole or part immediately on written notice if:
  - i. the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within 14 days (or such longer period stated in the notice in writing) of the Customer issuing a notice of the breach to the Supplier;
  - ii. a Conflict of Interest arises and has not been, or in the Customer's view cannot be appropriately managed, to the Customer's satisfaction;
  - iii. the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
  - iv. to the extent permitted by Law, an Insolvency Event happens to the Supplier;
  - v. the Customer believes the Supplier has breached any warranty in Clause 15.1, 15.2 or 15.3;
  - vi. the Supplier is unable to comply with its obligations in Clause 16; or
  - vii. having issued a show cause notice in accordance with Clause 4.11 the Customer believes that the Supplier does not comply with the *Queensland Government Supplier Code of Conduct*.
- b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates the Contract under Clause 18.1(a), the Customer may obtain from any other source a reasonably similar alternative to the Services in which case the Supplier is liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Services and the similar alternative) or suffered by the Customer.

### **18.2 For cause – by Supplier**

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

- a) not paid any amount which is undisputed and properly payable; and:
  - i. the Supplier has notified the Customer of the outstanding amount, stating that it will terminate the Contract if the Customer does not pay such amount within 30 days (or such longer period stated in the notice in writing); and
  - ii. the period specified in the notice given under Clause 18.2(a)(i) expires without the Customer disputing the amount or making payment;
- b) committed a breach of the Contract which prevents the Supplier from substantially performing its obligations under the Contract and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach; or
- c) breached its obligations under:
  - i. Clause 8; or
  - ii. Clause 10,and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach.

### **18.3 For convenience**

- a) The Customer may terminate the Contract in whole or part at its absolute discretion by giving the Supplier at least 30 days written notice. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination.
- b) If the Customer terminates the Contract under Clause 18.3(a), the Customer will pay:
  - i. the Supplier for the Services performed and Deliverables supplied in accordance with the Contract but not yet invoiced, substantiated to the reasonable satisfaction of the Customer; and
  - ii. either:
    - A. the Supplier's reasonable and documented expenses incurred directly relating to the termination; or

- B. any amount specified in the RFQ.
- c) The Customer will have no other liability to the Supplier relating to the termination under this Clause 18.3. In no case will the compensation payable as a consequence of termination by the Customer under Clause 18.3(a), exceed the Fees that would have been payable if the Contract had not been terminated.
- d) The Supplier must take reasonable steps to minimise its expenses relating to the termination.

#### **18.4 Suspension**

- a) In addition to the Customer's termination rights under this Clause 18, the Customer may suspend the Contract in whole or part immediately on written notice to the Supplier for the period specified in the notice:
  - i. at its absolute discretion; or
  - ii. in any circumstances described in Clause 18.1, provided that if the Customer seeks to suspend the Contract in the circumstances described in Clause 18.1(a):
    - A. the Customer has issued a notice of the breach to the Supplier; and
    - B. if the breach described in Clause 18.1(a) was capable of being remedied, the Supplier has not remedied the breach within 14 days (or such longer period stated in the notice in writing).
- b) The Customer may end the suspension on written notice.
- c) The Supplier must re-commence performance as soon as reasonably practicable after receiving the Customer's notice ending the suspension.
- d) If the Customer suspends the Contract under Clause 18.4(a)(i):
  - i. the Customer will pay the Supplier's reasonable and documented expenses directly resulting from the suspension; and
  - ii. where the suspension continues for 30 days or more, the Supplier may remove or replace any Key Personnel, provided that where the Customer ends the suspension under Clause 18.4(b), the Supplier must provide replacement Key Personnel approved by the Customer with at least equivalent skills, qualifications and experience. The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

- e) 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.

### **18.5 Consequences**

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

## **19 Assignment and novation**

### **19.1 By Supplier**

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

### **19.2 By Customer**

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

### **19.3 Acting reasonably**

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

### **19.4 Transferability and portability of Services**

- a) Notwithstanding any other provision of the Contract, the Supplier agrees that the Customer is entitled to transfer any Service to other Queensland Government Bodies, on the same terms and conditions, but only as a consequence of a Machinery of Government Change.
- b) If the Services are transferred in accordance with Clause 19.4(a), the Supplier:
  - i. must immediately notify the Customer of any proposed reduction in costs which may occur; and

- ii. may notify the Customer of any proposed additional Fees for any additional costs directly incurred as a result of the provision of additional overall Services.
- c) The Supplier agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
  - i. adjust the Fees as a result of notice of the matters raised in Clause 19.4(b); and/or
  - ii. comply with any specific requirements of the Queensland Government Body to which the Contract is transferred, following the Machinery of Government Change.

