

SOA Comprehensive Contract Conditions – ICT Products and/or Services

Contents

1	The Contract	5
1.1	When Contract is formed	5
1.2	Interpretation	5
1.3	Hierarchy	5
1.4	Additional Provisions	5
2	Non exclusivity	6
3	Term	6
3.1	Term	6
3.2	Extension of Term	6
3.3	Continuation after end of SOA	6
4	Supplier general obligations	6
4.1	Performance obligations	6
4.2	Compliance with Laws	6
4.3	Work health and safety	7
4.4	Co-operation	7
4.5	Ethical Supplier Threshold and Supplier Code of Conduct	7
5	Documentation	7
5.1	General	7
5.2	User Documentation	8
5.3	Bespoke Documentation	8
6	Customer's Site, IT System and Inputs	8
6.1	Compliance with policies	8
6.2	Access to Customer's Site	8
6.3	Access to Customer's IT System	9
6.4	Customer Inputs	9
6.5	Customer assistance	10
7	Project management	10
7.1	Management committee	10
7.2	Performance reviews	10
7.3	Site Specification	11
7.4	Project Implementation and Payment Plan (PIPP)	11
7.5	Staged Implementation	11
7.6	Delay	11
7.7	Liquidated Damages	12
7.8	Changes	13
7.9	Additional Products and/or Services	13
7.10	Training	14
8	Subcontracting and Personnel	14
8.1	Subcontracting	14
8.2	Supplier's Personnel	15
8.3	Removal of Supplier Personnel	15
8.4	Key Personnel	15
8.5	Customer's Personnel	16
8.6	Non-solicitation	16
9	Testing	16
9.1	Conducting Acceptance Tests	16
9.2	Acceptance Test outcomes	17
9.3	Actual Acceptance Date (AAD)	18
9.4	Document Deliverables	18
10	Price and Payment	18
10.1	Price	18

10.2	Expenses	19
10.3	Price review	19
10.4	Most favoured price	19
10.5	Invoices	19
10.6	Time for payment	19
10.7	Retention of money	20
10.8	Disputed invoices	20
10.9	Underpayments and overpayments	20
10.10	Set-off	20
11	GST	21
11.1	Construction	21
11.2	GST exclusive	21
11.3	Tax invoice	21
11.4	Adjustment event	21
11.5	Reimbursements	21
12	Intellectual Property Rights	21
12.1	Pre-Existing Material	21
12.2	Customer owned New Material	22
12.3	Supplier owned New Material	22
12.4	Third Party Material	23
12.5	Moral Rights	23
12.6	Escrow	23
13	Customer Data	23
14	Confidentiality	24
14.1	Mutual obligations of confidentiality	24
14.2	Permitted disclosures	24
14.3	Publicity	25
14.4	Return or destruction of material	25
15	Privacy	25
15.1	Supplier's privacy obligations	25
15.2	Notification of breach	26
15.3	Consequences of Privacy Breach	26
16	Warranties	26
16.1	Supplier warranties	26
16.2	Customer warranties	27
16.3	Mutual warranties	27
16.4	Intellectual Property Rights	27
17	Liability	27
17.1	Contribution	27
17.2	Consequential Loss	27
17.3	Limitation of liability	27
17.4	No limitation	28
17.5	Relationship between SOA and Contract	28
17.6	Mitigation	28
17.7	Australian Consumer Law	28
18	Indemnity	29
18.1	Supplier indemnity	29
18.2	Conduct of indemnified Claims	29
18.3	Additional obligations regarding IP Claims	30
19	Insurance	30
20	Security	31
20.1	Provision of security	31
20.2	Enforcement	31

20.3	Release of security	31
20.4	Adverse changes	32
21	Anti-competitive conduct, conflict of interest and criminal organisations	32
21.1	Anti-competitive conduct	32
21.2	Conflict of Interest	32
21.3	Criminal organisation	32
21.4	Warranties are ongoing	32
22	Contract Administration	33
22.1	Reporting	33
22.2	Records	33
22.3	Authorised Representatives	33
22.4	Inspections	33
22.5	Notice of Change in Control	33
22.6	Material Adverse Events and Electronic Incidents	33
22.7	Notices	34
22.8	Unexpected Events	34
23	Disputes	35
23.1	Resolution of disputes	35
23.2	Dispute notice	35
23.3	Senior management representatives	35
23.4	Director-General/Chief Executive Officer	35
23.5	Mediation	35
23.6	Expert Determination	35
23.7	Continued performance	36
24	Termination	36
24.1	For cause – by Customer	36
24.2	For cause – by Supplier	36
24.3	For convenience	37
24.4	Suspension	37
24.5	Consequences	38
25	Assignment and novation	38
25.1	By Supplier	38
25.2	By Customer	38
25.3	Acting reasonably	38
25.4	Transferability and portability of Products and/or Services	38
26	General	39
26.1	Entire agreement	39
26.2	Waiver	39
26.3	Rights cumulative	39
26.4	Variations	39
26.5	Relationship of the parties	39
26.6	Survival	40
26.7	Costs	40
26.8	Governing law	40
27	Definitions and Interpretation	40
27.1	Definitions	40
27.2	Interpretation	47

SOA Comprehensive Contract Conditions

- ICT Products and/or Services

These SOA Comprehensive Contract Conditions – ICT Products and/or Services are to be used in connection with the Details.

1 The Contract

1.1 When Contract is formed

- (a) A Contract will be formed between the Customer and the Supplier on the date when the Authorised Representatives of both parties have signed the appropriate section of the Details.
- (b) A Contract will not be formed where, at the time the parties sign the Details in accordance with clause 1.1(a), the SOA is suspended, has expired or been terminated.
- (c) The Contract may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

1.2 Interpretation

- (a) The definitions and rules of interpretation for the Contract are set out in clause 27.
- (b) Words and expressions used but not defined in these Comprehensive Contract Conditions have the meaning given to them in a SOA Module.

1.3 Hierarchy

If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:

- (a) Part C (Product and/or Services Catalogue) of the SOA Details;
- (b) items 10 and 12 of Part A (General Information) of the SOA Details;
- (c) the SOA Modules which are stated as forming part of the Contract in the Details;
- (d) these SOA Comprehensive Contract Conditions - ICT Products and/or Services;
- (e) the SOA Module Order Forms which correspond to the SOA Modules which are stated as forming part of the Contract in the Details (excluding any Additional Provisions and any document which the Details or a SOA Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract);
- (f) the Details (excluding any Additional Provisions and any document which the Details or a SOA Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract);
- (g) any Additional Provisions;
- (h) any Statement of Work;
- (i) any SOA Schedules (excluding any document which the Details or a SOA Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract); and
- (j) any document which the Details or a SOA Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract.

1.4 Additional Provisions

- (a) Subject to clause 1.4(b), the Customer and the Supplier may agree to include Additional Provisions.
- (b) Additional Provisions take effect only to the extent they are additional to, and do not detract from the parties' rights and obligations under, the terms and conditions of the Comprehensive Contract Conditions and the SOA Modules, provided that any Additional Provisions included to enable the Customer to comply with applicable legislative or policy requirements are deemed not to detract from the parties' rights and obligations.

2 Non exclusivity

Unless expressly stated otherwise in the Order Documents, the Customer may engage other suppliers to (or itself) provide products, services and other deliverables the same as or similar to the Deliverables.

3 Term

3.1 Term

The Contract starts on the start date specified in the Details and continues for the period set out in the Details unless any extension options are exercised under clause 3.2.

3.2 Extension of Term

The Customer may extend the Term on the same terms and conditions for any extension period(s) specified in the Details by giving the Supplier written notice by at least the period as specified in the Details before expiry of the then current Term.

3.3 Continuation after end of SOA

Subject to clause 24.1(c), the Term of the Contract (including extensions) continues after the SOA ends.

4 Supplier general obligations

4.1 Performance obligations

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

- (a) provide the Deliverables in accordance with the Contract;
- (b) meet all Delivery Dates specified in the Order Documents or as otherwise agreed in writing, and perform all other obligations in a prompt, diligent and competent manner, and with due care and skill;
- (c) provide, manage and maintain sufficient resources, including Personnel, equipment and facilities, to enable it to fulfil its obligations under the Contract;
- (d) ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose and meet the Requirements;
- (e) comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract;
- (f) do anything and execute any document that the Customer reasonably requests, to give effect to the Contract;
- (g) not, and must take reasonable steps to ensure that its supply chain does not, undertake acts which could constitute an offence involving Modern Slavery; and
- (h) implement due diligence procedures for its supply chain to ensure compliance with the *Modern Slavery Act 2018* (Cth), where that Act applies to the Supplier and must ensure its own due diligence obligations under the *Modern Slavery Act 2018* (Cth) are met.

4.2 Compliance with Laws

The Supplier must:

- (a) comply with all Laws in performing its obligations under the Contract;
- (b) ensure that the Deliverables comply in all aspects with:
 - (i) the requirements and specifications specified in item 12 of Part A (General Information) and Part C (Products and/or Services Catalogue) of the SOA Details;
 - (ii) all applicable Laws including but not limited to the *Modern Slavery Act 2018* (Cth), where applicable to the Supplier and the Human Rights Act 2019 (Qld) where applicable to the Supplier;
 - (iii) all applicable Government codes, policies or guidelines; and

- (iv) 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 Deliverables under this Contract;
- (c) obtain and maintain the authorisations described in item 10 of Part A of the SOA Details and the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must, upon request, provide evidence that it has complied with this clause 4.2(c); and
- (d) if the Supplier is a government owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with any applicable competitive neutrality principles of the Supplier's jurisdiction.

4.3 Work health and safety

Without limiting clauses 4.2, 6.1 or 6.2, the Supplier must:

- (a) at all times comply, and ensure that the Supplier's Personnel comply, with all applicable work health and safety Laws;
- (b) develop, maintain and implement a work health and safety management system that as a minimum complies with all work health and safety Laws applicable to the Supplier;
- (c) provide copies of documents recording the system referred to in clause 4.3(b) to the Customer if requested; and
- (d) not, and ensure that the Supplier's Personnel do not, at any time, cause the Customer to be in contravention of a work health and safety Law.

