

TMR SHORT FORM CONDITIONS OF CONTRACT

For the provision of Goods and/or Services

Version 2.3 – March 2024

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract, unless the context otherwise requires, the following definitions will apply:

“Approved Expenses” means the Contractor’s expenses (if any) which have been approved by the Customer prior to any expenditure being incurred;

“Business Day” means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which the relevant act is to be or may be done; or
- (c) any day occurring within any of the following periods –
 - i. 22 to 24 December;
 - ii. 27 to 31 December;
 - iii. 2 to 10 January;

“Claim” means an invoice:

- (a) which correctly identifies the Goods and/or Services supplied to which a payment relates;
- (b) states the amount of the payment that the Contractor claims is payable by the Customer; and
- (c) requests payment of the claimed amount.

“Confidential Information” means information of, or supplied by, the Customer, that:

- (a) is by its nature confidential;
- (b) is designated by the Customer as confidential; or
- (c) the Contractor knows or ought to know is confidential;

and includes information:

- (d) comprised in or relating to any Intellectual Property Rights of the Customer;
- (e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Customer;
- (f) that is of actual or potential commercial value to the Customer; and
- (g) relating to the clients or suppliers of the Customer;

but does not include information that:

- (h) was already in the possession of the Contractor and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Contractor or is public knowledge other than through a breach of an obligation of confidentiality;

“Conflict of Interest” means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively;

“Contract” means the legally binding contract between the Customer and the Contractor constituted by the Documents specified in clause 2.1;

“Contract Material” means any material that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing or carrying out the Contract;

“Contractor” means the entity specified in the Contract from whom the Goods and/or Services are being procured;

“Correctly Rendered Invoice” means an invoice:

- (a) in which the amount claimed is due for payment in accordance with the Contract;
- (b) in which the amount claimed is correctly calculated in accordance with the Contract;
- (c) which correctly identifies the Goods and/or Services supplied; and
- (d) which, if GST is applicable is a valid tax invoice under the GST Legislation;

“Criminal History Check” means a request for the convictions recorded against a person in respect of offences and which may be accessed through the Queensland Police Service and the New Zealand Police (if applicable). The check does not include convictions that have been set aside or quashed or charges or which may be excluded from a person’s criminal history under any other law.

“Customer” means the State of Queensland or other entity specified in the Contract, who is procuring the Goods and/or Services;

“Document” includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any articles or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other articles or device; or
- (d) a document in electronic form;

“Ethical Supplier Threshold” means the Ethical Supplier Threshold described in Clause 19 the Queensland Procurement Policy;

"Ethical Supplier Mandate" means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

"Goods" means the material, plant, item or equipment specified in the Order (if applicable);

"Government Department or Instrumentality" means the QGP Compliance Branch within Queensland Government Procurement Division of the Department of Energy and Public Works, and any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office;

"GST" means a goods and services tax imposed by or through the GST Legislation;

"GST Amount" means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time;

"GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such laws;

"Intellectual Property Rights" includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the commencement date of the Contract, but excludes Moral Rights;

"Modern Slavery" means 'modern slavery' within the meaning given in the *Modern Slavery Act 2018* (Cth);

"Moral Rights" means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement date of the Contract;

"Notice" means a notice in writing which may be given by personal delivery, pre-paid postage or facsimile to the Party's business address or registered office or, except for a notice under clauses 15 or 17, given by email to a Party's nominated email address;

"Order" means an order or any other Document acceptable to the Customer, used to authorise the purchase of the Goods and/or Services by the Customer;

"Party" means each of the Customer and the Contractor;

“Personal Information” is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“Price” and **“Pricing”** means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Customer for the Goods and/or Services and is inclusive of packaging, handling, freight, GST, and all other duties, taxes and charges;

“Records” means all material including but not limited to books, Documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Customer to the Contractor in connection with the performance of the Contract and includes a copy of such material;

“Services” means any services specified in the Order (if applicable);

“Short Form – Conditions of Contract” means these terms and conditions of Contract.

“Specifications” means the detailed description of the Customer’s requirements as specified in Section 1 of the Request for Quote or as specified, attached or referenced in the Order.

“Supplier Code of Conduct” means the supplier code of conduct available at (or through) www.forgov.qld.gov.au/supplier-code-conduct and as updated and amended from time to time.

