



PART 4

GENERAL CONDITIONS OF CONTRACT

LGA ARRANGEMENT

Supply of Goods & Services through a Register of Pre-Qualified Suppliers

for

Open Spaces, Parks, Play, Sport and Recreation BUS267

TABLE OF CONTENTS

A.	RECITALS	1
1.	CONSTRUCTION OF CONTRACT	1
2.	DEFINITIONS	1
3.	TERM.....	3
4.	EVIDENCE OF CONTRACT	3
5.	PURCHASER RFQ PROCESS	4
6.	SUPPLY OF THE DELIVERABLES	5
7.	QUALITY OF THE DELIVERABLES.....	5
8.	INSURANCE	5
9.	OBLIGATIONS OF CONTRACTOR & WARRANTIES.....	6
10.	VARIATION OF THE DELIVERABLES	6
11.	CONTRACT RATES.....	6
12.	INVOICING	7
13.	PAYMENT.....	7
14.	SUSPENSION OF CONTRACTOR - GENERAL.....	7
15.	SUSPENSION REQUEST BY CONTRACTOR	7
16.	SUSPENSION BY LOCAL BUY	8
17.	GOODS AND SERVICES TAX	8
18.	TERMINATION	8
19.	DISPUTE RESOLUTION.....	9
20.	CLAUSES TO SURVIVE EXPIRATION OR TERMINATION	9
21.	INTELLECTUAL PROPERTY RIGHTS	9
22.	RELEASE AND INDEMNITY	9
23.	CONFLICT OF INTEREST	10
24.	CONFIDENTIALITY.....	10
25.	ASSIGNMENT & SUBCONTRACTING	10
26.	NEGATION OF EMPLOYMENT AGENCY	11
27.	NOTICES	11
28.	FORCE MAJEURE.....	11
29.	CONTRACTORS REPRESENTATIVE	11
30.	SECURITY AND ACCESS.....	11
31.	INDUSTRIAL DISPUTES	11
32.	REPORTING – REQUESTED BY PURCHASER	11
33.	REPORTING – REQUESTED BY LOCAL BUY - QUARTERLY SALES RETURNS (QSR)	11
34.	REPORTING – REQUESTED BY LOCAL BUY - MONTHLY STATISTICAL REPORT (MSR).....	12
35.	LOCAL BUY CONTRACT MANAGEMENT FEE	12
36.	ANNUAL ADMINISTRATION FEE	13
37.	MARKETING AND PROMOTION	13
38.	FEEDBACK.....	13
39.	SUPPLIER TRANSITION.....	13
40.	FINANCIAL VIABILITY	13
41.	BEST TERMS TO BE PROVIDED.....	14
42.	CONTRACT WARRANTIES – TENDER & QUOTATIONS.....	14
43.	DISCLOSURE OF PRIOR ANTI-COMPETITIVE CONDUCT.....	14
44.	COMPLIANCE WITH ANTI-CORRUPTION LAWS.....	14
45.	RIGHT TO INFORMATION, PRIVACY, DISCLOSURE & PUBLICATION	15
46.	WORKPLACE HEALTH AND SAFETY.....	15
47.	ENTIRE PROJECT ENGAGEMENTS	15
48.	MISCELLANEOUS.....	15
	SCHEDULE A – CONTRACT DETAILS	17

General Conditions of Contract

A. RECITALS

- i. Local Buy is a company registered under the Corporations Act whose only shareholder is the Local Government Association of Queensland.
- ii. Pursuant to section 234 of the *Local Government Regulation 2012* Local Buy has a statutory right to establish LGA Arrangements which constitute an exception to a Queensland Local Government's obligation to invite written quotes or tenders when entering into a contract. Other entities listed as Purchasers may also utilise this LGA Arrangement subject to compliance with their own procurement obligations.
- iii. This LGA Arrangement (BUS267) may be made up of one or a number of individual contracts between Local Buy and the supplier(s) whose offers in response to the RFT issued by Local Buy were accepted.
- iv. Each Local Buy Contract details the overarching arrangement and contract management provisions that apply between Local Buy and the relevant Contractor.
- v. Each Purchaser Agreement details the specific pricing, specification and provisions that apply between the relevant Purchaser and the chosen Contractor.

- 1.5 No rule of construction or interpretation of the Contract shall apply to either Local Buy's or the Purchaser's disadvantage solely because Local Buy prepared the Contract or either of them rely on a provision of the Contract.
- 1.6 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.7 All information delivered as part of the Deliverables supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.8 Grammatical variations of a defined word/phrase have the same meaning as the defined word/phrase unless the context otherwise requires.
- 1.9 If a provision of the Contract is found by a court of competent jurisdiction to be void, voidable, illegal or unenforceable, then that provision shall be deemed to be deleted from the Contract and the remaining provisions of this Contract shall continue in full force and effect.
- 1.10 Where a Purchaser is not from Queensland, a reference to a Queensland Act or a Queensland body in the Contract shall be deemed to be a reference to the equivalent legislation or body of the State in which the Purchaser is based.

1. CONSTRUCTION OF CONTRACT

- 1.1 A reference to a party to the Contract includes:
 - (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
 - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
 - (a) all of those persons collectively; and
 - (b) each of them as an individual.
- 1.3 The parties to the Contract are:
 - (a) Local Buy (in its own right and as agent for LGAP – the Local Government Association of South Australia); and
 - (b) the Contractor,

and the conditions of Contract apply to and as between each of those parties as if each of them had executed the Contract or had executed separate Contracts. Clauses which reference Purchasers shall be deemed to be included in a Purchaser Agreement.

- 1.4 A reference to:
 - (a) the singular includes the plural, and vice versa;
 - (b) a gender includes each other gender;
 - (c) a person includes a corporation, a firm, and a voluntary association;
 - (d) an Act includes an Act that amends, consolidates or replaces the Act and includes subordinate legislation under that Act;
 - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
 - (f) money is a reference to Australian dollars and cents;
 - (g) a time of day is a reference to Australian Eastern Standard Time;
 - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced; and
 - (i) the words 'include', 'included' or 'including' when those words are used, will be interpreted as if they were

2. DEFINITIONS

- 2.1 In the Contract, except where the context otherwise requires:
 - 'Annual Administration Fee' means the annual administration fee set out in **Item 7 of Schedule A**.
 - 'Authorised Officer' means the relevant Purchaser's authorised representative (and any authorised delegate) as notified to the Contractor in writing from time to time.
 - 'Business Day' means a day that is not:
 - (a) a Saturday, Sunday or 27, 28, 29, 30 or 31 December; or
 - (b) public holiday, bank holiday or special holiday in Brisbane or in the case of a Purchaser Agreement, the place of business of the Purchaser where the Deliverables are being provided.
 - 'Categories' means the categories of Deliverables that may be supplied under the LGA Arrangement as set out in the Specification. The specific Categories that the Contractor has been appointed to and may supply to Purchasers under the LGA Arrangement are set out in the Letter of Acceptance.
 - 'Category Manager' means the relevant Local Buy category manager as set out in **Item 9 of Schedule A** and as may be updated from time to time in writing to the Contractor by Local Buy.
 - 'Clause' means a clause of the General Conditions of Contract.
 - 'Condition' means a condition of the Default Purchaser Conditions of Contract.
 - 'Contract' or 'Local Buy Contract' means all the documents set out in Clause 4.4 which constitute or evidence the final and concluded agreement between Local Buy and the Contractor for sales of the Deliverables to Purchasers.
 - 'Contract Commencement Date' means the contract commencement date set out in **Item 2 of Schedule A** unless otherwise set out in the Letter of Acceptance.
 - 'Contract Expiry Date' means the contract expiry date set out in **Item 3 of Schedule A** unless otherwise extended pursuant to the terms of the Contract.
 - 'Contract Extension Period' means the contract extension period set out in **Item 4 of Schedule A**.
 - 'Contract Management Fee' means the contract management fee payable in accordance with Clause 35.