## 20 Notices

- a) Each party must send all notices relating to the Contract to the other party's Authorised Representative (or as updated under Clause 22.1(c)).
- b) A notice will be deemed to be given:
  - i. if posted:
    - A. within Australia to an Australian postal address, 5 Business Days after the date of posting; or
    - B. outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after the date of posting;
  - ii. if delivered by hand during a Business Day on the date of delivery;
  - iii. if emailed, subject to Clause 20(c) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00 pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- c) A notice under Clause 17 or 18 which is sent via email, must also be sent by post, hand delivery or in any other way permitted by Law. In such circumstances, a notice will be deemed to be given on the earlier of when the email is opened by the receiving party or at the time that the notice is otherwise brought to the attention of the receiving party by post, hand delivery or in any other way permitted by Law.

## 21 Force Majeure Events

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

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

## 22 General

### 22.1 Authorised Representatives

- a) Each party may nominate one or more employee(s) as its nominated representative(s) in the RFQ or RFQ Response Form (**Authorised Representative**).
- b) Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the direction is confirmed in writing by that party's Authorised Representative.
- c) A party may notify the other party of any replacement of its Authorised Representative from time to time (subject to Clause 5.3 where the Supplier's Authorised Representative is Key Personnel).

### 22.2 Entire agreement

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

### **22.3 Waiver**

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

### **22.4 Rights cumulative**

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

### **22.5 Variations**

The Contract may only be varied by written agreement between the parties signed by Authorised Representatives of the parties.

### **22.6 Relationship of the parties**

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

### **22.7 Survival**

Clauses 1.2, 4.8(a)(iii), 4.9(b), 5.4, 6.5, 6.6, 6.7, 8, 9, 10, 11, 12, 13, 14, 17, 18.5, 19.4, 20, 22 and any other clause in the Contract, which is expressed to survive or by its nature survives, will survive termination or expiry of the Contract for any reason.

### **22.8 Costs**

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

### **22.9 Joint and several liability**

- a) The obligations of the Supplier, if more than one person, under the Contract, are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of the Contract) of the other as if those acts or omissions were its own and the Customer may proceed against any one or all of them.

- b) The rights of the Supplier, if more than one person, under the Contract (including the right to payment) jointly benefit each person constituting the Supplier (and not severally or jointly and severally).
- c) Any payment by the Customer under the Contract to any account nominated in writing by the Supplier, or failing such nomination, to any one or more persons constituting the Supplier, will be deemed to be payment to all persons constituting the Supplier.

### **22.10 Governing Law**

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

## **23 Definitions and Interpretation**

### **23.1 Definitions**

**Table 23.1 – Definition of terms**

| <b>Terms</b>              | <b>Definition</b>   |
|---------------------------|---|
| Authorised Representative | Has the meaning given in Clause 22.1(a).  |
| Business Day              | Any day other than a Saturday, Sunday or public holiday at the Customer’s address.                          |
| Business Hours            | Between 9.00 am and 5.00 pm on Business Days, unless otherwise specified in the RFQ.                        |
| Claim                     | Any claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a claim. |

| Terms                                 | Definition   |
|---------------------------------------|--|
| Confidential Information              | <p>All information disclosed by or on behalf of the Customer or the Supplier (<b>Discloser</b>) to the other party (<b>Recipient</b>) in connection with the Contract or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:</p> <ul style="list-style-type: none"> <li>a) is or becomes public, except through breach of a confidentiality obligation;</li> <li>b) the Recipient can demonstrate was already in its possession or was independently developed by the recipient; or</li> <li>c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.</li> </ul> |
| Conflict of Interest                  | Includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.   |
| Consequential Loss                    | <ul style="list-style-type: none"> <li>a) Indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party; and</li> <li>b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.</li> </ul>   |
| Contract                              | The agreement between the Customer and the Supplier, comprising documents specified in Clause 1.1(a).  |
| Infrastructure Contract Conditions A1 | This document titled 'Infrastructure Contract Conditions A1.   |
| Contract Term                         | The term of the Contract, determined by Clause 2.  |
| Corporations Act                      | The <i>Corporations Act 2001</i> (Cth).  |