1.2 Interpretation

The following rules apply in interpreting these Short Form - Conditions of Contract, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity, person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, successors and permitted assigns;
- (g) “consent” means prior written consent;
- (h) “in writing” means either by letter, email or facsimile;

- (i) a reference to a clause, attachment or annexure is a reference to a clause, attachment or annexure to these Short Form - Conditions of Contract;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next business day in that place, unless the Parties agree otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a reference to a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

2. FORMATION OF CONTRACT

2.1 The following Documents will constitute the entire Contract between the Customer and the Contractor:

- (a) the Order;
- (b) these Short Form - Conditions of Contract;
- (c) Specifications;
- (d) the Contractor's offer (to the extent accepted under the Order); and
- (e) any other Document, in whole or part, forming part of the Contract, as agreed in writing between the Customer and Contractor.

2.2 In the event of any conflict between the Documents specified in clause 2.1, the order of precedence to resolve the conflict will be in the above order.

2.3 The Contract supersedes all prior representations, agreements, statements and understandings between the Customer and Contractor, whether oral or in writing relating to the subject matter of the Contract.

3. PROVISION OF GOODS AND/OR SERVICES

3.1 The Contractor agrees to supply the Goods and/or perform the Services at or by the time specified in the Order, and if not specified, within a reasonable time having regard to normal commercial practice.

3.2 All Goods and/or Services provided by the Contractor to the Customer in accordance with the Contract, unless otherwise specified by the Customer, must comply in all aspects with:

- (a) the terms of the Contract;

- (b) all applicable Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), the *Modern Slavery Act 2018* (Cth) (where applicable to the Contractor) and the *Human Rights Act 2019* (Qld) (where applicable to the Contractor);
 - (c) all codes, policies, guidelines, codes of conduct (including the Supplier Code of Conduct), rules, standards and procedures (“**Policies**”) which apply to the Goods and/or Services and/or the Contractor's obligations under this Contract, including any amendments to existing Policies or new Policies that may be made or introduced after the commencement of the Contract and which are relevant to the supply or performance of the Goods and/or Services; and
 - (d) without limiting clause 3.2(d), any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO), including any that may be introduced or varied during the Contract, which govern the provision of the Goods and/or Services.
- 3.3 All Goods supplied by the Contractor to the Customer must be in a new and unused condition, of recent origin, unless otherwise specified in the Order.
- 3.4 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Customer upon delivery.
- 3.5 The Contractor must ensure that all Goods and/or Services are of a high quality, professional standard and are fit for purpose.
- 3.6 Without limiting the Contractor's obligations, the Contractor must ensure that any manufacturer's or supplier's warranty that applies to the Goods will be transferred to the Customer, at no cost to the Customer.
- 3.7 The Contractor will be responsible for the supply and/or performance of all personnel and/or equipment, necessary for the proper supply of the Goods and/or performance of the Services.
- 3.8 When supplying the Goods and/or performing the Services, the Contractor must take all measures to protect people and property; avoid unnecessary interference with the passage of people and vehicles; and prevent nuisance and unreasonable noise and disturbance.
- 3.9 The Contractor must comply with any reporting requirements reasonably requested by the Customer during the Contract.

4. PRICE AND PAYMENT

- 4.1 At the times for Claims stated in the Contract, the Contractor may deliver to the Customer a Claim. If the time for any payment Claim falls on a day which is not