4.4 Co-operation

- (a) The Supplier must cooperate with the Customer's Personnel and other suppliers to the Customer who provide goods and services relating to the Deliverables.
- (b) The Supplier must not make any additional charge for cooperating with other suppliers in accordance with this clause 4.4 where such cooperation is reasonably incidental to the performance of the Supplier's role as the Customer's provider of the Deliverables.

4.5 Ethical Supplier Threshold and Supplier Code of Conduct

- (a) The Supplier must comply with the Ethical Supplier Threshold and the Supplier Code of Conduct during the Term.
- (b) If the Customer reasonably suspects that the Supplier is not compliant with the Ethical Supplier Threshold or the Supplier Code of Conduct, then the Customer may issue a written show cause notice to the Supplier.
- (c) The Supplier must respond to any show cause notice given under clause 4.5(b) within 14 Business Days of receipt.

5 Documentation

5.1 General

- (a) The Supplier must provide the User Documentation and any Bespoke Documentation to the Customer in either hard copy or electronic format as specified in the Details.
- (b) The Supplier must ensure that User Documentation and any Bespoke Documentation is:
 - (i) of a reasonable standard in terms of its presentation, accuracy and scope;
 - (ii) in the English language; and
 - (iii) in a form where all key terms, words and symbols are adequately defined.

5.2 User Documentation

During the Term, the Supplier must:

- (a) supply, at no additional cost to the Customer, any revisions, replacements or additions to the User Documentation so that the User Documentation includes the most current and up-to-date versions generally available to customers of the Supplier; and
- (b) correct any errors or inaccuracies in the User Documentation, and promptly supply a duly amended version of the User Documentation at no additional cost to the Customer.

5.3 Bespoke Documentation

- (a) Where the Contract requires the Supplier to create or develop any Bespoke Documentation, the Supplier must:
 - (i) develop a draft of the Bespoke Documentation in accordance with the Details (including any specified timeframes); and
 - (ii) submit the draft Bespoke Documentation to the Customer for review and approval under clause 5.3(b).
- (b) The Customer must:
 - (i) review draft Bespoke Documentation submitted and resubmitted by the Supplier under this clause 5.3 in a timely manner and in accordance with any procedures specified in the Details; and
 - (ii) promptly advise the Supplier if it approves or rejects the draft Bespoke Documentation. The Customer may reject draft Bespoke Documentation if it does not meet the Requirements, and must specify why the Requirements have not been met.
- (c) The Supplier must amend and resubmit the draft Bespoke Documentation to the Customer until the Customer provides its approval.

6 Customer's Site, IT System and Inputs

6.1 Compliance with policies

- (a) The Supplier must, where relevant to the Supplier's obligations under the Contract, comply with all:
 - (i) Customer policies, codes of conduct, rules, standards and procedures (including in respect of work health and safety and security) which apply to the Site, the Customer's IT System, the Customer's Personnel or use of the Customer Inputs; and
 - (ii) all other Customer policies, codes of conduct, rules, standards and procedures, as listed in the Details. Copies of the relevant policies are available on request.
- (b) If the Customer amends a relevant, or introduces a new, policy, code of conduct, rule, standard or procedure relevant to the Supplier's obligations under the Contract, it will notify the Supplier and the Supplier must comply with the amended or new policy, code of conduct, rule, standard or procedure from the date of notification. Copies of the new and amended policies are available on request.

6.2 Access to Customer's Site

- (a) Without limiting the Supplier's obligations under clause 7.3, the Customer must prepare and maintain the Site:
 - (i) to enable the supply of the Deliverables; and
 - (ii) in accordance with any Site Specification that is approved under clause 7.3.
- (b) The Supplier must when present at the Site:
 - (i) avoid unnecessary interference with the Customer's business and activities; and

- (ii) ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security.
- (c) The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.

6.3 Access to Customer's IT System

Where access to the Customer's IT System is required to provide the Deliverables or is otherwise granted to the Supplier by the Customer (including in connection with any audit conducted by the Supplier in accordance with a SOA Module), the Supplier must:

- (a) only access and use that part of the Customer's IT System for which the Supplier is authorised, and only for the purpose of performing the Contract and to the extent necessary to perform the Contract;
- (b) not tamper with, hinder the operation of (except as expressly permitted by the Contract) or make unauthorised modifications to the Customer's IT System or maliciously or negligently introduce any Harmful Code to the Customer's IT System; and
- (c) not permit any Supplier's Personnel who do not have an appropriate level of security clearance, or who are not otherwise authorised, from gaining access to the Customer's IT System.

6.4 Customer Inputs

- (a) The Customer must provide and maintain the Customer Inputs at the times and in accordance with the requirements specified in the Details.
- (b) The Supplier must:
 - (i) take care of the Customer Inputs;
 - (ii) only use the Customer Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the requirements specified in the Details;
 - (iii) not part with possession of the Customer Inputs unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any Customer Input;
 - (iv) not modify any Customer Input without the prior written consent of the Customer;
 - (v) promptly inform the Customer of any loss, destruction or damage (other than fair wear and tear) to any Customer Input;
 - (vi) pay the costs, if any, stated in the Details for the Customer Inputs; and
 - (vii) comply with any instruction of the Customer for preserving, forwarding or disposing of any damaged Customer Input at its own cost.
- (c) If the Supplier loses or damages any Customer Input (other than fair wear and tear), the Supplier must, at the election of the Customer, promptly replace such Customer Input or pay the Customer the reasonable replacement cost of such Customer Input.
- (d) As between the Supplier and the Customer, the Customer retains all rights, title and interest (including all Intellectual Property Rights) in the Customer Input.
- (e) Provided the Supplier complies with its obligations under clause 6.4(b), the Customer must repair or replace the Customer Inputs within a reasonable time of becoming aware that the Customer Inputs no longer comply with the specifications, if any, specified in the Details.
- (f) If any Customer Input is no longer required for the purposes of the Contract, including on termination or expiry of the Contract, the Supplier must promptly cease using it and (as applicable) return or destroy it (at the Customer's option), unless the parties agree otherwise. Without limiting clause 14.4, the Supplier may retain a copy of any Customer Input that is a document or record to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

- (g) Clauses 6.4(b) - 6.4(f) do not apply to any Customer Input which comprises Customer Data.

6.5 Customer assistance

During the Term, the Customer must:

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

7 Project management

7.1 Management committee

- (a) If specified in the Details, the parties must establish a management committee by the date specified in the Details.
- (b) The management committee must consist of the party's project managers or such other persons specified in the Details.
- (c) All members of the management committee or their authorised representatives, must attend each meeting of the management committee unless otherwise agreed between the parties.
- (d) All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Contract.
- (e) Any decision made by the management committee will not bind a party unless the decision is confirmed in writing by the party's Authorised Representative.
- (f) The management committee must:
 - (i) review and monitor progress under the Contract and report to a person nominated by the Customer from time to time; and
 - (ii) carry out such other functions set out in the Details or agreed in writing between the parties.
- (g) The management committee must meet at such intervals, times and locations specified in the Details or as agreed by the parties.
- (h) At least 1 Business Day prior to a management committee meeting or such other timeframe agreed by the parties, the Supplier's project manager must submit to the Customer's project manager a report of progress under the Contract, including:
 - (i) details (including dates) of Deliverables commenced, completed or accepted;
 - (ii) any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues; and
 - (iii) such other supporting documentation including agendas and any reports or additional information as required by the Customer.
- (i) Minutes of the management committee meeting will be recorded by one or both of the parties and in a format as agreed by the parties.

7.2 Performance reviews

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

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

7.3 Site Specification

- (a) If specified in the Details, the Supplier must inspect the Site and provide the Customer with a Site Specification, within a reasonable time after such inspection, for the Customer's approval.
- (b) The Supplier must make any amendments to the Site Specification that are reasonably required by the Customer, provided that amendments are requested prior to the delivery of the Deliverables. Where the Supplier reasonably believes a required amendment will materially affect the Supplier's ability to perform its obligations under the Contract, it will notify the Customer and the parties will discuss in good faith whether any Change Request is required to deal with that required amendment.

7.4 Project Implementation and Payment Plan (PIPP)

If specified in the Details that a Project Implementation and Payment Plan is required, the parties must perform their obligations at the times and in the manner specified in the Project Implementation and Payment Plan.

7.5 Staged Implementation

- (a) The parties agree to perform the Contract in accordance with the Stages (if any) stated in the PIPP.
- (b) If specified in the Details that staged implementation applies to the Contract, the Supplier must not commence any work in a Stage until it receives prior written notice from the Customer to proceed with work in that Stage.
- (c) The Customer must give written notice to the Supplier within the notice period stated in the Details at the end of each Stage as to whether it wishes the Supplier to commence the following Stage.
- (d) The signing of the Contract is deemed to be sufficient notification to proceed with the work in the first Stage.
- (e) Nothing in the Contract obliges the Customer to give notice to proceed under clause 7.5(b) in respect of any subsequent Stage, and without limiting the requirement to provide written notice under clause 7.5(c), the Customer is not liable to the Supplier in any way for not giving notice to proceed to any subsequent Stage.

7.6 Delay

- (a) If the Supplier is or will be delayed in achieving a Delivery Date directly as a result of:
 - (i) any failure of the Customer or its Personnel to perform its obligations in accordance with the Contract, including any failure of the Customer to provide any Customer Inputs in accordance with the requirements specified in the Details;
 - (ii) any inability of the Supplier to access the Customer's Site (including any denial or suspension of access under clause 6.2(c)), unless the inability is due to an adverse finding arising out of an investigation into the conduct of the Supplier or its Personnel or the Supplier's breach of the Contract; or
 - (iii) the amendment to, or introduction of a new, policy, code of conduct, rule, standard or procedure relevant to the Supplier's obligations under the Contract,

(Delay Event), the Supplier must:

 - (iv) within 10 Business Days of becoming aware of the Delay Event, provide to the Customer a notice setting out detailed particulars of the Delay Event, including the reasons for and consequences of the Delay Event;

- (v) within 10 Business Days of providing notice to the Customer under clause 7.6(a)(iv) (or such other period agreed by the Customer in writing), provide to the Customer:
 - (A) a plan developed in consultation with the Customer setting out in detail the steps the Supplier proposes to take to minimise the impact of the Delay Event; and
 - (B) a Change Request under clause 7.8(d) for:
 - (1) an extension of the Delivery Date affected by the Delay Event; and
 - (2) any reasonable and documented expenses incurred by the Supplier as a direct result of the Delay Event.
- (b) The Customer must not unreasonably refuse a Change Request submitted by the Supplier under clause 7.6(a) provided that the Supplier:
 - (i) has complied with clause 7.6(a);
 - (ii) has taken and continues to take all reasonable steps to minimise the delay, including by taking reasonable steps to mitigate against the effects of any delay; and
 - (iii) has actually been prevented from achieving the relevant Delivery Date by the Delay Event.