| Terms                      | Definition   |
|----------------------------|--|
| Correctly Rendered Invoice | <p>A tax invoice (as defined by the GST Law) in which:</p> <ul style="list-style-type: none"> <li>a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;</li> <li>b) the invoice is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;</li> <li>c) the invoice is accompanied, where necessary, by documentation that provides evidence that the amount specified in the invoice is in accordance with the Contract; and</li> <li>d) the invoice is addressed to the Authorised Representative or the officer specified in the RFQ to receive invoices.</li> </ul> |
| Criminal Code              | The Criminal Code set out in Schedule 1 of the <i>Criminal Code Act 1899</i> (Qld).  |
| Customer                   | The entity specified in the RFQ.   |
| Customer Data              | Any information (including Customer Confidential Information), material, data, dataset or database to the extent provided by or on behalf of the Customer to the Supplier under the Contract. Customer Data does not include any Pre-Existing Material or Deliverables owned by the Supplier.  |
| Customer Materials         | The Customer's materials, Customer Data, equipment, premises, documents and any other resources that the Customer provides or makes available to the Supplier, as set out in the RFQ.  |
| Data Breach                | <p>Any actual, threatened or suspected cyber or information security incident affecting the security, integrity or availability of the Customer Data held by or on behalf of the Supplier, and includes:</p> <ul style="list-style-type: none"> <li>a) any unauthorised access, disclosure, modification, use, copying, or loss of any Customer Data (whether or not confidential in nature); and</li> <li>b) any 'eligible data breach' (within the meaning of the <i>Information Privacy Act</i> or the <i>Privacy Act</i>) in respect of the Customer Data.</li> </ul>  |
| Deliverables               | All materials, documents, information and other items that are created, written, developed or otherwise brought into existence by or on behalf of the Supplier for the Customer in the course of the Supplier performing its obligations under the Contract in any form whatsoever (including electronic form), including the Supplier Data and any items specified as 'Deliverables' in the RFQ.  |
| Delivery Date              | Any date and time for delivery of the Services as stated in the RFQ.   |

| Terms                   | Definition  |
|-------------------------|---|
| Department              | Any entity declared to be a department of government by the Governor in Council by gazette notice.  |
| Discloser               | Has the meaning given in the definition of Confidential Information.  |
| Fees                    | For the Services, the price or prices described in the RFQ Response Form or calculated using a calculation method specified the RFQ Response Form.  |
| Force Majeure Event     | <p>Any of the following events, provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party by reasonable diligence or reasonable precautions:</p> <ul style="list-style-type: none"> <li>a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, tsunami, explosion or fire;</li> <li>b) strikes or other industrial action, other than strikes or other industrial action of some or all of the Supplier's Personnel; and</li> <li>c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic, but excludes any act or omission of a Subcontractor (except where that act or omission was caused by a Force Majeure Event).</li> </ul> |
| Further Term            | The period specified as the 'Further Term' in the RFQ.  |
| GST                     | Has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the <i>GST and Related Matters Act 2000</i> (Qld) or equivalent legislation.   |
| GST Law                 | Has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).  |
| Initial Term            | The period specified as the 'Initial Term' in the RFQ.  |
| Information Privacy Act | The <i>Information Privacy Act 2009</i> (Qld).  |

| Terms                        | Definition  |
|------------------------------|---|
| Insolvency Event             | <p>In relation to a party, any of the following:</p> <ul style="list-style-type: none"> <li>a) the party is or states that it is unable to pay from its own money all its debts as and when they become due and payable;</li> <li>b) the party is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;</li> <li>c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party;</li> <li>d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of the party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 7 days;</li> <li>e) a receiver or receiver and manager is appointed in respect of any property of the party;</li> <li>f) the party is deregistered under the <i>Corporations Act</i> or notice of its proposed deregistration is given to the party;</li> <li>g) the party enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the party's creditors or members or a moratorium involving any of them; or</li> <li>h) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of the party.</li> </ul> |
| Intellectual Property Rights | <p>Includes all copyright, trade mark, design, patents, semi-conductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract, but excludes Moral Rights.</p>  |
| Key Personnel                | <p>The individuals identified in the RFQ Response Form.</p>   |

| Terms                          | Definition  |
|--------------------------------|---|
| Laws                           | <p>All:</p> <ul style="list-style-type: none"> <li>a) acts, ordinances, regulations, by-Laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;</li> <li>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Services; and</li> <li>c) the requirements of any authority with jurisdiction in respect of the Services and/or the Site, as applicable.</li> </ul> |
| Letter of Acceptance           | The document titled 'Letter of Acceptance' issued by the Customer to the Supplier accepting the offer made by the Supplier in its RFQ Response Form that the Supplier submitted in response to the Request for Quote.   |
| Machinery of Government Change | A transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.   |
| Modern Slavery                 | Has the meaning given in the <i>Modern Slavery Act 2018</i> (Cth).  |
| Modern Slavery Act             | The <i>Modern Slavery Act 2018</i> (Cth).   |
| Moral Rights                   | The right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the <i>Copyright Act 1968</i> (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of Contract.   |
| Personal Information           | <p>Has the meaning given:</p> <ul style="list-style-type: none"> <li>a) for the purpose of the <i>Information Privacy Act</i>; in that Act, or</li> <li>b) for the purposes of the <i>Privacy Act</i>, in that Act.</li> </ul>  |
| Personnel                      | A party's officers, directors, employees and agents and, in the case of the Supplier, includes any Subcontractor and the Subcontractor's officers, directors, employees and agents.   |
| Pre-Existing Material          | All materials, documents and other items which existed at the Start Date or which are developed independently of the Contract. Pre-Existing Material includes any adaptation, translation or derivative of the Pre-Existing Material, but does not include any Third Party Material.  |
| Principal                      | The State of Queensland acting through the Department of Transport and Main Roads.  |
| Privacy Act                    | The <i>Privacy Act 1988</i> (Cth).  |