General Conditions of Contract

‘Contract Management Rebate’ means the contract management percentage figure set out in **Item 6 of Schedule A** used to calculate the Contract Management Fee.

‘Contract Number’ means the number given to the LGA Arrangement as set out in **Item 1 of Schedule A**.

‘Contract Rates’ means the rates for provision of the Deliverables as set out in the Pricing Schedule.

‘Contractor’ means the party whose Offer to supply the Deliverables is accepted by Local Buy (by way of Letter of Acceptance) and available to Purchasers. A reference to the Contractor includes its employees, agents and sub-contractors unless otherwise required by the context.

‘Contractor Data’ means information held electronically on Local Buy’s information directory or electronic RFQ system about the Contractor including (but not limited to) the Contractor’s contact details, insurances, office location/s, and pricing information.

‘Default Purchaser Conditions’ means the Purchaser Conditions set out in Part 5 of the RFT documents for this LGA Arrangement.

‘Deliverables’ means the goods and/or services (including any ancillary works) the subject of the Contract which are more particularly described in the Contract documents (including the Specification and Pricing Schedule) including all variations to the goods and services provided for by the Contract or such of them as shall be described in a Purchaser Agreement and a reference to **‘Goods’**, **‘Services’** or **‘Works’** shall be a reference to that separate component of the Deliverables.

‘Force Majeure Event’ means any occurrence or omission outside a party’s reasonable control, by which the party relying on the event is prevented from or delayed in performing its obligations under this Contract (other than a payment obligation, delays in the Contractor’s supply chain or an industrial dispute involving the Contractor’s own staff, sub-contractors or agents), and includes:

- (a) a physical natural disaster including fire, cyclone, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any Government Agency; and
- (f) a non-trivial change in the law taking effect after the Contract Commencement Date which could not have been reasonably anticipated by the party claiming force majeure and which has a material effect on that party’s ability to perform its obligations under the Contract (but for the avoidance of doubt does not include the introduction of any emissions trading scheme or carbon tax).

‘General Conditions of Contract’ or **“GCC”** means these conditions of Contract.

‘GST’ means the goods and services tax under the GST Act.

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999*.

‘Insolvency Event’ means any of the following or similar events occurring in relation to the Contractor:

- (a) the Contractor is wound up, voluntarily or involuntarily;
- (b) the Contractor suspends payment of its debts or is unable to pay its debts;
- (c) the Contractor enters into an arrangement, reconstruction or compromise with its creditors or any of them;

(d) if a receiver, receiver and manager, controller (as defined in the Corporations Act), administrator, liquidator, provisional liquidator or similar person is appointed to take, or the holder of a security interest takes, (or appoints an agent to take) possession of any property of the Contractor or any of its subsidiaries or is subject to any form of external administration;

(e) the Contractor becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation; or

(f) the Contractor ceases to carry on business.

‘Intellectual Property Rights’ includes copyright, and all rights conferred by any law in relation to inventions, patents, registered and unregistered trademarks, including service marks, registered and unregistered designs, semi-conductor or circuit layout rights, trade or other proprietary rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether created before, on or after the Contract Commencement Date.

‘Key Personnel’ means any of the Contractor’s staff referred to by name in the relevant Purchaser Agreement.

‘Letter of Acceptance’ means the letter from Local Buy to the Contractor advising the Contractor of Local Buy’s acceptance of the Contractor’s Offer for the supply of Deliverables in the Categories set out to Purchasers.

‘LGA Arrangement’ means the register of pre-qualified suppliers or preferred supplier arrangement established by Local Buy by way of the Local Buy Contract pursuant to section 234 of the *Local Government Regulation 2012* which constitutes an exception to a local government’s need to invite written quotes or tenders.

‘LGAQ’ or ‘LGA’ means the Local Government Association of Queensland Ltd.

‘Local Buy’ means Local Buy Pty Ltd (ACN: 090 446 487) as trustee for the Local Buy Trading Trust (ABN: 61 561 663 808).

‘Offer’ or **‘Tender’** means the written offer (in the form of the RFT tender response) submitted to Local Buy by the Contractor to supply the Deliverables to Purchasers under an LGA Arrangement and, if applicable, as amended in writing by any post Offer negotiations or clarifications.

‘Order’ means an order for the supply of Deliverables placed by a Purchaser with a Contractor under the Contract to which the relevant Purchaser Conditions apply and **‘Ordered’** has a corresponding meaning.

‘Order Commencement Date’ means where so specified in an Order the date for the commencement of the provision of the Deliverables by the Contractor to the relevant Purchaser and where not so specified, the date of the Order.

‘Order Price’ means the price agreed between the Purchaser and Contractor for the supply of the Deliverables pursuant to a Purchaser Agreement.

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

‘Pricing Schedule’ means the pricing schedule submitted by the Contractor as part of its Offer and, if applicable, as amended in writing by any post Offer negotiations or clarifications and as amended pursuant to this Contract from time to time.

‘Pricing Schedule Fixed Period’ means the time period for which the Pricing Schedule is fixed as set out in Item 8 of Schedule A.

‘Project Schedules’ means the schedules (if any) agreed between the Purchaser and Contractor specific to the Deliverables which are being supplied by the Contractor as per Condition 5.13 of the Default Purchaser Conditions.

‘Purchaser’ means the relevant entity from those set out in **Item 11 of Schedule A**, which has contracted to purchase

General Conditions of Contract

Deliverables from the Contractor pursuant to a Purchaser Agreement in a particular transaction.

‘Purchaser Agreement’ means the legally binding agreement (made pursuant to the Local Buy Contract) between the Purchaser and the Contractor for the provision of the Deliverables comprising the documents set out in Condition 4.1 of the Default Purchaser Conditions.

‘Purchaser Agreement Expiry Date’ means the expiry date of the Purchaser Agreement as set out in the Purchaser’s Order or if not so set out, means the date on which the supply of the Deliverables has been completed in compliance with the relevant Purchaser Agreement.

‘Purchaser Conditions’ means the relevant Purchaser terms and conditions detailed in **Item 10 of Schedule A**.

‘Purchaser Requirements’ means a Purchaser’s specific requirements in relation to the Deliverables to be supplied by the Contractor as detailed in the Purchaser Agreement and includes any agreed Project Schedules.

‘Quality Assured System’ means the formal management system used by the Contractor to ensure that the required quality standards are met through the use of systematic monitoring and evaluation (if any).

‘Quotation’, ‘Quote’ or ‘RFQ Response’ means a quote to supply the Deliverables in accordance with the Purchaser Requirements issued by the Contractor in response to a Purchaser’s RFQ.

‘Regional Representation Schedule’ means the regional representation schedule included in the RFT (if any) and completed by the Contractor setting out the regions to which the Contractor is able to supply the Deliverables (as updated from time to time).

‘Register of Sub-Contractors’ means the Register of Sub-Contractors submitted as part of the Contractor’s RFT response and as updated in accordance with the Contract from time to time.