7.7 Liquidated Damages

- (a) If specified in the Details, where the Supplier has not completed a LD Obligation by the LD Due Date, the Supplier must pay the Customer the Liquidated Damages unless the late completion of the LD Obligation is:
 - (i) caused by an Unexpected Event under clause 22.8;
 - (ii) caused by the Customer or its Personnel, including any failure of the Customer to provide any Customer Inputs in accordance with the requirements specified in the Details; or
 - (iii) permitted because an extension of time to the relevant LD Due Date has been granted by the Customer under clause 7.6.
- (b) The Customer must promptly give the Supplier notice in writing setting out the grounds on which the Customer claims that Liquidated Damages are payable.
- (c) Each party acknowledges that the Liquidated Damages are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which Liquidated Damages are payable under clause 7.7(d) as a result of the Supplier not completing the LD Obligation by the LD Due Date.
- (d) The Supplier must pay any Liquidated Damages that are due from the LD Due Date until the date on which the Supplier successfully completes the relevant LD Obligation, provided that the Supplier's liability under this clause 7.7 will not exceed any applicable LD Cap specified in the Details.
- (e) Liquidated Damages paid under clause 7.7(d):
 - (i) are the Customer's sole and exclusive financial remedy for the Customer's loss, damage and expense that the Customer suffers during the period in which Liquidated Damages are payable under clause 7.7(d) as a result of the Supplier not completing the LD Obligation by the LD Due Date; but
 - (ii) do not relieve the Supplier from any other liability or from meeting any other obligation under the Contract.
- (f) The parties agree that where the Supplier has not successfully completed the LD Obligation in relation to which the Liquidated Damages have been applied by the date

when the LD Cap is reached, the payment of Liquidated Damages by the Supplier under clause 7.7(d) is without prejudice to the Customer's right to:

- (i) claim damages at large in respect of loss, damage and expense that arises after the date the LD Cap is reached in connection with the Supplier not completing the LD Obligation by that date; or
- (ii) terminate the Contract under clause 24.1(a)(i) and claim from the Supplier any loss, damage or expense in connection with such termination.

7.8 Changes

- (a) Unless otherwise specified in the Order Documents, all Changes must be dealt with by the parties in accordance with this clause 7.8.
 - (b) If the Supplier wishes to request a Change, it must submit a Change Request to the Customer.
 - (c) If the Customer requests a Change, the Customer must provide to the Supplier details of the requested Change and the Supplier must prepare and submit to the Customer a Change Request within 5 Business Days of such request or as otherwise agreed.
 - (d) A Change Request must outline:
 - (i) the options the Supplier considers suitable for implementing the Change;
 - (ii) changes or modifications to, or additional, Deliverables that are required as a result of the Change;
 - (iii) the cost of the Change (which must be calculated in accordance with clause 7.8(e));
 - (iv) if applicable, the date of expiry of the Change Request;
 - (v) if applicable, the changes to the Requirements or Order Documents required as a result of the Change; and
 - (vi) any other effects which compliance with the Change will have in respect of the Supplier's obligations under the Contract.
 - (e) The cost of the Change must be agreed by the parties in writing or, if they cannot agree, the cost of the Change:
 - (i) must be calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates (subject to clause 10.4 (if applicable)); or
 - (ii) if no rate is capable of applying, must be a reasonable price having regard to the reasonable cost of the Supplier effecting the Change.
 - (f) Subject to clause 7.6(b), the Customer may:
 - (i) evaluate, analyse, discuss and negotiate the Change Request with the Supplier; and
 - (ii) before the expiry of the Change Request (if applicable):
 - (A) reject a Change Request; or
 - (B) accept the Change Request (with negotiated modifications, if any).
 - (g) If the Change Request is accepted by the Customer (including any negotiated modifications), both parties must sign the Change Request and the Contract will be varied as set out in the accepted Change Request.
- ## **7.9 Additional Products and/or Services**
- (a) If the Customer wishes to purchase any additional Products and/or Services from the Supplier during the Term, it will notify the Supplier of its requirements for the supply of the additional Products and/or Services in the form of a draft Statement of Work Form.
 - (b) The Supplier must submit its proposal to the Customer promptly (and within a time agreed) after receipt of the Customer's request, in the form of a completed Statement of Work Form.

- (c) The Statement of Work Form returned to the Customer by the Supplier under clause 7.9(b) must specify:
- (i) the additional Products and/or Services that the Customer requires;
 - (ii) the cost of the additional Products and/or Services which must be calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates (subject to clause 10.4 (if applicable));
 - (iii) if applicable, the date of expiry of the Statement of Work Form;
 - (iv) if applicable, the changes to the Requirements or Order Documents required as a result of the additional Products and/or Services; and
 - (v) any other information reasonably requested by the Customer.
- (d) The Customer may:
- (i) evaluate, analyse, discuss and negotiate the Statement of Work Form with the Supplier; and
 - (ii) before expiry of the Statement of Work Form (if applicable), accept Statement of Work Form (with negotiated modifications, if any).
- (e) If the Statement of Work Form is accepted by the Customer (including any negotiated modifications), both parties must sign the Statement of Work Form and the additional Products and/or Services will be provided as set out in the Statement of Work Form.
- (f) Each Statement of Work forms part of and is subject to the terms and conditions of the Contract.

7.10 Training

The Supplier must provide to the Customer the training (if any) specified in the Details.

8 Subcontracting and Personnel

8.1 Subcontracting

- (a) The Supplier may only subcontract any part of its obligations under the Contract to Subcontractors identified in the Details or with the Customer's prior written consent.
- (b) The Customer will not unreasonably withhold consent to any subcontracting, but may give consent subject to reasonable conditions.
- (c) The Supplier:
- (i) must ensure that each Subcontractor is aware of all the terms and conditions of the Contract that are relevant to the Subcontractor's performance of its work, and supplies the Deliverables in accordance with the terms of the Contract;
 - (ii) will not be relieved of any of its liabilities or obligations under the Contract arising out of, or in connection with, a Contract by subcontracting the supply of any Deliverables;
 - (iii) is liable to the Customer for all acts and omissions of a Subcontractor, or any employees or agents of a Subcontractor, as fully as if they were acts or omissions of the Supplier; and
 - (iv) must implement an appropriate system of due diligence designed to ensure the subcontractor takes reasonable steps to reduce the risk of Modern Slavery in the subcontractor's supply chains and in any part of the subcontractor's business. The Supplier must also take reasonable steps to ensure that the subcontractor complies with the Ethical Supplier Threshold.
- (d) If specified in the Details, the Supplier must obtain from the Subcontractor a signed statutory declaration substantially in the form of SOA Schedule 3 – Statutory Declaration by Subcontractor or such other form reasonably acceptable to the Customer.

8.2 Supplier's Personnel

- (a) The Supplier must provide experienced and skilled Personnel to supply the Deliverables.
- (b) If specified in the Details or if the Customer reasonably requests at any time during the Term, prior to permitting any Personnel to be involved in the supply of any Deliverables under the Contract, the Supplier must either:
 - (i) conduct, and provide to the Customer an original or certified copy of the results of, a criminal background check or any other checks required by the Customer for such Personnel; or
 - (ii) procure the consent of such Personnel for the Customer to conduct a criminal background check or any other checks required by the Customer.
- (c) The Supplier must notify the Customer promptly if it becomes aware during the Term that any of its Personnel involved in the supply of the Products and/or Services have been convicted of any criminal offence or any conduct which involves dishonesty.
- (d) The Supplier is liable to the Customer for all acts and omissions of its Personnel, as fully as if they were acts or omissions of the Supplier.
- (e) The Supplier is not, and its Personnel are not, employees of the Customer.
- (f) If specified in the Details or if the Customer otherwise requests during the Term, the Supplier must obtain from its Personnel (including Subcontractors) a signed confidentiality, privacy and conflict of interest deed substantially in the form of SOA Schedule 4 - Confidentiality, Privacy and Conflict of Interest Deed, or such other form reasonably acceptable to the Customer.

8.3 Removal of Supplier Personnel

If:

- (a) a Conflict of Interest arises or is disclosed with respect to any of the Supplier's Personnel which cannot be appropriately managed to the Customer's satisfaction;
- (b) the Customer is not satisfied with the results of any of the Supplier's Personnel criminal background check or any other checks required by the Customer under clause 8.2(b) or notification provided by the Supplier under clause 8.2(c); or
- (c) the Customer requires, at its discretion and without having to give reasons,

the Supplier must:

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

8.4 Key Personnel

- (a) In providing the Services, the Supplier must:
 - (i) subject to this clause 8.4(a), ensure that the Key Personnel perform the roles allocated to them in the Details, and devote sufficient time to the role they are retained to perform so that their role is performed efficiently, skillfully and in accordance with the Contract;
 - (ii) promptly notify the Customer if any Key Personnel is or will be unavailable to perform his or her allocated role for any reason;
 - (iii) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, or the termination of such Key Personnel's employment or engagement with the Supplier; and
 - (iv) ensure that any replacement Key Personnel have at least equivalent skills, qualifications and experience, and promptly provide information reasonably

requested about any proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.

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

8.5 Customer's Personnel

- (a) The Customer must make available its Personnel to work with the Supplier for the purposes of the Contract as specified in the Details.
- (b) The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Supplier have the requisite authority, skills and experience to perform the tasks allocated to them.

8.6 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 8.6(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- (c) The parties agree that the restrictions in this clause 8.6 are necessary to protect the legitimate interests of each party.