- a Business Day, the Contractor shall submit the Claim on the next Business Day.
- 4.2 If the Goods and/or Services are provided in accordance with the Contract, the Customer will, subject to clause 4.3, within 20 Business Days of receipt of a Claim:
- (a) pay the Contractor the Price; and
 - (b) reimburse the Contractor for the Approved Expenses (after the Approved Expenses have been incurred by the Contractor),
- 4.3 In the event that the Customer disputes the whole or any part of a Claim, the Customer shall, within 15 Business Days of receipt of the Claim, at the nominated place, provide the Contractor with a payment schedule which:
- (a) identifies the Claim to which it responds; and
 - (b) states the amount of the payment, if any, that the Customer proposes to make; and
 - (c) if the amount proposed to be paid is less than the amount stated in the Claim — states why the amount proposed to be paid is less, including the Customer's reasons for withholding any payment.
- 4.4 In the event that the Customer disputes the whole or any part of the Claim, the Customer shall pay the Contractor within 20 Business Days of receipt of the Claim, that part of the amount that is not in dispute. The Customer is not obliged to pay any amount in dispute until the dispute has been resolved.
- 4.5 If a party fails to pay monies payable under the Contract by the due date for payment, that party shall, subject to the applicability of section 67P of the Queensland Building and Construction Commission Act 1991 (Qld), pay the other party interest on the amount payable at the annual rate of 10% for each day that the amount is unpaid.
- 4.6 Payment of moneys shall not be evidence that the Goods and/or Services have been provided in accordance with the Contract or an admission of liability but shall be a payment on account only.
- 4.7 The Customer may pay a Claim by either corporate credit card, of a type accepted by the Contractor, or by an electronic facility.
- 4.8 The Contractor must not charge, or pass on to, the Customer any fees, costs or charges associated with the use of the corporate credit card or electronic facility.
- 4.9 The Contractor shall issue to the Customer a valid tax invoice complying with the GST Legislation in respect of the relevant supply:
- (a) within two Business Days of the issue of the payment schedule by the Customer; or

- (b) where the Customer does not issue a payment schedule under clause 4.3, within 2 Business Days of when the Customer could have issued a payment schedule.

5. GST

5.1 The Price is inclusive of GST and:

- (a) the Customer is not required to pay a GST Amount in addition to the Price; and
- (b) the Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.

5.2 Where the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including but not limited to:

- (a) an amendment to the GST Legislation;
- (b) the issue of a ruling or advice by the Commissioner of Taxation;
- (c) a refund of GST to the Contractor in respect of any supply made under the Contract; or
- (d) a decision of any tribunal or court;

then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.

6. CONFLICT OF INTEREST

6.1 The Contractor warrants that, to the best of its knowledge, as at the commencement date of the Contract neither the Contractor nor any of its officers, employees, agents or sub-contractors have, or are likely to have a Conflict of Interest in the performance of the Contractor's obligations under the Contract.

6.2 If a Conflict of Interest or risk of Conflict of Interest arises during the term of the Contract (without limitation, including work undertaken by the Contractor for any entity other than the Customer), the Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS

7.1 Title to, and Intellectual Property Rights in, all Contract Material will, upon its creation, vest in the Customer, unless otherwise specified in the Order.

7.2 If the Contractor is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the

Contract Material granted under the Contract that might otherwise constitute an infringement of the individual's Moral Rights.

- 7.3 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of the Goods and/or Services, obtain from that individual who is to create Contract Material:
- (a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under the Contract in full, without impediment or cost to the Customer; and
 - (b) without limiting clause 7.3(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the person's Moral Rights.

8. CONFIDENTIALITY AND PERSONAL INFORMATION

- 8.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose Confidential Information to any person for any purpose other than to provide the Goods and/or Services, in accordance with the Contract.
- 8.2 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must:
- (a) if the Customer is an "agency", other than the "health department", within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract as if the Contractor was the Customer; and
 - (b) if the Customer is the "health department" within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract, as if the Contractor was the Customer.
- 8.3 The Contractor must return all Records to the Customer upon completion or termination of the Contract.

9. SECURITY AND ACCESS

- 9.1 The Contractor must, and must ensure that its officers, employees, agents and/or sub-contractors, when entering upon the Customer's premises, dealing with the Customer's employees or members of the public, or using the

Customer's facilities, equipment or resources, comply with all applicable rules, policies, standards, codes of conduct, directions and procedures of the Customer, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Customer.

10. LIABILITY

- 10.1 The liability of a Party under the Contract to the other Party for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the Contract or otherwise at law.
- 10.2 The liability of a Party arising under and/or in connection with the Contract, will exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 10.3 The liability of a Party arising under and/or in connection with the Contract, will, except in relation to liability:
- (a) for personal injury (including sickness, injury, death);
 - (b) for loss of, or damage to, tangible property;
 - (c) a breach of the Intellectual Property Rights and Moral Rights in accordance with clause 7; or
 - (d) under an indemnity provided by the Contractor in accordance with clause 11,
- be limited to the liability cap (if any) specified in the Specifications or three (3) times the Contract Price, whichever is higher.
- 10.4 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of the Contract, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the Contract.
- 10.5 Despite any other provision of the Contract, but subject to compliance with clause 12.5, the Contractor's liability under the Contract (including but not limited to any liability under this clause 10 and liability to indemnify in accordance with clause 11) is limited to the extent necessary to comply with a scheme that is in force and applies to the Contractor under the *Professional Standards Act 2001* (Qld).