‘RFT’ or ‘Request for Tender’ means the Request for Tender issued by Local Buy to prospective tenderers inviting tenders for the supply of the Deliverables.

‘RFQ’ or ‘Request for Quotation’ means a request issued by a Purchaser inviting a Quote from the Contractor to supply the Deliverables in accordance with the set-out Purchaser Requirements.

‘RTI Act’ means the Right to Information Act 2009 (Qld).

‘Special Conditions of Contract’ means the special conditions of Contract included in a Purchaser’s RFQ and/or Order (if any) or otherwise agreed in writing between a Purchaser and Contractor.

‘Specification’ means the specification included in the Request for Tender including any amendments set out in the Letter of Acceptance.

‘Suspension’ means a temporary postponement of the Contractor’s right to supply the Deliverables pursuant to the LGA Arrangement and under the Contract for a period of time and **‘Suspend’** has a corresponding meaning.

‘Term’ means the period for which the Contract will be in effect as specified in Clause 3, including any period(s) of extension under Clauses 3.2 and 3.3.

‘Vendor Panel’ means an online electronic RFQ system accessible through Local Buy by both the Contractor and Purchasers.

‘Warranty Period’ means the longer of any warranty period required under this Contract, the Purchaser Agreement, set out in the Contractor’s Offer or Quote, or required by law.

‘Wilful Misconduct’ means a wilful and malicious act committed by the Contractor with intent to cause, or gross disregard to causing, loss, injury or damage.

3. TERM

3.1 The Term of the Contract shall begin on the Contract Commencement Date [refer **Item 2 of Schedule A**] and expire on the Contract Expiry Date [refer **Item 3 of Schedule A**] unless:

- (a) terminated earlier in accordance with the terms and conditions of the Contract; or
- (b) extended by Local Buy in accordance with Clause 3.2 or 3.3.

3.2 Local Buy may, at its sole discretion, by written notice to the Contractor extend this Contract for the Contract Extension Period [refer **Item 4 of Schedule A**].

3.3 Local Buy may, at its sole discretion, extend the Contract Term for a period of up to four (4) months beyond the expiry of the Contract Extension Period in the event that it has not completed the procurement process for any replacement LGA Arrangement.

3.4 The Contractor acknowledges that it is one supplier on a Local Buy LGA Arrangement and accepts and agrees that Local Buy may from time to time appoint additional suppliers to or expand the Categories of Deliverables which current suppliers are able to provide under this LGA Arrangement (on terms substantially similar to the terms of these General Conditions of Contract) for the remainder of the term of the LGA Arrangement to supply goods and/or services which are the same or similar to the Deliverables, provided that each such supplier meets the same or reasonably similar (as determined by Local Buy) evaluation criteria as those originally set out in the Request for Tender.

3.5 Local Buy also reserves the right to expand the scope of the LGA Arrangement to other State local government Purchasers. Where the scope of the arrangement is expanded in this way, the Contractor will be given the opportunity to decide whether or not they wish to supply to the other nominated State local government Purchasers.

3.6 The Contractor will not hold Local Buy liable for any direct or indirect action, claim, damage, liability and/or loss whatsoever that the Contractor may suffer arising from or in any way related to Local Buy’s use of Clauses 3.4 or 3.5.

4. EVIDENCE OF CONTRACT

4.1 In consideration of being selected as a successful supplier under this LGA Arrangement and the benefits which accrue thereto, the Contractor agrees to meet its obligations pursuant to, and provide the Deliverables in accordance with, the Contract terms and conditions.

4.2 The Contract is formed by Local Buy’s acceptance of the Contractor’s tendered Offer by way of Letter of Acceptance.

4.3 Local Buy may choose to deliver, and the Contractor consents to the receipt of, the Letter of Acceptance electronically to the Contractor’s nominated email address. Both parties agree that such electronic communication constitutes a valid transaction for the purposes of the *Electronic Transactions (Queensland) Act 2001*.

4.4 The Contract is constituted by the following documents:

- (a) Letter of Acceptance;
- (b) Clarifications and Addendums issued in writing by Local Buy as part of the RFT process;
- (c) General Conditions of Contract;
- (d) Specification;
- (e) correspondence passing between Local Buy and the Contractor clarifying any aspect of the Request for Tender or Offer (including for the avoidance of doubt any clarifications posted by Local Buy in the LG Tender Box forum as part of the RFT process); and
- (f) Offer.

4.5 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the

General Conditions of Contract

Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (f) in Clause 4.4 in order of descending priority.

- 4.6 Local Buy does not guarantee any volume of Orders or level of income to the Contractor. For the avoidance of doubt, any figures set out in the Request for Tender or the Contract relating to real or potential expenditure are estimates only and should not be relied on by the Contractor.
- 4.7 The Contractor acknowledges and accepts that the relevant Purchaser Conditions shall apply, to the total exclusion of all other terms and conditions (with the exception of third party manufacturer hardware or software ELUAs), to all Deliverables supplied to a Purchaser pursuant to this Local Buy Contract.

5. PURCHASER RFQ PROCESS

- 5.1 The Purchaser RFQ process set out in Condition 5 of the Default Purchaser Conditions shall be used for all purchases under this Contract unless a Purchaser believes that there is sufficient information available to them in the Contract documents to place an Order directly with the LGA Arrangement supplier of their choice.
- 5.2 The Contractor shall, and shall use all reasonable endeavours to ensure that its employees, sub-contractors and agents, comply at all times with the RFQ process referred to in Clause 5.1 above and shall bring any discrepancies to the Category Manager's attention promptly.
- 5.3 Local Buy shall be entitled (acting reasonably) to vary the RFQ process set out in the Purchaser Conditions at any time by written notice to the Contractor. For the avoidance of doubt, such variation shall only apply to RFQ processes that have not commenced. The Contractor shall inform its employees, sub-contractors and agents promptly where such a variation occurs.

Authorised Purchaser List

- 5.4 Local Buy may from time to time provide the Contractor with a list of Purchasers who have agreed that all purchases made by them shall be pursuant to the LGA Arrangement (an "Authorised Purchaser List"). All purchases made by Purchasers on the Authorised Purchaser List shall be deemed to have been made pursuant to the LGA Arrangement whether or not the Contract Number is provided to the Contractor unless otherwise explicitly stated in writing by the relevant Purchaser's Authorised Officer.

Vendor Panel

- 5.5 Local Buy may invite the Contractor to register for Vendor Panel. The Contractor must accept such invitation, register and complete their profile on Vendor Panel within fourteen (14) Business Days of receipt of such request. Where the Contractor fails to register within the timeframe set out, Local Buy may immediately Suspend the Contractor or terminate the Contract.
- 5.6 Local Buy reserves the right to review the Contractor's Vendor Panel profile and to require changes to be made where those profiles do not reflect the terms of the Local Buy Contract. Where required to make changes by Local Buy, the Contractor shall make such changes as required within three (3) Business Days of notification to their nominated email address. Local Buy may Suspend the Contractor until Local Buy is satisfied that the changes have been made.
- 5.7 The Contractor acknowledges and agrees that where they fail to register and create an electronic profile within the Vendor Panel system or they are Suspended from the Local Buy Contract, they will not be entitled to receive and must not respond to Purchaser RFQs whether issued through Vendor Panel or otherwise.
- 5.8 All RFQs received via Vendor Panel must be responded to via Vendor Panel and in accordance with the terms of the

Local Buy Contract, the Purchaser Conditions, relevant RFQ and technical specification.