9 Testing

9.1 Conducting Acceptance Tests

- (a) If specified in the Details, Acceptance Tests must be conducted in relation to the Deliverables in accordance with this clause 9. If the Details specify that Acceptance Tests are not required, this clause 9 (other than clause 9.3) does not apply.
- (b) Acceptance Testing must be completed by the parties in accordance with the requirements of SOA Schedule 9 – Acceptance Testing and within the Acceptance Test Period.
- (c) If SOA Schedule 9 – Acceptance Testing is not completed, then at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the parties may agree) the parties must agree in writing:
 - (i) the Deliverable or part of the Deliverable to be tested;
 - (ii) the allocation of each party's responsibilities in relation to testing, including the party responsible for conducting the Acceptance Tests;
 - (iii) which party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use;
 - (iv) the methodology and process for conducting the Acceptance Tests;
 - (v) the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period;
 - (vi) the Acceptance Criteria, which should only test whether the Deliverable meets the Requirements and should not include any other criteria unless the parties otherwise agree in writing; and
 - (vii) the Acceptance Test Data, provided that the Customer is responsible for ensuring that the Acceptance Test Data is representative of the data that will be used by the Deliverable in the Customer's business or production environment.
- (d) Where details of the Acceptance Tests are not stated in SOA Schedule 9 – Acceptance Testing, the Supplier must, at least 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the parties may agree), notify the Customer that details of the Acceptance Tests (including those in 9.1(c)(i) to (vii)) have not yet been

agreed and must be agreed at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the parties may agree). Any failure of the parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 23, and the 20 Business Days requirement referred to in this clause 9.1(d) will not apply.

- (e) Where the Supplier is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Supplier.
- (f) Each party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Test.
- (g) Each party is entitled to observe, and to the extent reasonable, participate in the performance of any Acceptance Test conducted by the other party.
- (h) The party conducting the Acceptance Test must provide the other party within the Acceptance Test Notification Period a written test notification specifying:
 - (i) a written summary of the Acceptance Test; and
 - (ii) the results achieved from that Acceptance Test (including a description of any issues or Testing Defects identified with the Deliverable or failure of the Deliverable to meet the Acceptance Criteria).

9.2 Acceptance Test outcomes

- (a) If at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Acceptance Criteria, the Customer must issue an Acceptance Notice to the Supplier within the Acceptance Test Notification Period. Any review, testing or Acceptance Notice given by the Customer does not constitute any waiver of rights, or give rise to any estoppel, if the Deliverable is later found not to comply with the Acceptance Criteria.
- (b) Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable fails to meet the Acceptance Criteria, then the Customer must notify the Supplier within the Acceptance Test Notification Period of the Testing Defects, and may, at its discretion, do one or more of the following:
 - (i) waive the requirement for the Acceptance Tests to be satisfactorily completed;
 - (ii) require the Supplier to remedy all Testing Defects at its own expense within a reasonable period of time, and re-submit the corrected Deliverable to further Acceptance Testing under this clause 9;
 - (iii) withhold payment of the Price payable in respect of the Deliverable under the Contract until the Deliverable meets the Acceptance Criteria;
 - (iv) conditionally accept the Deliverable, subject to the Supplier agreeing, at its own expense, to deliver a workaround or to otherwise rectify any Testing Defect promptly and in a manner acceptable to the Customer;
 - (v) accept the Deliverable subject to a reduction in the Price as reasonably determined by the Customer to reflect the Testing Defects, provided that if the Supplier does not agree with the determination it may dispute the determination in accordance with clause 23;
 - (vi) where a Deliverable has failed Acceptance Testing more than twice, without limiting any other remedy, reject the Deliverable in which case:
 - (A) the Supplier must refund any of the Price and other amounts paid by the Customer in respect of the rejected Deliverable; and
 - (B) the Customer may require the removal of the Deliverable and any materials associated with the rejected Deliverable, and the restoration of anything affected by the Deliverable to its pre-Contract state, at the Supplier's expense.

9.3 Actual Acceptance Date (AAD)

- (a) The Actual Acceptance Date (**AAD**) for a Deliverable occurs:
- (i) where the Details or SOA Schedule 9 – Acceptance Testing state that Acceptance Testing is not required for a Deliverable, 3 Business Days or such other period agreed by the parties in writing following delivery of the Deliverable unless the Customer notifies the Supplier of any Defect or other issue promptly following delivery of the Deliverable; or
 - (ii) where the Details or SOA Schedule 9 – Acceptance Testing state that the Deliverable is required to undergo Acceptance Tests, on the sooner of:
 - (A) the date the Customer issues an Acceptance Notice; or
 - (B) on the date the Customer issues a notice that it conditionally accepts the Deliverable in accordance with clause 9.2(b)(iv); or
 - (C) on the last day of the Acceptance Test Notification Period where acceptance is deemed to have occurred in accordance with clause 9.3(b).
- (b) A Deliverable is deemed accepted if:
- (i) where the Customer is to perform the Acceptance Tests, the Customer fails to perform the Acceptance Tests within the Acceptance Test Period for any reason, or fails to notify the Supplier within the Acceptance Test Notification Period, except for any delay resulting from any action of the Supplier;
 - (ii) the Customer gives written notice within the Acceptance Test Notification Period that it waives the requirement for the Deliverable to pass the Acceptance Tests;
 - (iii) the parties agree under clause 9.2(b)(v) that the Deliverable is accepted based on an agreement to a reduction in the Price; or
 - (iv) the Customer uses the Deliverable in a production environment (if applicable), other than for testing, without the prior written consent of the Supplier.

9.4 Document Deliverables

Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Requirements where the Customer requests a change to:

- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the Supplier's professional opinion; or
- (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Requirements.

10 Price and Payment

10.1 Price

- (a) In consideration for the Supplier providing the Deliverable in accordance with the Contract, the Customer must pay the Supplier the Price.
- (b) Unless otherwise stated in the applicable Pricing Schedule, the Price is 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 Price 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 Price or any amount for which the Supplier has an express right to charge the Customer under the Contract.

10.2 Expenses

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

- (a) the expenses are stated in the applicable Pricing Schedule 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.

10.3 Price review

- (a) The Supplier may change the Price in accordance with any Price review mechanism specified in the applicable Pricing Schedule.
- (b) No other Price change or new Price will be effective unless the Customer agrees in writing.

10.4 Most favoured price

- (a) This clause 10.4 only applies if specified in the Details.
- (b) Notwithstanding clause 10.1, if specified in the Details the Supplier must ensure that the Price charged to the Customer under the Contract is, and continues to be, no less favourable than the price paid or payable by any other customer of the Supplier in Australia purchasing the same or substantially similar products and/or services in the same or substantially similar circumstances, including volumes (where Price is volume dependent), timing and terms and conditions.
- (c) Where the Supplier offers or has offered a more favourable price to any other customer of the Supplier in Australia purchasing the same or substantially similar products and/or services in the same or substantially similar circumstances, including volumes (where Price is volume dependent), timing and terms and conditions, the Supplier must promptly make the more favourable price available to the Customer.
- (d) This clause 10.4 does not apply where the Supplier is a SME.

10.5 Invoices

- (a) The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in the applicable Pricing Schedule.
- (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 applicable Pricing Schedule, the Supplier may not:
 - (i) invoice the Customer (and the Customer is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
 - (ii) charge or pass through any fees, costs or charges associated with a payment method.

10.6 Time for payment

- (a) Unless expressly stated otherwise in the applicable Pricing Schedule, the Customer will pay each Correctly Rendered Invoice within 30 days of receipt.
- (b) If the Supplier refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Contract, the Customer may on written notice to the Supplier withhold

payment associated with that failure until the Supplier performs the relevant obligation in accordance with the Contract, unless the Contract entitles the Customer to some alternative specific financial remedy for such refusal, neglect or failure, for example Liquidated Damages or service credits, but not a general right to damages.

10.7 Retention of money

If specified in the applicable Pricing Schedule, the Customer may retain a proportion of the invoiced amount for any milestones in the amount and for the period stated in the applicable Pricing Schedule for the due and proper performance and completion of the Supplier's delivery obligations under the Contract incurred prior to the end of the Warranty Period, or a period otherwise stated in the applicable Pricing Schedule. Upon the completion of such delivery obligations in accordance with the Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the applicable Pricing Schedule) the Customer must pay to the Supplier any amount retained under this clause 10.7.

10.8 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 10.6(a).
- (b) Once the dispute about an invoice is resolved:
- (i) if the Customer withheld payment of the disputed amount under clause 10.8(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 10.8(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 10.6(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.

10.9 Underpayments and overpayments

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

10.10 Set-off

- (a) 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.
- (b) If the amounts payable to the Supplier by the Customer are less than the amounts payable by the Supplier to the Customer, the Customer may have recourse to any security provided in accordance with clause 20. Nothing in this clause affects the Customer's right

to recover from the Supplier the whole amount owing by the Supplier to the Customer, or any balance that remains owing after set off.

11 GST

11.1 Construction

In this clause 11, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.

11.2 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.

11.3 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 11.2(b). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

11.4 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 11.2(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.

11.5 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.

12 Intellectual Property Rights

12.1 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**);
 - (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 Details.
- (c) The licence to Pre-Existing Material in clause 12.1(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 Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 12.1(b) to any:
 - (A) ~~Department;~~

- (B) Public Service Office;
 - (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);
 - (D) contractor that is providing services to the Customer that includes the use of the Pre-Existing Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
 - (E) other entity specified in the Details,
- at no additional cost, unless the additional cost is specified in the Details.

12.2 Customer owned New Material

- (a) This clause 12.2 applies where the Details specify the Customer will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
 - (i) all Intellectual Property Rights in the relevant New Material 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, sublicensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant New Material, for any purpose of the Supplier, subject to the Supplier removing any of the Customer's Confidential Information and Personal Information incorporated or otherwise contained in the New Material prior to exercising its rights under this clause 12.2(b)(ii), and the Supplier will confirm to the Customer when this has been done.
- (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 New Material 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.