11. INDEMNITY

11.1 In this clause 11:

“**claim**” includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement.

11.2 The Contractor releases, discharges and indemnifies the Customer and each of its officers and employees (“the Indemnified Persons”) from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:

- (a) negligent or unlawful act or omission of the Contractor, its officers, employees, agents or sub-contractors;
- (b) breach of the Contract by the Contractor;
- (c) contravention of any legislative requirements by the Contractor, its officers, employees, agents or sub-contractors; or
- (d) infringement by the Contractor, its officers, employees, agents or sub-contractors of the Intellectual Property Rights or Moral Rights of any third party, except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

12. INSURANCE

12.1 The Contractor warrants that it will hold and maintain for the duration of the Contract the following insurances to cover its obligations under the Contract:

- (a) Workers’ Compensation insurance in accordance with the *Workers’ Compensation and Rehabilitation Act 2003* (Qld);
- (b) Public Liability insurance for a minimum amount of \$20 million in respect of each claim unless otherwise specified in the Order; and
- (c) any other insurances as specified in the Order.

12.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.

12.3 The Contractor must, if requested by the Customer, promptly provide a certificate of currency for each insurance policy.

12.4 The Contractor warrants if it is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld) that it will hold and maintain the minimum level of insurance applicable to the scheme.

12.5 If the Contractor is a member of a scheme approved under the *Professional Standards Act 2004* (Qld), the Contractor must provide a copy of the applicable scheme to the Customer, prior to the commencement of the Contract.

13. LICENSING REQUIREMENTS

- 13.1 The Contractor warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.
- 13.2 The Contractor must, if requested by the Customer, provide evidence of compliance with its obligations under this clause, to the satisfaction of the Customer.

14. VARIATION

- 14.1 The Contract may only be varied by written agreement between the Customer and Contractor. The Customer and Contractor must act reasonably in deciding whether to agree to a variation, as requested by the other Party.

15. BREACH AND TERMINATION

- 15.1 The Customer may terminate the Contract, in whole or in part, for convenience by giving 30 days prior Notice or such other reasonable period determined by Customer, to the Contractor.
- 15.2 If the Contract is terminated in accordance with clause 15.1:
- (a) the Contractor must, following receipt of that Notice from the Customer, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and/or sub-contractors;
 - (b) subject to clause 15.2 (c), the Customer must pay to the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Contract to the date of termination together with any costs and expenses reasonably incurred by the Contractor by reason of termination; and
 - (c) the Customer will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss or any other reason in relation to termination nor will the Customer be liable for payment to the Contractor for any amount greater than the amount that the Customer would have paid to the Contractor had the Contract been completely performed.
- 15.3 Without limiting clause 15.5, where the Contractor commits any breach of the Contract, the Customer may by Notice, require the Contractor to show cause by the date specified in the Notice, why the Customer should not terminate the Contract.

- 15.4 If the Contractor fails to show reasonable cause by the date specified in the Notice, then the Customer is entitled, upon Notice to the Contractor, to terminate the Contract.
- 15.5 The Customer may immediately terminate the Contract by Notice to the Contractor if:
- (a) the Contractor gives Notice in accordance with clause 6.2 or the Customer otherwise identifies a Conflict of Interest;
 - (b) the Customer is satisfied that the Contractor has breached any part of clause 8.1 or 8.2;
 - (c) the Contractor breaches any part of clause 12 or 13;
 - (d) the Customer is satisfied that the Contractor has breached any part of clause 16.1;
 - (e) the Contractor:
 - i. becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
 - ii. has a receiver or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration;
 - iii. enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - iv. is wound up, voluntarily or involuntarily; or
 - (f) the Contractor indicates that it is unable or unwilling to complete the Contract.
- 15.6 If the Customer terminates the Contract in accordance with clause 15.4 or 15.5, the termination is without prejudice to any rights of the Customer under the Contract or at common law, including the right to claim damages for breach of the Contract.