- 5.9 The Contractor holds Local Buy harmless from any action, claims, liability and/or loss arising from or in any way related to their use of Vendor Panel (including for the avoidance of doubt, a fault in or failure of the Vendor Panel system, a failure to correctly register with Vendor Panel, RFQs issued or responded to through Vendor Panel and/or any Orders arising therefrom).
- 5.10 The Contractor's ratio of RFQs received to responses provided may be monitored by Local Buy. Where the Contractor fails to respond to four (4) consecutive relevant RFQs or where the Contractor's level of responses to relevant RFQs drops below 75% in any three month period Local Buy may require that the Contractor provide a written explanation of the low level of its responses to RFQs and a proposed plan to improve the response levels. The Contractor shall supply such written explanation and any subsequent clarifications within the reasonable timeframe(s) set by Local Buy's Category Manager.
- 5.11 Where:
 - (a) the Contractor fails to submit a written explanation pursuant to Clause 5.10;
 - (b) such written explanation is not accepted by Local Buy's Category Manager (acting reasonably);
 - (c) there has been no improvement in the level of responses to relevant RFQs in the three month period following receipt of the written explanation; or
 - (d) where the Contractor breaches any conditions relating to Vendor Panel

Local Buy may at its sole discretion Suspend the Contractor pursuant to Clause 16 or immediately terminate the Contract.

RFQ Monitoring

- 5.12 Local Buy reserves the right to monitor RFQs issued and the responses received for compliance with the terms and conditions of the Local Buy Contract and other general purposes including contract review, forecasting and administration purposes.
- 5.13 If Local Buy finds that an issued RFQ or the response received are substantially in conflict with the terms and conditions of the Local Buy Contract or Purchaser Conditions, Local Buy shall consult the Purchaser and Contractor to resolve the matter.
- 5.14 If the matter cannot be resolved as set out above in Condition 5.13, the Order will be deemed to be cancelled and, with respect to Queensland Local Government, will no longer constitute a valid LGA arrangement exemption for the purposes of the *Local Government Regulation 2012*.

Contractor's Online Ordering Portal

- 5.15 Where the Contractor provides an online ordering portal to Purchasers, it must:
 - (a) on request, provide Local Buy with the ability to access and/or test the portal; and
 - (b) on request, provide Local Buy with details of Orders placed through the portal; and
 - (c) ensure that it is able to accurately track and attribute Purchaser Orders under this Contract in its portal; and
 - (d) ensure that the Deliverables offered through the portal comply in all respects with the terms and conditions of the Local Buy Contract (including for the avoidance of doubt, the Categories that the Contractor has been approved to supply and pricing).

Purchaser Agreement

General Conditions of Contract

- 5.16 A contract between a Purchaser and Contractor is formed at the time of an Order being issued by that Purchaser to the Contractor.
- 5.17 The Purchaser Agreement constitutes the entire contract between the relevant Purchaser and the Contractor, is formed when a Purchaser places an Order with the Contractor and is constituted by the documents set out in Condition 4.1 of the Default Purchaser Conditions.
- 5.18 The relevant Default Purchaser Conditions set out in Part 5A (Goods and Services) and Part 5B (Works) of the Request for Tender apply and take precedence over any other Purchaser Conditions until such time as an alternative set of relevant Purchaser Conditions has been executed by both the relevant Purchaser and Contractor.
- 6. SUPPLY OF THE DELIVERABLES**
- 6.1 All supplies of the Deliverables by the Contractor must meet the requirements of this Contract and relevant Purchaser Agreement.
- 6.2 Supply of the Deliverables must be in accordance with the requirements of Condition 6 (Supply of the Deliverables) of the Default Purchaser Conditions.
- 6.3 The Contractor shall use all reasonable endeavours to ensure that its employees, sub-contractors and agents comply at all times with the requirements for the supply of Deliverables referred to in Clauses 6.1 and 6.2 above and bring any discrepancies to the Category Manager's attention promptly.
- 6.4 Where the Contractor provides the Deliverables to a Purchaser without the Purchaser having undertaken a separate valid legally compliant procurement process, such purchase shall constitute an Order for the purposes of the Contract irrespective of whether or not the order is identified as an "Order" and be included as part of the Contract Management Fee calculation [refer Clause 35].
- 6.5 The Contract does not confer on the Contractor an exclusive right to supply the Deliverables to a Purchaser and a Purchaser may obtain the Deliverables or any part of the Deliverables from an alternate supplier at any time during the Term.
- 6.6 The Contractor must not supply Categories of Deliverables to Purchasers under the Contract other than those tendered and appointed for as set out in the Letter of Acceptance, without the prior written approval of Local Buy.
- 6.7 If Local Buy finds that any aspect of a Purchaser Agreement is substantially in conflict with the terms and conditions of the Contract or Purchaser Conditions, Local Buy shall consult the Purchaser and Contractor to resolve the matter.
- 6.8 If the matter cannot be resolved as set out above, the Order will be deemed to be cancelled and, with respect to Queensland Local Government, will no longer constitute a valid LGA Arrangement exemption for the purposes of the *Local Government Regulation 2012*.
- 6.9 For the avoidance of doubt, the Contractor's standard terms and conditions (whether included in an RFQ response, quotation, invoice, receipt or the like) shall not apply to this Contract or any Purchaser Agreement.
- 6.10 The Warranty Period shall apply to all Deliverables supplied under this Contract and any Purchaser Agreement.
- 6.11 The Contractor shall ensure that the benefits of any warranties relating to Goods supplied under a Purchaser Agreement are passed onto the relevant Purchaser.
- 6.12 The Contractor's supply of Deliverables under this LGA Arrangement is subject to compliance at all times with applicable Workplace Health and Safety requirements and the directions and policies of the relevant Purchaser.
- 7. QUALITY OF THE DELIVERABLES**
- 7.1 The quality of the Deliverables supplied by the Contractor must meet the requirements of this Contract and the relevant Purchaser Agreement.
- 7.2 The quality of the Deliverables must be in accordance with the requirements of Condition 7 (Quality of the Deliverables) of the Default Purchaser Conditions.
- 7.3 The Contractor shall use all reasonable endeavours to ensure that its employees, sub-contractors and agents comply at all times with the requirements for the quality of the Deliverables referred to in Clause 7.1 and 7.2 above and bring any discrepancies to the Category Manager's attention promptly.
- 7.4 On request the Contractor shall provide documentary evidence of the Contractor's Quality Assured policies and procedures to Local Buy.
- 8. INSURANCE**
- 8.1 The Contractor must take out and keep current at its own expense insurance policies as follows for the Term of the Contract or the expiry of the last Purchaser Agreement (whichever is the later):
- (a) public liability insurance in the amount set out in **Item 5 of Schedule A**; and
 - (b) workers' compensation insurance as required by law; and
 - (c) professional indemnity insurance in the amount set out in **Item 5 of Schedule A**; and
 - (d) product liability insurance in the amount set out in **Item 5 of Schedule A**; and
 - (e) motor vehicle insurance covering all liabilities in respect of injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of Contractor-owned or leased motor vehicles; and
 - (f) insurance sufficient to fully cover any ancillary works undertaken for a Purchaser as part of the Deliverables; and
 - (g) where any work under the Contract includes asbestos removal of any description, a suitable Asbestos Liability Policy; and
 - (h) any other insurances set out in **Item 5 of Schedule A**; and
 - (i) any other insurances as may be reasonably expected to be held by a Contractor with expertise and experience in carrying out services or supplying goods similar to the Deliverables.
- 8.2 Every policy of general insurance the subject of Clause 8.1 must issue from an insurer registered in Australia to conduct insurance business or such other insurer as Local Buy may approve from time to time. Local Buy reserves the right to accept a self-insuring Contractor subject to receipt of acceptable evidence of the Contractor's financial soundness.
- 8.3 Upon request, the Contractor must provide Local Buy with a certificate of currency for any insurance policy the Contractor is required to hold pursuant to Clause 8.1 or held by its sub-contractors or agents pursuant to Clause 8.7 and respond fully and promptly to any requests from Local Buy for additional information.
- 8.4 The Contractor must upload its current insurance certificates of currency to Vendor Panel and ensure that they are kept up to date.
- 8.5 The Contractor must promptly notify Local Buy of any cancellation or lapse of any policy of insurance required by Clause 8.1.
- 8.6 The Contractor shall within five (5) Business Days of any claim arising which relates to, or has implications for the supply of any Deliverables, notify Local Buy and keep Local Buy informed of such claim.