12.3 Supplier owned New Material

- (a) This clause 12.3 applies where the Details specify the Supplier will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
 - (i) all Intellectual Property Rights in the relevant New Material 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 New Material, for the purposes of using, supporting and/or modifying the Deliverable incorporating the New Material, in the course of the Customer's functions or activities and for such other purposes specified in the Details.
- (c) The licence to New Material in clause 12.3(b):
 - (i) does not permit the Customer to manufacture, sell or otherwise commercially exploit any New Material unless otherwise specified in the Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 12.3(b) to any:
 - (A) Department;
 - (B) Public Service Office;
 - (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);

- (D) contractor that is providing services to the Customer that includes the use of the New Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
 - (E) other entity specified in the Details,
- at no additional cost, unless the additional cost is specified in the Details.

12.4 Third Party Material

- (a) 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 Details, and subject to any terms and conditions (including licence terms and conditions) specified in the Details.
- (b) Clause 12.4(a) does not apply to any Licensed Software or As a Service (where applicable) supplied under the Contract.

12.5 Moral Rights

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

12.6 Escrow

- (a) If specified in the Details, the Supplier must arrange:
 - (i) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (ii) for the Customer to become a party to or beneficiary under an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- (b) Any escrow arrangement to which the Customer becomes a party to or beneficiary under clause 12.6(a) must continue for the minimum period specified in the Details unless otherwise agreed by the parties.
- (c) The parties will bear the costs connected with such Escrow Agreement or escrow arrangement (as applicable) in the proportions agreed by them in the Escrow Agreement or escrow arrangement (as applicable).
- (d) The Supplier must consult with and comply with the reasonable directions of the Customer in any negotiation with the escrow agent arising under clause 12.6(a).

13 Customer Data

- (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 has no right, title or interest in Customer Data except as specified in this clause 13.
- (c) The Supplier must not access, use or modify, or permit third parties to access, use or modify, Customer Data except:
 - (i) to the extent required to perform the Contract;
 - (ii) in accordance with all applicable Laws; or
 - (iii) in the case of Customer Data that is Metadata, to the extent expressly permitted by the rights granted to the Supplier under clause 13(f).

- (d) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Data.
- (e) The Supplier must provide reasonable assistance to the Customer on request to enable the Customer to comply with all Laws, policies and standards applicable to the Customer in relation to Customer Data including (without limitation) identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Personal Information, public records, right to information and information standards.
- (f) For Customer Data that is Metadata, and which is not Personal Information:
 - (i) the Customer grants to the Supplier a perpetual, non-exclusive right to use such Metadata solely for the internal business purposes of the Supplier as specified in the Details (if any); and
 - (ii) notwithstanding clause 14.4, the Supplier may retain a copy of such Metadata to enable the Supplier to exercise the right granted under clause 13(f)(i) and otherwise to the extent required by applicable Law.

14 Confidentiality

14.1 Mutual obligations of confidentiality

Each party as Recipient must:

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

14.2 Permitted disclosures

- (a) The Customer may publish information about the Contract on the Queensland Government's contract directory, where required or recommended by Queensland Government policy. Nothing in the Contract prevents the Customer from disclosing information about the Contract as necessary to comply with the Procurement Guidelines: Contract Disclosure.
- (b) Nothing in this clause 14 prevents the Customer from disclosing information about the Supplier's compliance with the Ethical Supplier Threshold to other Queensland Government entities for inclusion in a register.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under the Contract (other than disclosure by the Customer as permitted under clause 14.1(c)(v)), the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.

14.3 Publicity

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

14.4 Return or destruction of material

- (a) If requested by the Customer, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer and will confirm to the Customer when this has been done.
- (b) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.
- (c) Nothing in this clause 14 limits any obligations of the Supplier with respect to the return, destruction or retention of Customer Data, Confidential Information and Personal Information of the Customer under a SOA Module or SOA Module Order Form.

15 Privacy

15.1 Supplier's privacy obligations

- (a) This clause 15 applies if the Supplier collects or has access to Personal Information in order to perform its obligations under the Contract.
- (b) When performing the Contract the Supplier must:
 - (i) if the Customer is an 'agency' for the Information Privacy Act comply with parts 1 and 2 of Chapter 2 and section 41 of the Information Privacy Act as if the Supplier were the Customer; or
 - (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.
- (c) The Supplier must:
 - (i) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (ii) not use Personal Information collected or accessed in connection with the Contract other than for the purpose of performing its obligations under the Contract;
 - (iii) not disclose Personal Information without the prior written consent of the Customer, unless required or authorised by Law;
 - (iv) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except:
 - (A) with the prior written consent of the Customer; or
 - (B) where the Personal Information is about the Customer's ordering officer or other personnel which is provided in connection with account management purposes or service delivery management under the Contract;
 - (v) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Contract;
 - (vi) ensure that its Personnel are aware of the Supplier's obligations under this clause 15 and comply with the same obligations imposed on the Supplier under this clause;
 - (vii) fully cooperate with the Customer to enable the Customer to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints; and
 - (viii) comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time.

- (d) Nothing in this clause 15 is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable), that the Supplier may have as an organisation with respect to Personal Information.

15.2 Notification of breach

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

- (a) any breach of this clause 15;
- (b) any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract;
- (c) 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 is likely to occur; or
- (d) anything that would constitute an Eligible Data Breach relating to the Personal Information collected or accessed in connection with the Contract.

15.3 Consequences of Privacy Breach

If a Privacy Breach occurs:

- (a) the Supplier must immediately provide the Customer with details of the Privacy Breach and must comply with the reasonable directions of the Customer in relation to the Privacy Breach; and
- (b) if a Privacy Breach is required by Law to be notified to any privacy and other relevant authority and to individuals impacted by the Privacy Breach, the parties must:
 - (i) consult and cooperate with one another in respect of the preparation and making of any such notifications; and
 - (ii) make the relevant notifications in accordance with all prescribed timeframes and requirements.

16 Warranties

16.1 Supplier warranties

The Supplier warrants to the Customer that:

- (a) the execution of the Contract 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 Details and any other licences, permits, permissions and authorities necessary to perform the Contract;
- (e) it will perform its obligations in compliance with all Laws, and any codes, policies, guidelines and standards specified in the Details;
- (f) it has the necessary skills and expertise to properly perform the Contract;
- (g) all of its Personnel performing duties in relation to the Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning the Contract;
- (h) the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chains have not been convicted of any offence involving Modern Slavery. The Supplier must immediately notify the Customer if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chains; and
- (i) it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

16.2 Customer warranties

The Customer warrants to the Supplier that:

- (a) where the Supplier is required to attend the Customer's Site to provide the Deliverables and subject to the Supplier's compliance with clause 6.2, it will provide the Supplier and its Personnel with a safe place to work in accordance with applicable Laws;
- (b) it will perform its obligations in compliance with all Laws; and
- (c) to the best of its knowledge and belief having made all reasonable enquiries, the use of the Customer Inputs by the Supplier as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

16.3 Mutual warranties

Each party warrants to the other party that during the Term it will:

- (a) co-operate with the other party and its respective Personnel to ensure timely progress and fulfilment of the Contract, provided that nothing in this clause 16.3 requires the disclosure of a party's Confidential Information or granting of any Intellectual Property Rights;
- (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 its obligations so as to avoid hindering the performance of the other party;
- (d) without limiting clause 7.1 or 7.2, hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other party on a regular basis to ensure the other party is fully informed of the progress of work required under the Contract; and
- (e) perform its obligations and responsibilities by the dates stated in the Contract.

16.4 Intellectual Property Rights

The Supplier warrants that:

- (a) it is authorised to grant the rights in clause 12; 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.

17 Liability

17.1 Contribution

Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Contract, for loss or damage to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.

17.2 Consequential Loss

Subject to clause 17.4, to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Contract.

17.3 Limitation of liability

Subject to clause 17.4:

- (a) 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 Contract and the SOA (including under an indemnity) except for liability for loss of Customer Data under SOA Module 3 – As a Service (as applicable), is limited to the amount specified in the Details. If no limitation of liability is specified for the Supplier in the Details, the Supplier's liability is not limited by the Contract.

- (b) to the extent permitted by Law, the maximum liability of the Customer to the Supplier, whether in contract, tort (including negligence) or otherwise in connection with the Contract and the SOA, is limited to the amount specified in the Details. If no limitation of liability is specified for the Customer in the Details, the Customer's liability is not limited by the Contract.

17.4 No limitation

The exclusions and limitations of liability in clauses 17.2 and 17.3 do not apply to liability in relation to:

- (a) personal injury, including sickness and death;
- (b) loss of, or damage to, tangible property;
- (c) an infringement of Intellectual Property Rights or Moral Rights;
- (d) any fraudulent act or omission of the Supplier or its Personnel; or
- (e) any breach by the Supplier or its Personnel of any obligation under clause 14 or 15.

17.5 Relationship between SOA and Contract

The parties acknowledge that if the same event or set of circumstances gives rise to a claim by a Customer against the Supplier under both the SOA and the Contract, the Customer may bring the claim under the SOA or the Contract, but not both and subject in each case to the limitation of liability in clause 17.3(a).

17.6 Mitigation

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

17.7 Australian Consumer Law

- (a) To the extent that the provisions of the Australian Consumer Law apply to the supply of goods or services supplied under the Contract, this clause 17.7 applies. For clarity, this clause 17.7 does not apply if the Australian Consumer Law does not apply to the supply of goods or services supplied under the Contract.
- (b) To the extent that there is a failure by the Supplier to comply with a guarantee under sections 54 to 59 of the Australian Consumer Law in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by Law, the Supplier's liability for failure to comply with a guarantee under sections 54 to 59 of the Australian Consumer Law is limited to one or more of the following, at the election of the Supplier:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (c) To the extent that there is a failure by the Supplier to comply with a guarantee in respect of the supply of services under sections 60 to 62 of the Australian Consumer Law, then to the extent permitted by Law, the Supplier's liability for failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 of the Australian Consumer Law is limited to one or more of the following, at the election of the Supplier:
 - (i) supplying the services again; or
 - (ii) payment of the cost of having the services supplied again.
- (d) For clarity, the limitations of the Supplier's liability under clause 17.7(b) and 17.7(c) do not apply to limit any other liability of the Supplier under the Contract.