16. GENERAL PROVISIONS

16.1 Commissions, Incentives and Collusion

Commissions and Incentives

- 16.1.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, give or offer anything to the Customer or any officer or employee of the Customer, or to a parent, spouse, child or associate of an officer or employee of the Customer, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Customer's actions in relation to the Contract.

16.1.2 If the Customer discovers at any time during the contract term that the Contractor has breached clause 16.1.1, the Customer may, in addition to any other action, elect to terminate the Contract in accordance with clause 15.5(d).

Collusion

16.1.3 The Contractor warrants to the Customer that its offer was not prepared (and any variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract).

16.1.4 The Contractor acknowledges that the Customer has entered into the Contract in reliance of the warranties in clause 16.1.3.

16.1.5 If the Contractor breaches clause 16.1.3, without limiting its rights under the Contract, the Customer may:

- (a) deduct from any moneys due to the Contractor under the Contract, an equivalent sum as an amount due from the Contractor to the Customer; and
- (b) at its discretion terminate the Contract and claim damages for breach of the Contract.

16.2 Relationship of the Parties

16.2.1 The relationship of the Parties under the Contract is one of principal and contractor and the Contractor is not by virtue of the Contract in partnership or joint venture with the Customer and must not represent itself or allow itself to be represented as a partner or joint venturer, officer or employee of the Customer.

16.3 No Advertising

16.3.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not make any public announcement or advertisement in any medium in relation to the Contract without the consent of the Customer.

16.4 Waiver

16.4.1 Any failure by a Party at any time to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a Party to the other will not constitute a waiver of the Party's rights.

16.4.2 No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.

16.4.3 A waiver by a Party of a breach of any part of the Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

16.5 No Assignment or Sub-contracting

16.5.1 The Contractor must not assign, in whole or in part, its obligations or interest in the Contract or sub-contract the provision of any Goods and/or Services pursuant to the Contract, without the consent of the Customer.

16.5.2 The Contractor must ensure that the terms of any subcontract include:

- (a) a right for the Contractor to terminate the subcontract if the Contractor becomes aware that, at the time the subcontract was entered into by the subcontractor, the subcontractor was subject to a sanction under the Ethical Supplier Mandate; and
- (b) that the subcontract cannot be extended if the subcontractor becomes subject to a sanction under the Ethical Supplier Mandate during the term of the subcontract.
- (c) The Contractor must exercise the right in clause 16.5.2(a) if directed to do so by the Customer.

16.6 Governing Law

16.6.1 This Contract is governed by and construed in accordance with the laws of Queensland and the Parties submit to the nonexclusive jurisdiction of the courts of Queensland.

16.6.2 Notwithstanding clause 16.5.1, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* to the Contract to the fullest extent permitted by law.

16.7 Severability

16.7.1 If any part of the Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

16.8 Further Assistance

16.8.1 The Contractor must do all things reasonably required by the Customer to give effect to the Contract.

16.9 Disclosure by Customer

16.9.1 The Contractor acknowledges that the Customer, its officers, employees, agents and sub-contractors may use and disclose any of the information

provided by the Contractor about the Contractor, the Contract or the Goods and/or Services to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or the Commonwealth, States or Territories for any purpose in connection with the administration of the Contract.

16.9.2 The Contractor acknowledges that the Customer may disclose information about the Contractor's compliance with clause 17.1 to any Government Department or Instrumentality.

16.10 Right to Information and Disclosure

16.10.1 The *Right to Information Act 2009* (Qld) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

16.10.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

16.10.3 Information relating to the Contract is potentially subject to disclosure to third parties.

16.10.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Customer. The Customer cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

16.10.5 Despite any other provision of the Contract, the Customer is entitled to publish on the Queensland Government Procurements' website: www.epw.qld.gov.au under '*Supply and disposal/Tenders and contracts*', or by any other means, the following details:

- (a) the name and address of the Customer;
- (a) a description of the Goods and/or Services;
- (b) Contract commencement date or award date;
- (c) value of the Contract;
- (d) name and address of the Contractor;
- (e) procurement method used; and
- (f) where the total value of the Goods and/or Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - i. Invitation details;

- ii. Contract overview; and
- iii. reasons for non-disclosure of procurement results (if applicable).