General Conditions of Contract

- 8.7 The Contractor must ensure that during the Term its sub-contractors and agents supplying any Deliverables have in force at all times such levels of insurance cover as may reasonably be expected to be held by a supplier carrying out services similar to the Deliverables.
- 8.8 If the Contractor fails to discharge an obligation under this Clause 8, Local Buy may Suspend the Contractor pursuant to Clause 16 until such time as the Contractor has satisfied Local Buy that it (or its sub-contractor or agent) has the required insurances in place.
- 8.9 The Contractor shall ensure that the benefits of any insurance policies relating to any Goods purchased are passed onto the relevant Purchaser in the event of a claim.
- 8.10 Where the Contractor anticipates reaching, reaches or exceeds any aggregated insurance level set out in the Contract or any Purchaser Agreement, the Contractor shall immediately advise Local Buy's Category Manager. Local Buy may require the Contractor to take out and provide evidence of top up insurance and Suspend the Contractor pursuant to Clause 16 until such time as it has been provided. Where evidence of such top up insurance is not provided promptly, Local Buy may terminate the Contract.
- 8.11 Nothing in this Clause 8 limits the obligations, liabilities and responsibilities of the Contractor or its sub-contractors or agents under this Contract.

9. OBLIGATIONS OF CONTRACTOR & WARRANTIES

- 9.1 The Contractor must supply all personnel and equipment necessary for the proper supply and performance of the Deliverables (including at least one free of cost means for a Purchaser to contact the Contractor for customer support issues – eg email, freecall number).
- 9.2 The Contractor warrants that it and its staff, sub-contractors and agents engaged in the supply of the Deliverables have the necessary skills, experience, licences, qualifications, memberships, expertise and the like to be able to competently supply the Deliverables.
- 9.3 Except to the extent of any reliance by the Contractor on information supplied in writing by Local Buy, the Contractor warrants the accuracy and completeness of all the information provided in its Offer. The Contractor acknowledges that Local Buy has accepted the Contractor's Offer and Purchasers accept the Contractor's quotations in reliance on this warranty.
- 9.4 The Contractor must at all times during the Term use all reasonable endeavours to ensure that its employees, sub-contractors and agents comply with the terms and conditions of the Local Buy Contract and each relevant Purchaser Agreement.
- 9.5 Where a Contractor is engaged by a Purchaser to deliver a project (including to manage works), the Contractor must comply with all relevant legislative requirements including for the avoidance of doubt the procurement requirements under the *Local Government Regulation 2012*.
- 9.6 Local Buy may request and the Contractor must provide within three (3) days (or such other time period approved by Local Buy) evidence of any requirement under this Clause 9.

10. VARIATION OF THE DELIVERABLES

By Local Buy

- 10.1 Local Buy may, by written notice given to the Contractor, require the Contractor to vary the Deliverables supplied under the Contract in nature, scope and/or timing.
- 10.2 Where Local Buy requires a variation under Clause 10.1, the parties must negotiate in good faith a variation of the Pricing Schedule, Specification and where required any times listed for completion of supply of the Deliverables. Failing agreement Local Buy may withdraw the variation or may invoke the dispute resolution procedure in Clause 19.

- 10.3 The Contractor must not begin offering the varied Deliverables to Purchasers unless and until the variation is agreed in writing by Local Buy and the Contractor.
- 10.4 For the avoidance of doubt, a variation under Clause 10.1 does not affect any Purchaser Agreement already entered into unless otherwise agreed between the Contractor and relevant Purchaser.
- 10.5 Local Buy may remove a Contractor's right to supply a Category of Deliverables where Local Buy deems (acting reasonably) that the Contractor no longer has the same capacity to provide those Deliverables as originally set out in its Offer.

By the Contractor

- 10.6 Contractors are appointed to provide one or more Categories of Deliverables as set out in the Letter of Acceptance. A Contractor is unable to provide other Categories of Deliverables under the Local Buy Contract throughout its Term unless approved to do so pursuant to Clause 3.4. For the avoidance of doubt this restriction extends also to the Contractor's sub-contractors and agents.
- 10.7 The Contractor may request to amend the Categories of Deliverables it supplies under the Contract by way of written notification to Local Buy's Category Manager. The notification must be on company letterhead, dated with details including company name, account manager, contract details, brief statement, evidence of experience, supporting CVs for the Key Personnel in any new Categories they wish to be added to and expected effective date in regards to the requested variation.
- 10.8 The Contractor must update any relevant schedules as part of the above notification action and respond fully and promptly to any requests from Local Buy for additional information.
- 10.9 It is acceptable for this variation notice to be emailed to Local Buy's Category Manager.
- 10.10 The Contractor must not begin offering the varied Deliverables to Purchasers unless and until the variation has been approved in writing by Local Buy.
- 10.11 For the avoidance of doubt, the Contract does not restrict a Contractor from supplying any goods, services and/or works outside of the Local Buy Contract where a separate valid legally compliant procurement process has been undertaken by a Purchaser.

11. CONTRACT RATES

- 11.1 The Contractor acknowledges that it has taken into account the Contract Management Rebate in its calculation of the Contract Rates. For the avoidance of doubt, no additional amount to cover the Contract Management Rebate may be charged by the Contractor on top of the Contract Rates.
- 11.2 Rate increases under this Clause 11 shall not affect any Purchaser Agreement in force unless agreed to by the Contractor and relevant Purchaser.

Price Increases

- 11.3 The prices set out in the Contractor's Pricing Schedule are fixed for the Pricing Schedule Fixed Period.
- 11.4 No later than twenty one (21) days prior to the expiry of the relevant Pricing Schedule Fixed Period, the Contractor may submit a revised Pricing Schedule to the Category Manager for approval. If approved, the revised Pricing Schedule shall be fixed for the subsequent twelve (12) months.
- 11.5 On receipt of a revised Pricing Schedule the Category Manager may request an explanation and/or evidence supporting any price increases and the Contractor shall provide such information within three (3) Business Days of such request.