18 Indemnity

18.1 Supplier indemnity

- (a) The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by any of them, whether in contract, tort (including negligence), or otherwise in connection with any:
- (i) failure by the Supplier or its Personnel to comply with applicable Laws;
 - (ii) fraudulent or wilfully wrong act or omission of the Supplier or its Personnel;
 - (iii) 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 (**IP Claim**);
 - (iv) breach by the Supplier or its Personnel of any obligation under clause 14 or 15; or
 - (v) Claim by a third party arising out of any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the Contract.
- (b) The Supplier is not required to indemnify the Customer or its Personnel in respect of an IP Claim to the extent the IP Claim is caused by:
- (i) the combination, operation or use of the Deliverable with any other product, equipment business method, software or data except as expressly stated in the Order Documents;
 - (ii) any Intellectual Property Rights including Moral Rights, material or thing provided by any person other than the Supplier or its Personnel, including any Customer Input;
 - (iii) the Supplier following any design, instruction or specification in respect of the Deliverable provided to the Supplier by or on behalf of the Customer under the Contract;
 - (iv) any modification of the Deliverable by any person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (v) the continued use of the Deliverable after the Supplier has provided the Customer a new software version, patch or correction, or replacement part or other correction that would have overcome the infringement.

18.2 Conduct of indemnified Claims

- (a) If a Claim to which clause 18.1 applies is made against the Customer or its Personnel, the Customer must:
- (i) give written notice of the Claim to the Supplier as soon as practicable;
 - (ii) subject to the Supplier agreeing to comply at all times with clause 18.2(b):
 - (A) in the case of an IP Claim, permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by applicable Law and Queensland Government policy, to control and direct any settlement negotiations or litigation that may follow the IP Claim; and
 - (B) in the case of a Claim that is not an IP Claim, elect to either handle settlement negotiations and/or conduct litigation itself, or permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by applicable Law and Queensland Government policy, to control and direct any settlement negotiations or litigation that may follow the Claim; and
 - (iii) where the Supplier is permitted to handle settlement negotiations or conduct litigation on behalf of the Customer under clause 18.2(a)(ii), provide all reasonable assistance to the Supplier in the Supplier's handling of any settlement negotiations and litigation.

- (b) If the Customer notifies the Supplier of an IP Claim or Claim (as applicable) and the Supplier is permitted to handle settlement negotiations or conduct litigation in respect of that IP Claim or Claim under clause 18.2(a), the Supplier must:
- (i) keep the Customer informed of all developments relating to the conduct of the defence or settlement of the IP Claim or Claim (as applicable) including providing copies of all relevant documents;
 - (ii) comply with Queensland Government policy and obligations relevant to the conduct of the litigation and any settlement negotiations, and provide the Customer with such information and documents as may be requested by the Customer to enable the Customer to verify whether the conduct of the litigation or settlement negotiations by the Supplier is being conducted in accordance with such policy and obligations;
 - (iii) notify the Customer in writing and consult with the Customer prior to making or accepting any offer of settlement in respect of the IP Claim or Claim (as applicable); and
 - (iv) satisfy any settlement or judgment awarded.
- (c) If the Supplier is not permitted to handle settlement negotiations or conduct litigation in respect of an IP Claim or Claim (as applicable) under clause 18.2(a):
- (i) the Customer must:
 - (A) keep the Supplier informed of developments relating to the conduct of the defence or settlement of the IP Claim or Claim (as applicable) including providing copies of all relevant documents;
 - (B) notify the Supplier in writing prior to making or accepting any offer of settlement in respect of the IP Claim or Claim (as applicable); and
 - (C) not make or accept any offer of settlement without the Supplier's prior written consent (not to be unreasonably withheld or delayed); and
 - (ii) the Supplier must satisfy any settlement or judgment awarded.

18.3 Additional obligations regarding IP Claims

- (a) If there is an IP Claim, without prejudice to the Customer's rights under clause 18.1(a)(iii), the Supplier must, with the consent of the Customer (not to be unreasonably withheld or delayed) and at the Supplier's cost, either:
- (i) obtain for the Customer the right to the continued use of the Deliverable(s) in accordance with the Contract; or
 - (ii) replace or modify the affected Deliverable(s) so that the alleged infringement ceases ensuring that the replaced or modified Deliverable(s) provides the Customer with substantially similar functionality and performance as required in the Requirements.
- (b) If the Supplier is unable to comply with its obligations in clause 18.3(a), then without prejudice to any other right or action which the Customer has:
- (i) the Supplier must reimburse the Customer for the total Price paid for the Deliverable(s) and take all necessary action to ensure that the alleged infringement ceases; and
 - (ii) clause 24.1(a)(vi) applies.

19 Insurance

- (a) Subject to clause 19(f), the Supplier must, at its cost and by the start date of the Contract, take out and maintain or be insured under, the insurance policies described in the Details with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercially available.

- (b) The Supplier must promptly notify the Customer if any required insurance policy is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under the Contract.
- (c) The Supplier must maintain all required insurance policies which are maintained on a "claims made" basis for a minimum period of 4 years after the Contract ends, or such other period specified in the Details.
- (d) The Supplier must, on request, promptly provide to the Customer:
 - (i) an insurance certificate of currency confirming that the Supplier has effected and renewed or is insured under the insurance policies described in the Details; or
 - (ii) such other evidence of the required insurances, specified in the Details.
- (e) If specified in the Details, the Supplier must notify the Customer in writing of any exclusions and deductibles relevant to the insurance policies that the Supplier is required to have in place under clause 19(a).
- (f) The Customer may at its sole discretion, agree to the Supplier being self-insured provided that the Supplier provides the Customer with such supporting documentation as may be required by the Customer, including the Supplier's financial records (limited to publically available financial records where the Supplier or its Related Body Corporate is publically traded).

20 Security

20.1 Provision of security

- (a) The Supplier must, if specified in the Details, provide a bank guarantee, performance guarantee and/or other specified security (**security**) to guarantee the proper performance of the Supplier's obligations under the Contract.
- (b) Such security must:
 - (i) comply with the requirements of Part 2 Division 6 of the *Financial and Performance Management Standard 2009* (Qld) (**Standard**) as applicable to the form of security required;
 - (ii) be substantially in the form of SOA Schedule 6 – Financial Security or SOA Schedule 7 – Performance Guarantee (as applicable) or such other form reasonably acceptable to the Customer; and
 - (iii) meet all additional conditions specified in the Details.
- (c) Where the provider of a security stops being an approved security provider under the Standard, the Supplier must comply with a notice from the Customer under section 40(2) of the Standard.

20.2 Enforcement

- (a) If the Supplier fails to properly perform its obligations under the Contract and the Customer suffers loss or damage as a result, the Customer may claim upon and will be entitled to receive payment for such loss or damage under the security, subject to clauses 17.2, 17.3 and 17.4 in the case of a financial security.
- (b) The Supplier agrees not to take any action to obtain an injunction or otherwise prevent the Customer from making a claim upon or receiving a payment in connection with any security.
- (c) The Customer will not have any liability to the Supplier in connection with the Customer's enforcement of any security in accordance with this clause 20.2.

20.3 Release of security

- (a) The Customer will release any security when the Supplier has fully performed or discharged its obligations under the Contract (excluding any obligations which survive termination in accordance with clause 26.6), if in the reasonable opinion of the Customer the Customer is not entitled to make a claim under the security.

- (b) In the case of a financial security, upon performance of part of the Contract in accordance with its terms, the Supplier may request the Customer to consent to the discharge of the financial security provided under the Contract and the substitution of another financial security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Contract has proportionately reduced the risk for which the financial security was originally provided.

20.4 Adverse changes

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

21 Anti-competitive conduct, conflict of interest and criminal organisations

21.1 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 products and services similar to the Products and/or Services.

21.2 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 Details.
- (b) If, during the 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.

21.3 Criminal organisation

The Supplier warrants that 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.

21.4 Warranties are ongoing

- (a) The warranties in this clause 21 are provided as at the date of the Contract and on an ongoing basis.

- (b) The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 21 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.

22 Contract Administration

22.1 Reporting

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

22.2 Records

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

22.3 Authorised Representatives

- (a) Each party may nominate one or more employee(s) as its nominated representative(s) in the Details (**Authorised Representative**).
- (b) Each party warrants to the other party that its Authorised Representative(s) have the authority to provide such consents and approvals as are required for the purposes of the Contract and to issue instructions and directions as are necessary for the purposes of the Contract, on behalf of that party.
- (c) The parties will direct all enquiries relating to the Contract to the other party's Authorised Representative, or to another person if the other party directs.
- (d) Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the direction is confirmed in writing by that party's Authorised Representative.
- (e) A party may notify the other party of any replacement of its Authorised Representative from time-to-time (subject to clause 8.4 where the Supplier's Authorised Representative is Key Personnel).

22.4 Inspections

The Supplier must, on reasonable prior written notice from the Customer, give the Customer reasonable access during Business Hours to the Supplier's premises where the Deliverables (excluding Services supplied under SOA Module 3 – As a Service) are being performed or produced, 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 22.4 requires the Supplier to provide the Customer with access to any documents or records of or in respect of a third party.

22.5 Notice of Change in Control

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

22.6 Material Adverse Events and Electronic Incidents

The Supplier must provide the Customer with notice in writing immediately upon becoming aware of:

- (a) the existence or possibility of a Material Adverse Event; and
- (b) an Electronic Incident.

22.7 Notices

- (a) Each party must send all notices relating to the Contract to the other party's Authorised Representative (or as updated under clause 22.3(e)).
- (b) Notices may be given by being:
 - (i) posted to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (ii) delivered by hand at the party's current address for notices;
 - (iii) sent by email to the party's current email address for notices; or
 - (iv) given in any other way permitted by Law.
- (c) A notice will be deemed to be given:
 - (i) if posted:
 - (A) within Australia to an Australian postal address, 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 posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (d) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- (d) Any notice under clause 23 or 24 which is sent via email must also be sent by post, hand delivery or in any other way permitted by Law.