17. ETHICAL SUPPLIER

- 17.1 The Contractor must, and must ensure its subcontractors in carrying out work under the Contact, comply with:
- (a) the Ethical Supplier Threshold; and
 - (b) the Ethical Supplier Mandate,
- during the term of the Contract.
- 17.2 The Contractor must provide evidence of compliance with clause 17.1 upon request by the Customer.
- 17.3 The Contractor authorises the Customer and each relevant Government Department or Instrumentality to obtain information relevant to the Ethical Supplier Mandate and the Ethical Supplier Threshold that may be held by any Government Department or Instrumentality and to take that information into account in determining the Contractor's compliance with clause 17.1. The Contractor agrees to provide all information requested by the Customer and any relevant Government Department or Instrumentality during an audit or investigation, including the information of subcontractors.
- 17.4 Without limiting the Customer's rights and remedies under clause 15, where the Customer reasonably suspects that the Contractor has not complied with the requirements of this clause 17, the Customer may by Notice, require the Contractor 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.
- 17.5 If the Contractor fails to show reasonable cause by the date specified in the Notice given by the Customer under clause 17.4, then the Customer is entitled, upon Notice to the Contractor, to immediately terminate the Contract.
- 17.6 The Contractor acknowledges that a failure to comply with the Customer's policies that apply to the Contract or the Contractor's obligations under the Contract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate or Ethical Supplier Threshold, in addition to any other remedies available to the Customer under this Contract.
- 17.7 The Contractor acknowledges and agrees that the State may publish information about sanctions imposed under the Ethical Supplier Mandate on the Contractor. If the Contractor is a natural person, the Customer and any relevant Government Department or Instrumentality collects personal information about the Contractor for the purposes of determining whether to

impose demerits or sanctions on the Contractor's business under the Ethical Supplier Mandate. Personal Information may be included in referrals to the Tripartite Procurement Advisory Panel for the making of a recommendation about non-compliance and penalty under the Ethical Supplier Mandate and to the decision maker, for the purposes of making a decision about non-compliance and penalty.

18. CRIMINAL HISTORY CHECK

- 18.1 In addition to any other rights and remedies under the Contract, where a criminal history check has been undertaken for the Contractor, its employee, key personnel or subcontractor and the result is Positive, the Customer may at its sole discretion, do any of the following:
- (a) give Notice to the Contractor to remove any employee, key personnel or subcontractor with a Positive result. Upon receipt of such Notice under this clause 18.1.1(a), the Contractor must, at no cost to the Customer, promptly remove and replace such employee, key personnel or subcontractor mentioned in the Notice with a person approved by the Customer. The process set out in this clause will apply if such approved person returns a Positive result.
 - (b) give Notice to the Contractor to immediately terminate the Contract and the provisions of clause 15.6 of the Contract apply.
- 18.2 The Contractor must and must ensure its employee, key personnel or subcontractor performing the Services under the Contract promptly give Notice to the Customer of any change to the circumstances relating to Contractor, its employee, key personnel or subcontractor's criminal history during the Contract Term.
- 18.3 Upon receipt of a Notice in accordance with clause 18.1.2, or upon the Customer becoming aware of any change or of the Contractor's failure to give Notice of any change, the Customer may:
- (a) direct the Contractor as to how to manage that change in circumstance and the Contractor must comply with any reasonable direction so given by the Customer;
 - (b) give Notice to the Contractor to immediately terminate the Contract and the provisions of clause 15.6 of the Contract apply.
- 18.4 If clause 18.1.3(a) or 18.1.3(b) applies, the Contractor must give Notice to the Customer when the change in circumstance has been resolved.
- 18.5 Where the scope of the work being undertaken by a Contractor/Consultant introduces or extends to activities which would require a criminal history check

during the course of the contract, the criminal history check process should be undertaken. This would activate clauses 18.1.1, 18.1.2, 18.1.3 and 18.1.4.

19. CLAUSES TO SURVIVE TERMINATION

19.1 The following clauses will survive termination or expiration of the Contract:

- clause 1 - Definitions and Interpretation;
- clause 7 - Intellectual Property Rights and Moral Rights;
- clause 8 - Confidentiality and Personal Information;
- clause 10 - Liability;
- clause 11 - Indemnity;
- clause 12 - Insurance;
- clause 16.3 - No Advertising;
- clause 16.4 - Waiver;
- clause 16.6 - Governing Law;
- clause 16.9 - Disclosure by Customer;
- clause 16.10 - Right to Information and Disclosure; and
- clause 17 – Ethical Supplier.