General Conditions of Contract

- 11.6 If the Contractor fails to make an application pursuant to Clause 11.4 then the Contractor's Pricing Schedule will be deemed unchanged and will remain in force for the subsequent Pricing Schedule Fixed Period.
- 11.7 Where the Category Manager believes that any rate increases set out in the proposed revised Pricing Schedule pursuant to Clause 11.4 are unreasonable then the Contractor's Representative and Category Manager will meet in good faith to discuss the Contractor's proposal. Where agreement cannot be reached the Contractor may retain the original pricing or remove the item from the Pricing Schedule.
- 11.8 Changes to the Contract Rates at any other time during the Term shall only be allowed in extenuating circumstances (which the Contractor must document in writing) and entirely at Local Buy's sole discretion.

Price Decreases

- 11.9 The Contractor is to notify Local Buy's Category Manager of any decrease in the Contract Rates as soon as practicable and in writing. Upon receipt of such notification, any decrease to the Contract Rates will have immediate effect.
- 11.10 The Contractor may offer short term rate reductions. A written notification by email or letter attention to the Local Buy Category Manager for approval is required prior to the commencement of any short term rate reductions.
- 11.11 The Contractor after receiving approval may promote this short term rate reduction period via their website and communications with Purchasers.
- 11.12 The Contractor shall assume responsibility for notifying the Category Manager when the short term rate reduction expires.

Price Change Notifications

- 11.13 The Contractor is to notify Local Buy's Category Manager of any rates increase or decrease by completing a formal notification (in writing, on company letterhead, dated) with details including company name, account manager, contract details, brief statement and expected effective date in regards to rates request.
- 11.14 The Contractor must update the relevant schedule as part of the above notification action and respond fully and promptly to any requests from Local Buy for additional information.
- 11.15 It is acceptable for this variation notice to be emailed to Local Buy's Category Manager.
- 11.16 The Contractor must not begin offering the varied pricing to Purchasers unless and until the varied pricing has been approved in writing by Local Buy.

12. INVOICING

- 12.1 The Contractor must comply with the invoicing requirements set out in the relevant Purchaser Agreement.
- 12.2 Each invoice provided by a Contractor must list the LGA Contract Number (BUS267).
- 12.3 The Contractor shall within five (5) Business Days supply such information in respect of any invoice rendered under a Purchaser Agreement as Local Buy may from time to time request.

13. PAYMENT

- 13.1 The Purchaser shall pay all invoices received for Deliverables supplied, which include the LGA Contract Number (BUS267) and are not in dispute within the timeframes set out in the relevant Purchaser Agreement (or if not so set out, within 30 days).
- 13.2 The Contractor must ensure that its sub-contractors and agents comply with the payment terms set out in the relevant Purchaser Agreement.

- 13.3 A Purchaser may request evidence of the Contractor's payment of its sub-contractors and such evidence must be supplied by the Contractor promptly.

14. SUSPENSION OF CONTRACTOR - GENERAL

- 14.1 The terms of this Clause 14 apply when a Contractor is Suspended whether pursuant to Clause 15, Clause 16 or as otherwise provided for under the Contract.
 - 14.2 The effect of a Suspension is that the Contractor is not, for the period of the Suspension, eligible to offer the Deliverables to Purchasers under the LGA Arrangement.
 - 14.3 A Suspension is based upon an expectation that the Contractor shall be entitled to resume the supply of the Deliverables under the Contract after the period of Suspension, providing the cause giving rise to the Suspension is resolved to Local Buy's satisfaction.
 - 14.4 The Suspension period will form part of the defined Term of the Contract.
 - 14.5 During the Suspension period, the Contractor and Local Buy are required to keep in regular contact about the prospects and timeframe for resuming the supply of the Deliverables.
 - 14.6 The Contractor's right to supply the Deliverables under the Contract resumes at the end of the Suspension period. However, if both the Contractor and Local Buy agree in writing, the Contractor can resume supplying the Deliverables under the Contract prior to the end date of the Suspension period.
 - 14.7 During the Suspension period, Local Buy will immediately notify any existing or inquiring prospective Purchaser(s) of the Contractor's Suspension, and will provide reasons for the Contractor's Suspension to any existing or inquiring prospective Purchaser(s).
 - 14.8 During the Suspension period, Local Buy may remove, amend or alter the Contractor's Contractor Data and turn the Contractor's profile off in Vendor Panel.
 - 14.9 The Contractor may be suspended under the following circumstances:
 - (a) where the Contractor has legitimate business reasons affecting the Contractor's ability to supply the Deliverables ("Suspension by Contractor" – as per Clause 15); or
 - (b) where, in the reasonable opinion of Local Buy, the Contractor has breached the Contract or a Purchaser Agreement, or if Local Buy has a reasonably held belief that the Contractor is likely to breach the Contract or a Purchaser Agreement ("Suspension by Local Buy" – as per Clause 16).
 - 14.10 During the Suspension period, the Contractor must not accept any new Orders for the supply of Deliverables from any Purchaser under the Contract without the prior written approval of Local Buy.
 - 14.11 Where Local Buy is of the view that the breach or potential breach relates only to one or more States, Local Buy retains the option to suspend the Contractor in the relevant State(s) only.
 - 14.12 For the avoidance of doubt, the Suspension of a Contractor also includes the Suspension of all its sub-contractors and agents.
- 15. SUSPENSION REQUEST BY CONTRACTOR**
- 15.1 An application for Suspension may be made by the Contractor only for legitimate business reasons affecting the Contractor's ability to supply the Deliverables. Legitimate business reasons may include, but are not limited to, business re-location or a Force Majeure Event.
 - 15.2 An application for Suspension by the Contractor must be made made in writing to the Category Manager. The Contractor must provide Local Buy with evidence that the Contractor has used their best endeavours to avoid the need for a Suspension.