22.8 Unexpected 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 an Unexpected Event.
- (b) A party prevented from performing any of its obligations under the Contract by an Unexpected Event, must:
 - (i) notify the other party, as soon as it is affected by the Unexpected Event, of
 - (A) the details of the Unexpected Event;
 - (B) anticipated duration of any delay arising from the Unexpected 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 Unexpected Event; and
 - (ii) make all reasonable efforts to minimise the effects of the Unexpected Event (including in the case of the Supplier, by activating its Disaster Recovery Procedures under the relevant SOA Module).
- (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.
- (d) Where the Contract is terminated by a party in accordance with clause (c):
 - (i) the Supplier will be entitled to payment for all Deliverables which have completed Acceptance Testing (where applicable) in accordance with the Contract up to the date of termination; and

- (ii) the parties will otherwise bear their own costs and will be under no further obligation to perform the Contract.

23 Disputes

23.1 Resolution of disputes

Neither party may commence court proceedings or action against the other party under or in connection with the Contract (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute under this clause 23.

23.2 Dispute notice

- (a) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute.
- (b) 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.

23.3 Senior management representatives

If the dispute is not resolved under clause 23.2, 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.

23.4 Director-General/Chief Executive Officer

If the dispute is not resolved under clause 23.3, the dispute must be referred to each party's Director-General/Chief Executive Officer (or their equivalent officer or nominee) for resolution.

23.5 Mediation

- (a) Subject to clause 23.6, if the dispute is not resolved under clause 23.4 within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 23.5(b).
- (b) The mediation will be conducted in Brisbane in accordance with the Resolution Institute's Mediation Rules operating at the time the dispute is referred to the Resolution Institute, and the terms of those rules are incorporated in the Contract. The parties:
 - (i) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Resolution Institute will determine the mediator;
 - (ii) may be legally represented at the mediation; and
 - (iii) will each bear their own costs concerning the mediation, and will bear the costs of the mediation venue and the mediator equally.
- (c) If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.

23.6 Expert Determination

- (a) This clause 23.6 applies if the dispute is a Technical Dispute.
- (b) If the dispute is a Technical Dispute and is not resolved under clause 23.4 within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the Technical Dispute must be referred to expert determination according to this clause 23.6.
- (c) The expert determination will be conducted in Brisbane in accordance with the Resolution Institute's Expert Determination Rules operating at the time the dispute is referred to the Resolution Institute and the terms of those rules are incorporated in the Contract.
- (d) The expert determination will be conducted by an independent expert agreed by the parties or, failing agreement, by the Queensland Chapter of the Resolution Institute.

- (e) An expert determination conducted under this clause 23.6 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (f) The expert determination is, in the absence of manifest error, final and binding on the parties.

23.7 Continued performance

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under the Contract to the extent practicable having regard to the nature of the dispute, unless the parties agree otherwise in writing.

24 Termination

24.1 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 30 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) the Supplier is or becomes Insolvent;
 - (v) the Customer believes the Supplier has breached any warranty in clause 21.1, 21.3 or 21.4;
 - (vi) the Supplier is unable to comply with its obligations in clause 18.3(a);
 - (vii) having issued a show cause notice in accordance with clause 4.5, the Customer believes that the Supplier does not comply with the Ethical Supplier Threshold; or
 - (viii) having issued a show cause notice in accordance with clause 4.5, the Customer believes that the Supplier does not comply with the Supplier Code of Conduct.
- (b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates the Contract under clause 24.1(a), the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Supplier is liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.
- (c) Without limiting the Customer's rights under clause 24.1(a), the Customer may immediately terminate the Contract where the State of Queensland terminates the SOA for cause without liability to the Supplier.

24.2 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 24.2(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;
- (c) the Customer breaches its obligations under:
 - (i) the Contract regarding the Supplier's Intellectual Property Rights; or
 - (ii) clause 14,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.

24.3 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 24.3(a), the Customer will pay:
 - (i) the Supplier for the work 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 Details.
- (c) The Customer will have no other liability to the Supplier relating to the termination under this clause 24.3. In no case will the compensation payable as a consequence of termination by the Customer under clause 24.3(a) exceed the Price 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.

24.4 Suspension

- (a) In addition to the Customer's termination rights under this clause 24, 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 24.1, provided that if the Customer seeks to suspend the Contract in the circumstances described in clause 24.1(a)(i):
 - (A) the Customer has issued a notice of the breach to the Supplier; and
 - (B) if the breach described in clause 24.1(a)(i) was capable of being remedied, the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing).
- (b) Where the Contract is suspended in accordance with clause 24.4(a), prior to the suspension expiring, the Customer must notify the Supplier in writing that either:
 - (i) the period of the suspension will cease to be effective from the date specified in the notice and each party must recommence performance under the Contract from the date specified in the notice; or
 - (ii) the period of the suspension will be extended for a further period.
- (c) If the Customer fails to notify the Supplier in writing under clause 24.4(b), the period of suspension will expire at the end of the period set out in the suspension notice provided under clause 24.4(a) and each party must recommence performance under the Contract.

- (d) Without limiting clause 24.4(b), the Customer may otherwise end the suspension on written notice. The Supplier must re-commence performance as soon as reasonably practicable after receiving the Customer's notice ending the suspension.
- (e) If the Customer suspends the Contract under clause 24.4(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 24.4(d) the Supplier must provide replacement Key Personnel approved by the Customer with at least equivalent skills, qualifications and experience. The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.
- (f) The Customer will have no other liability to the Supplier relating to the suspension.
- (g) The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

24.5 Consequences

- (a) Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.
- (b) If the Contract is terminated, the SOA will not, unless the SOA requires it, be affected in any way whatsoever.

25 Assignment and novation

25.1 By Supplier

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

25.2 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.

25.3 Acting reasonably

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

25.4 Transferability and portability of Products and/or Services

- (a) Notwithstanding any other provision of the Contract, the Supplier agrees that the Customer is entitled to transfer any Product and/or 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 Products and/or Services are transferred in accordance with clause 25.4(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:
 - (A) usage arising from the Machinery of Government Change, to the extent that such usage is greater than any limits on usage specified in the Order Documents (including, in the case of Licensed Software, any limit on usage specified in the Class of Licence); and
 - (B) 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 Price as a result of notice of the matters raised in subclause 25.4(b); and/or
 - (ii) comply with any specific requirements of the Queensland Government Body to which the Contract is transferred following the Machinery of Government Change.
- (d) Any agreement that arises from clause 25.4(c) must be documented via a Change Request under clause 7.8.

26 General

26.1 Entire agreement

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

26.2 Waiver

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

26.3 Rights cumulative

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

26.4 Variations

The Order Documents, any Additional Provisions, any Statement of Work and any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference may only be varied (including as a result of any Change agreed under clause 7.8) by written agreement between the parties signed by Authorised Representatives of the parties.

26.5 Relationship of the parties

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

26.6 Survival

- (a) Clauses 1.2, 1.3, 7.7, 8.6, 12, 13, 14, 15, 16, 17, 18, 19(c), 20, 22.2, 22.8(d), 23, 24.5, 25.4 and 26; and
- (b) any other clause in the Contract (including the SOA Modules) which is expressed to survive or by its nature survives,

will survive termination or expiry of the Contract for any reason.

26.7 Costs

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

26.8 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.

27 Definitions and Interpretation

27.1 Definitions

Acceptance Criteria means the criteria to be applied in the performance of any Acceptance Test as specified in SOA Schedule 9 – Acceptance Testing or agreed by the parties under clause 9.1(c).

Acceptance Notice means notice given by the Customer to the Supplier under clause 9.2(a) that a Deliverable meets the relevant Acceptance Criteria.

Acceptance Test Notification Period means the period, as specified in SOA Schedule 9 – Acceptance Testing or agreed by the parties under clause 9.1(c), from the end of the Acceptance Test Period within which the party conducting the Acceptance Test must provide the other party with written notice of the result of the Acceptance Test.

Acceptance Test Data means the data that is provided by the Customer that reflects the data the Customer will use in the Deliverable that is to be used for Acceptance Testing, as specified in SOA Schedule 9 – Acceptance Testing or agreed by the parties under clause 9.1(c).

Acceptance Test Period means the period for the performance of any Acceptance Tests for any Deliverable as specified in SOA Schedule 9 – Acceptance Testing or agreed by the parties under clause 9.1(c).

Acceptance Tests means any acceptance tests specified in SOA Schedule 9 – Acceptance Testing or agreed by the parties under clause 9.1(c).

Actual Acceptance Date or **AAD** means the date the Deliverable is accepted or is deemed accepted and occurs on the date specified in clause 9.3(a).

Additional Provisions means any terms and conditions agreed between the Customer and the Supplier in accordance with clause 1.4 and which may be specified in the Details or any other document which makes up the Contract.

Australian Consumer Law means SOA Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Authorised Representative has the meaning given in clause 22.3(a).

Bespoke Documentation means documents created for the Customer as a Deliverable under the Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under the Contract, in a hard copy, electronic or online format as stated in the Details.

Business Day means any day other than a Saturday, Sunday or public holiday at the Customer's address.

Business Hours means between 9.00am and 5.00pm on Business Days unless otherwise specified in the Details.

Claim means any claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a claim.

Change means a change (including addition or deletion) to the scope of the Deliverables or PIPP (if applicable), including any change to the type of Deliverables to be supplied under the Contract, or the Requirements applying to such Deliverables. For clarity, a request for or purchase of additional Products or Services under clause 7.9 is not a Change.

Change in Control means in relation to a Supplier that is:

- (a) a company within the meaning of the Corporations Act – a change in the identity of a person who, as at the start date of the Contract, is able to Control an entity (including a corporation defined in the Corporations Act); or
- (b) not a company within the meaning of the Corporations Act – a circumstance in which effective control is or may be exercised over the Supplier.

Change Request means a written request for a Change raised by either the Customer or the Supplier, described in clause 7.8(d) substantially in the form of SOA Schedule 11 – Change Request or such other form reasonably acceptable to the Customer.

Confidential Information means all information disclosed by or on behalf of the Customer or the Supplier (**Discloser**) to the other party (**Recipient**) 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:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party;
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity; or
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under the Contract with respect to:
 - (i) the hosting, storage, migration, conversion, cleansing or back-up of data for the Customer in providing Products or Services; or
 - (ii) Harmful Code.

Contract means the agreement between the Customer and the Supplier, made up of the documents specified in clause 1.3.

Control of an entity includes the definition of “Control” in section 50AA of the Corporations Act and in the case of a corporation includes the power (whether legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.