| Terms  | Definition  |
|--|---|
| Procurement Assurance Model                        | The Procurement Assurance Model described in Part 3 of the <i>Queensland Procurement Policy</i> .   |
| Procurement Guidelines: <i>Contract Disclosure</i> | The Procurement Guidelines: <i>Contract Disclosure</i> issued by the Director-General, Department of Communities, Housing and Digital Economy.  |
| Professional Standards Legislation                 | A Law providing for the limitation of liability of certain suppliers by reference to schemes that are approved in accordance with applicable Federal and State and Territory legislation as set out on the Professional Standards Councils' website at <a href="https://www.psc.gov.au/legislation">https://www.psc.gov.au/legislation</a> .  |
| Queensland Government Body                         | Any of: <ul style="list-style-type: none"> <li>a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);</li> <li>b) a body established by the State of Queensland through the Governor or a Minister; or</li> <li>c) an incorporated or unincorporated body over which the State of Queensland exercises control.</li> </ul> |
| Queensland Government Supplier Code of Conduct     | Means the Queensland Government policy titled " <i>Queensland Government Supplier Code of Conduct</i> " or any policy that replaces that policy.  |
| Queensland Procurement Policy                      | The <i>Queensland Procurement Policy</i> published by the Queensland Government, as amended or replaced by the Queensland Government.   |
| Recipient  | Has the meaning given in the definition of Confidential Information.  |
| Related Body Corporate                             | Has the meaning given in the <i>Corporations Act</i> .  |
| Request for Quote                                  | A request for quote issued by a Customer, inviting offers to deliver the Services to the Customer.  |
| Right to Information Act                           | The <i>Right to Information Act 2009</i> (Qld).   |
| RFQ Response Form                                  | The response form submitted by the Supplier in response to the Request for Quote, as amended through any negotiations between the Supplier and the Customer pursuant to the Request for Quote.  |

| <b>Terms</b>             | <b>Definition</b>  |
|--------------------------|--|
| Service Levels           | The service levels specified in the RFQ.   |
| Service Standards        | The standards and other requirements for the Services specified in the RFQ.  |
| Services                 | The services specified in the Technical Specifications and any services incidental or necessary to complete the performance of those services or which are customarily performed in connection with those services.  |
| Site                     | Each of the sites or premises at which the Services are to be provided as specified in the RFQ.  |
| Special Conditions       | Any terms and conditions specified by the Customer in the RFQ.   |
| Start Date               | The date indicated as the 'Start Date' in the RFQ.   |
| Subcontractor            | A third party to whom the Supplier subcontracts the performance or supply of any Services in accordance with Clause 5.1.   |
| Supplier                 | The entity specified in the RFQ Response Form.   |
| Supplier Data            | Any information, models, formula, calculation, material, data, dataset or database disclosed or provided by or on behalf of the Supplier to the Eligible Customer under the Contract, including where such information, models, formula, calculation, material, data, dataset or database includes some or all of the Customer Data. |
| Technical Specifications | Part C of the Request for Quote.   |
| Third Party Material     | All materials, document and other items in which the Intellectual Property Rights are owned by a party other than the Supplier or the Customer.  |

### **23.2 Interpretation**

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

- a) a reference to an agreement includes any variation or replacement of the agreement;
- b) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- c) all currency amounts are in Australian dollars;
- d) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;
- e) 'include', 'includes' and 'including' must be read as if followed by the words 'without limitation';

- f) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- g) agreements, representations and warranties made by 2 or more people will bind them jointly and severally;
- h) a reference to any legislation includes any consolidation, amendment, re enactment or replacement of legislation;
- i) a person includes the person's executors, administrators and permitted novatees and assignees;
- j) no rule of construction will apply to a provision of a document to the disadvantage of a party, merely because that party drafted the provision or would otherwise benefit from it, and
- k) if any part of the Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