General Conditions of Contract

- 15.3 Within five (5) Business Days of receipt of an application for Suspension for legitimate business reasons, the Category Manager will advise the Contractor in writing of whether the Suspension application has been accepted or declined.
- 15.4 During the period of Suspension approved for a legitimate business reason, the Contractor must use their best endeavours to avoid the need to request an extension of the Suspension period. If the Contractor needs to extend the initial Suspension period for legitimate business reasons, then the Contractor must provide Local Buy with reasons in writing as to why an extension of the Suspension period is required.
- 15.5 The maximum period for Suspension of the Contractor for a legitimate business reason is thirty (30) days. However, if the Contractor has submitted a request for an extension of the Suspension period to Local Buy, the Suspension period may be extended by Local Buy upon consideration of all the circumstances, including the best endeavours used by the Contractor during the initial Suspension period, together with the evidence provided by the Contractor to support an extension of the initial Suspension period.
- 15.6 Within five (5) Business Days of receipt of a request for an extension of the Suspension period, Local Buy will advise the Contractor whether the application for an extension of the initial Suspension period has been accepted or declined.
- 15.7 If the Contractor has been suspended under this Clause 15, it will be at the sole discretion of Local Buy to resume the Contractor's right to supply the Deliverables under the LGA Arrangement to Purchasers. If Local Buy agrees to lift the Contractor's Suspension, Local Buy will require:
- (a) evidence that the Contractor is capable of supplying the Deliverables; and
 - (b) payment in full from the Contractor of any outstanding amounts of money the Contractor is required to pay under the Contract within seven (7) Business Days.
- 16. SUSPENSION BY LOCAL BUY**
- 16.1 Local Buy may, by written notice, Suspend the Contractor at any time on terms and conditions specified by Local Buy (including by State) if, in the reasonable opinion of Local Buy, the Contractor has breached (or if Local Buy has a reasonably held belief that the Contractor is likely to breach) the Contract or a Purchaser Agreement, has had proceedings for corruption, collusion or any other anti-competitive or illegal activity issued against it or as otherwise provided under the Contract.
- 16.2 Local Buy will notify the Contractor in writing of their Suspension from the LGA Arrangement by issuing a "Suspension Notification Form". The Suspension Notification Form will contain:
- (a) the reason(s) for the Suspension; and
 - (b) a review or expiry date for the Suspension.
- 16.3 During the Suspension period the Contractor:
- (a) must not accept any new Orders for the supply of Deliverables from any Purchaser under the LGA Arrangement without the prior written approval of Local Buy; and
 - (b) remains liable for the delivery of all Deliverables Ordered prior to the Suspension date, as well as for all fees and charges due throughout the Suspension period.
- 16.4 If the Contractor has been suspended under this Clause 16, it will be at the sole discretion of Local Buy to resume the Contractor's right to supply the Deliverables under the LGA Arrangement to Purchasers. If Local Buy agrees to lift the Contractor's Suspension, Local Buy will require:
- (a) payment in full from the Contractor of any outstanding amounts of money the Contractor is required to pay under the Contract within seven (7) Business Days; and
 - (b) payment of the Reactivation Fee within thirty (30) days.
- 16.5 Local Buy is under no obligation to provide the Contractor with a copy of the Contractor Data if Local Buy has Suspended the Contractor under this Clause 16. However, at the Contractor's request Local Buy may agree to provide the Contractor with a copy of their Contractor Data, and if so Local Buy are entitled to charge a reasonable fee for service.
- 17. GOODS AND SERVICES TAX**
- 17.1 Words and phrases defined in the GST Act have the same meaning in this Clause 17 unless the context indicates otherwise.
- 17.2 The Contract Rates exclude the liability for GST on the supply of the Deliverables unless otherwise explicitly indicated in the Pricing Schedule.
- 17.3 The Contractor must ensure that all invoices rendered to a Purchaser under a Purchaser Agreement are in a format that identifies any GST paid, and which permits that Purchaser to claim an input tax credit. However, this Clause 17.3 does not apply if the supply of the Deliverables is not a taxable supply.
- 17.4 The Contractor indemnifies Local Buy and each Purchaser fully from any claims, damages, costs (including legal costs), losses and the like arising in any way from the Contractor's failure to comply with its obligations under the GST Act or to correctly calculate any applicable GST.
- 18. TERMINATION**
- Termination at Will
- 18.1 No earlier than twelve (12) months after the Contract Commencement Date, Local Buy may, upon giving the Contractor not less than one month's prior written notice, terminate the Contract. At the end of the notice period, the Contract will end.
- Termination for Cause
- 18.2 Without prejudice to its rights at common law, Local Buy may immediately terminate the Contract, by written notice to the Contractor (a Notice of Termination for Cause):
- (a) where the Contractor makes (or has made – including as part of the Request for Tender process) any statement, fact, information, representation or provides material which is false, untrue, or incorrect in a way which adversely affects the Contract, any Purchaser Agreement or the provision of the Deliverables in a material way;
 - (b) where a decision is made against the Contractor by the Independent Commission Against Corruption, Crime and Misconduct Commission, Australian Competition and Consumer Commission, a court or similar public body Contractor for corrupt conduct (including bribery), collusive pricing or any other similar type of anti-competitive or unlawful conduct;
 - (c) where the Contractor commits a substantial breach of the Contract that is not in Local Buy's opinion capable of remedy;
 - (d) where the Contractor commits a substantial breach of the Contract in a manner that is capable of remedy and does not remedy the breach within seven (7) days of receiving a notice from Local Buy requiring it to do so (Notice of Breach), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as Local Buy may reasonably allow;
 - (e) where the Contractor has been Suspended from the Contract pursuant to Clause 15 or 16 for more than thirty (30) days;
 - (f) where the Contractor does anything to bring Local Buy or any Purchaser into disrepute;
 - (g) on the occurrence of an Insolvency Event; or

General Conditions of Contract

- (h) as otherwise provided for in the Contract.
- 18.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 18.2, Local Buy may at its sole discretion, in circumstances which would otherwise entitle Local Buy to terminate the Contract:
- (a) provide the Contractor with a notice (a "Rectification Notice") setting out the details of the Contractor's default and giving the Contractor a timeframe within which to rectify that default to Local Buy's satisfaction;
 - (b) let such contracts as Local Buy decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and/or
 - (c) Suspend the Contractor's right to supply the Deliverables to Purchasers under the Contract.
- 18.4 Termination of the Local Buy Contract shall not affect any ongoing Purchaser Agreement (or RFQ issued period to the termination or expiry date and any Purchaser Agreement arising therefrom) which shall remain in full force and effect and subject to the terms and conditions of the Local Buy Contract until such time as that relevant Purchaser Agreement is itself terminated or expires.
- 18.5 Local Buy may at any time remove any Purchaser (or category of Purchaser – eg a State) from the Contract and such removal shall not affect any Purchase Agreements already in force or the validity of the Contract in respect of the remaining Purchasers.
- 19. DISPUTE RESOLUTION**
- 19.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 19.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 19.3 The parties must initially attempt to resolve the matter at an operational level through discussions between the Category Manager and the Contractor's Representative.
- 19.4 If the dispute cannot be resolved at an operational level within seven (7) days of the giving of the Dispute Notice (or such other period agreed between the parties), the dispute shall be escalated to a panel consisting of a senior representative of the Contractor who is authorised to settle the dispute and a senior Local Buy representative.
- 19.5 Within seven (7) days of the escalation of the dispute (or such other period agreed between the parties), the senior representative panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 19.6 If the dispute has not been resolved within twenty eight (28) days of the giving of the Dispute Notice (or such other period agreed between the parties), the dispute may be referred to mediation by either party.
- 19.7 Mediation shall be effected by a mediator who shall be nominated by Local Buy and agreed to by the Contractor or failing agreement within seven (7) days, who shall be nominated by the Queensland chapter of the Resolution Institute and conducted in accordance with, and subject to, the Resolution Institute's nominated Mediation Rules then in force and all hearings (if required) held in Brisbane.
- 19.8 If the dispute is not settled within thirty (30) days of the submission to mediation (unless such period is extended by agreement of the parties), either party may issue proceedings in relation to the issues in dispute.
- 19.9 Nothing in this Clause 19 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 19 or any matter arising under the Contract.
- 19.10 The parties must continue to perform their obligations under this Contract despite the existence of a dispute except where such dispute relates to a genuine workplace health and safety issue.
- 20. CLAUSES TO SURVIVE EXPIRATION OR TERMINATION**
- 20.1 Clauses 1, 2, 4, 8, 17.4, 18.4, 20 to 22, 24, 31, 35.14 to 35.17, 37.6, 39, 45 and 48 (inclusive) and any provisions relating to warranties provided by the Contractor shall survive the expiry or termination of the Contract.
- 20.2 Clauses 33, 35 and 36 shall survive the expiry or termination of the Contract to the extent that they relate to outstanding payments, reporting and amounts owing in relation to ongoing Purchaser Agreements, calculation of payments owing (including where the amount owing has been calculated incorrectly by the Contractor), remedies available to Local Buy and interest payable on amounts owing.
- 21. INTELLECTUAL PROPERTY RIGHTS**
- 21.1 The provisions set out in the relevant Purchaser Agreement relating to ownership of Intellectual Property Rights shall apply to the supply of the Deliverables under that Purchaser Agreement.
- 21.2 Notwithstanding Clause 21.1, the intellectual property rights in any reports, advice, plans, designs and the like prepared by the Contractor for a Purchaser or data collected pursuant to a Purchaser Agreement shall vest in that Purchaser upon payment and the Contractor shall promptly undertake all actions that are necessary to ensure full and valid transfer of the intellectual property to the Purchaser.
- 21.3 Unless otherwise set out as provided for in Clause 21.1 the Contract shall not affect the Intellectual Property Rights of any party.
- 22. RELEASE AND INDEMNITY**
- 22.1 To the extent permitted by law, the Contractor indemnifies Local Buy, each Purchaser and its employees (collectively referred to as the "Indemnified Parties") against, and must pay the Indemnified Parties on demand, the amount of any damages, losses, claims, expenses (including reasonable legal costs) or liabilities which the Indemnified Parties suffer or incur in respect of the wilful, wrongful, negligent or unlawful acts or omissions of the Contractor or the Contractor's personnel, agents or sub-contractors caused by or resulting in:
- (a) loss of, or damage to, or loss of use of, any real or tangible personal property; and/or
 - (b) the personal injury, disease or illness (including mental illness) to, or death of, any person; and/or
 - (c) any Wilful Misconduct, fraudulent, unlawful and/or negligent act or omission; and/or
 - (d) any infringement or alleged infringement of any Intellectual Property Rights in respect of the provision of the Deliverables or anything used or supplied by the Contractor in connection with the Deliverables.
- 22.2 The relevant Purchaser and Contractor may agree a reasonable liability cap based on the scope of the Deliverables being supplied. In no case shall the Contractor's liability to a Purchaser in respect to a specific Purchaser Agreement be limited to less than three (3) times the total relevant Purchaser Agreement value and any attempt to cap liability to a lesser amount shall be void and unenforceable.
- 22.3 Any liability cap agreed pursuant to Clause 22.2 shall not apply to:
- (a) liability for fraud or other criminal conduct; and/or
 - (b) liability for any unlawful act or omission; and/or
 - (c) liability in relation to personal injury or death; and/or