Corporations Act means the *Corporations Act 2001* (Cth).

Correctly Rendered Invoice means a tax invoice (as defined by the GST Law) in which:

- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
- (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;
- (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;
- (d) the invoice is accompanied by documentary evidence that provides evidence that Acceptance Testing (where applicable) has been completed in accordance with the Contract; and
- (e) the invoice is addressed to the Authorised Representative or the officer specified in the applicable Pricing Schedule to receive invoices.

Criminal Code means the Criminal Code set out in SOA Schedule 1 of the *Criminal Code Act 1899* (Qld).

Customer means the entity specified in the Details.

Customer Data means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Products or Services; and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services,

and includes Metadata but does not include any Pre-Existing Material or New Material owned by the Supplier.

Customer Inputs means the Customer's equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Customer's IT System means the Customer's physical and computing environment that is operated, maintained or provided by or on behalf of the Customer relevant to the Deliverables under this Contract and includes the Designated Environment.

Defect means a failure of a Deliverable to comply with the Requirements.

Delay Event has the meaning given in clause 7.6(a).

Deliverables means the Products, Services and documentation to be provided to the Customer including as described in the Order Documents and the Requirements.

Delivery Date means any date and time for delivery of a Deliverable as stated in the Order Documents.

Department means any entity declared to be a department of government by the Governor in Council by gazette notice.

Designated Environment means the physical and computing environment specified in the Details with which the Deliverables must operate.

Details means the document titled '*SOA Comprehensive Contract Details – ICT Products and/or Services*' that contains information about a specific contract between the Customer and Supplier, which is in the format issued with these Comprehensive Contract Conditions.

Discloser has the meaning given in the definition of Confidential Information.

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 article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
- (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.

Eligible Data Breach has the meaning given in the Information Privacy Act

Electronic Incident means an unauthorised action by a known or unknown person which is an attack, penetration, denial of service, misuse of access, unauthorised access or intrusion (hacking) or introduction of Harmful Code affecting:

- (a) the Customer's IT System, any Customer Data or any of the Customer's Confidential Information; or
- (b) any Supplier IT system which is used to provide the Products or Services to the Customer and any such Products or Services.

Escrow Agreement means an agreement under which a third party receives the Escrow Materials from the Supplier for the delivery to the Customer or the Supplier on the fulfillment of pre-specified conditions and is substantially in the form of SOA Schedule 5 – Escrow Agreement or such other form reasonably acceptable to the Customer.

Escrow Materials means:

- (a) the source code and/or object code of any software Deliverable and all other relevant software programs owned by the Supplier, documentation, information, drawings and plans; and
- (b) a list of any relevant third party software programs,

necessary to enable a competent person skilled in the use of the relevant Deliverable (and any necessary development tools used to create the Deliverable) to keep the Deliverables in good order and repair as specified in the Escrow Agreement.

Ethical Supplier Threshold means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due, or

something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor 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.

IP Claim has the meaning given in clause 18.1(a)(iii).

Key Personnel means the people identified in the Details as ‘key personnel’.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables; and
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable.

Liquidated Damages means the liquidated damages specified in the Details.

LD Cap means any cap specified in the Details of the liquidated damages that may be payable under clause 7.7.

LD Due Date means the date by which an LD Obligation must be met, as specified in the Details, as may be varied by a Change Request or otherwise in accordance with the Contract.

LD Obligation means an obligation that is specified in the Details as being an obligation for which the late completion by the Supplier may require the payment of Liquidated Damages under clause 7.7.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Material means any Document or other item in which Intellectual Property Rights subsist.

Material Adverse Event means any matter that:

- (a) substantially and adversely affects the Supplier’s ability to perform any of its material obligations under the Contract, which may result from:
 - (i) any material litigation or proceeding against the Supplier;
 - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Supplier;
 - (iii) matters relating to the commercial, technical or financial capacity of the Supplier; or
 - (iv) any obligation under another contract the compliance with which may place the Supplier in breach of the Contract; or
- (b) the Supplier knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Customer as a result of the Customer’s association with the Supplier.

Metadata means any system-generated data that is created or generated in connection with the Customer’s use of the Products or Services, including in the use, processing, storing or hosting

of any information, material, data, dataset or database in the provision of the Products or Services and includes any descriptive, structural and administrative metadata.

Modern Slavery means the definition under 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 or after the date of Contract.

New Material means all Material that is 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, and includes the Material specified in the Details as New Material. New Material does not include Pre-Existing Material, Third Party Material, Licensed Software or As a Service.

Order Documents means:

- (a) the Details;
- (b) any SOA Schedule;
- (c) the SOA Module Order Forms; and
- (d) any document which the Details or a SOA Module Order Form states will form part of the Contract or is otherwise expressly incorporated by reference in the Contract.

Part A of the SOA Details means that part as set out in the SOA.

Part C of the SOA Details means that part as set out in the SOA.

Personal Information has the meaning given:

- (a) for the purpose of the Information Privacy Act – in that Act; or
- (b) for the purposes of the Privacy Act – in that Act.

Personnel means 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 means all Material, which existed at the Contract start date or which is developed independently of the Contract, and includes the Material specified in the Details as Pre-Existing Material. Pre-Existing Material includes any adaptation, translation or derivative of the Pre-Existing Material, but does not include Licensed Software, As a Service or any Third Party Material.

Price means the price or prices described in the applicable Pricing Schedule or calculated using a calculation method in the applicable Pricing Schedule, which are based on the price or prices in Part C of the SOA Details.

Pricing Schedule means SOA Schedule 1 – Price and Payment Terms or SOA Schedule 2 – Project Implementation and Payment Plan (as applicable).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Breach means any of the occurrences referred to in clause 15.2.

Procurement Guidelines: Contract Disclosure means the Procurement Guidelines: Contract Disclosure issued by the Queensland Government.

Products means products the Supplier will provide under the Contract, described in the Order Documents.

Project Implementation and Payment Plan or **PIPP** means the document which includes the details relating to the implementation of a project and associated payment arrangements, substantially in the form of SOA Schedule 2 – Project Implementation and Payment Plan or such other form reasonably acceptable to the Customer, which is included in the Contract if stated in the Details.

Public Service Office has the meaning given in the *Public Service Act 2008* (Qld).

Queensland Government Body means any of:

- (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);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Queensland Procurement Policy means the Queensland Procurement Policy as published by the Queensland Government.

Recipient has the meaning given in the definition of Confidential Information.

Related Body Corporate has the meaning given in the Corporations Act.

Requirements means the standards, Specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract, which are set out in the Contract.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Service Levels means the service levels in respect of Deliverables described in the Order Documents.

Services means the services the Supplier will perform under the Contract, described in the Order Documents.

Site means each of the site or premises at which the Deliverables are to be provided as specified in the Order Documents.

Site Specification means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverables.

SME has the meaning given in the ICT SME Participation Scheme Standard as may be amended or replaced from time to time.

SOA means the document entered into between the State of Queensland and the Supplier to create a standing offer arrangement under which contracts may be established using these Comprehensive Contract Conditions as further specified on the front page of the Details.

SOA Comprehensive Contract Conditions or **Comprehensive Contract Conditions** means this document titled '*SOA Comprehensive Contract Conditions – ICT Products and/or Services*'.

SOA Module means a document which describes the additional terms and conditions that are specific to a particular Product or Service available at <https://publications.qld.gov.au/dataset/qitc-framework>

SOA Module Order Form means a document that includes the agreed details for the supply of the particular Product or Service that are relevant to the particular SOA Module substantially in the form of the module order form available at <https://publications.qld.gov.au/dataset/qitc-framework>

SOA Schedule means schedules 1 to 9 available at <https://publications.qld.gov.au/dataset/qitc-framework> and such other schedules as incorporated into the Contract by the parties.

Specifications:

- (a) in respect of Products, Services and Deliverables, mean the requirements set out or referred to in the Order Documents, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters;
- (b) in respect of any Licensed Software, Hardware and As a Service (where applicable) supplied under the Contract, includes any published specifications of the Supplier or a third party manufacturer or supplier relating to the Licensed Software, Hardware and As a Service (as applicable).

Stage means one or more milestones that are identified as a stage in the PIPP.

Statement of Work means each statement of work formed between the Customer and the Supplier in accordance with clause 7.9(e).

Statement of Work Form means the statement of work substantially in the form of SOA Schedule 10 – Statement of Work or such other form reasonably acceptable to the Customer.

Subcontractor means a third party to whom the Supplier subcontracts the performance or supply of any Deliverables in accordance with clause 8.1, but excludes a Reseller.

Supplier means the entity specified in the Details.

Supplier Code of Conduct means the supplier code of conduct available from the Queensland Government website and as updated and amended from time to time.

Technical Dispute means a dispute involving issues of a technical nature which is capable of determination by reference to infrastructure, information or communications technology or scientific knowledge or practice.

Term has the meaning given in clause 3.1.

Testing Defect means any failure of a Deliverable to meet the Acceptance Criteria.

Third Party Material means all Material in which the Intellectual Property Rights are owned by a party other than the Supplier or the Customer, and includes the Material specified in the Details as Third Party Material. Third Party Material does not include Third Party Software.

Unexpected Event means 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:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, tsunami, explosion or fire;
- (b) strikes or other industrial action, other than strikes or other industrial action of some or all of the Supplier's Personnel; and
- (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 an Unexpected Event).

User Documentation means the Supplier's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided by the Supplier to the Customer. User Documentation excludes any document that is designed by the Supplier to be training materials.

Warranty Period means the warranty period applicable to any Deliverable as specified in the Order Documents, commencing on the AAD of that Deliverable unless otherwise specified in the Order Documents.

27.2 Interpretation

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

- (a) (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
- (b) (**Business Day**) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) (**currency**) all currency amounts are in Australian dollars;
- (d) (**headings**) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;

- (e) **(includes)** “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
- (f) **(corresponding meaning)** if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (g) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (h) **(law)** a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (i) **(person)** a person includes the person’s executors, administrators and permitted novatees and assignees;
- (j) **(construction)** 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;
- (k) **(other capitalised terms)** definitions for any other capitalised terms not defined in this clause 27 are set out in the SOA Modules; and
- (l) **(severability)** 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.