General Conditions of Contract

- (d) liability in relation to damage to real or tangible property; and/or
 - (e) liability in relation to any breach of a party's obligations with respect to confidential or personal information; and/or
 - (f) liability in relation to any third party intellectual property claim; and/or
 - (g) liability for Wilful Misconduct.
- 22.4 Where the cap set out in Clause 22.2 has been exceeded, the relevant Purchaser shall be entitled to terminate the relevant Purchaser Agreement or accept a higher cap proposed by the Contractor.
- 22.5 The liability of the Contractor to indemnify the Indemnified Parties will be reduced proportionally to the extent that an act or omission of the Indemnified Parties contributed to the damage, expense, loss or liability.
- 22.6 Neither Local Buy nor the Contractor shall be liable to the other (whether under contract, tort, statute or in equity) arising out of or in connection with this Contract, for incidental or consequential loss including any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or cost of finance.
- 22.7 To the extent any liability of Local Buy cannot be excluded by law, and to the maximum extent permitted by law, Local Buy's maximum aggregate liability under the Contract (whether under contract, tort, statute or in equity) to the Contractor is limited to the Administration Fee(s) paid by the Contractor in the twelve (12) months immediately prior to the action arising. This cap on liability shall not apply where Local Buy is itself acting as a Purchaser of the Deliverables.
- 22.8 Any indemnity granted under this Contract is in addition to an Indemnified Party's rights under the Contract, legislation and/or common law and does not in any way restrict Local Buy's or any Purchaser's right to take legal action.
- 23. CONFLICT OF INTEREST**
- 23.1 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Deliverables to Local Buy and/or the Purchaser. Any such activity must be disclosed in writing to Local Buy and the relevant Authorised Officer immediately.
- 23.2 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises, the Contractor must promptly give written notice to Local Buy and the relevant Authorised Officer of that conflict of interest or risk of it.
- 23.3 Where Local Buy receives notice of a conflict of interest or risk of such conflict pursuant to Clause 23.1, Local Buy may at its sole discretion, Suspend the Contractor pursuant to Clause 16 until such time as the conflict has been resolved to Local Buy's satisfaction or terminate the Contract.
- 24. CONFIDENTIALITY**
- 24.1 The Contractor must, and must use all reasonable endeavours to ensure that its employees, agents and subcontractors, keep confidential any information obtained in the course of performing the Contract or any Purchaser Agreement.
- 24.2 If required by Local Buy the Contractor's employees, agents and/or approved subcontractors must deliver to Local Buy a confidentiality undertaking in a form agreed to by the Contractor.
- 24.3 The Contractor may only disclose information obtained in the course of performing the Contract or any Purchaser Agreement:
- (a) which it is legally required or entitled to disclose (but only to the extent of such required disclosure);
 - (b) to the extent necessary to perform its obligations under the Contract or relevant Purchaser Agreement;
 - (c) for reporting or Contract administration purposes to Local Buy; or
 - (d) to its professional advisers for the purposes of obtaining advice in relation to the Contract or relevant Purchaser Agreement or any matter arising from same.
- 24.4 For the avoidance of doubt, the Contractor must not enter into any Purchaser Agreement which contains terms which restrict in any way the ability of the Contractor to supply reporting and other information required under the Contract to Local Buy.
- 24.5 The Contractor acknowledges and accepts, and will use all reasonable endeavours to ensure that the Contractor's personnel are from the Commencement Date made aware on a regular basis, that ss.199 and 200 of the *Local Government Act 2009* apply to both local government employees and contractors of a local government and provide criminal penalties for improper conduct and use of information.
- 25. ASSIGNMENT & SUBCONTRACTING**
- 25.1 The Contractor is liable to Local Buy and each relevant Purchaser for the acts and omissions of its employees, sub-contractors and agents as if they were the acts or omissions of the Contractor.
- 25.2 The Contractor must not assign, novate or sub-contract any of its rights or obligations under the Contract (either for the supply of the Deliverables or otherwise) without the prior written consent of Local Buy. Any consent given by Local Buy:
- (a) may be conditional;
 - (b) require execution of a formal document;
 - (c) in the case of assignment or novation, require payment to Local Buy of a two hundred and fifty dollar (\$250) GST exclusive administration fee; and
 - (d) will not, unless otherwise agreed, relieve the Contractor from any of its liabilities or obligations under the Contract or any Purchaser Agreement.
- 25.3 The Contractor must inform Local Buy promptly of any change in control or structure. Where such change in control or structure results in a change of legal identity (for instance by way of acquisition, merger or the like), the new legal entity will be required to meet such eligibility requirements (based on the original RFT requirements) as Local Buy may set prior to being allowed to supply the Deliverables pursuant to the LGA Arrangement.
- 25.4 The list of the Contractor's sub-contractors authorised by Local Buy shall be set out in the Register of Subcontractors.
- 25.5 The Contractor must promptly provide such supporting documentation and information as Local Buy may request in respect to each sub-contractor that the Contractor nominates.
- 25.6 Local Buy reserves the right to reject at any time any sub-contractor that they believe does not have the financial, managerial and/or technical capabilities necessary to supply the Deliverables in accordance with the Contract or any Purchaser Agreement.
- 25.7 Every three (3) months from the Contract Commencement Date during the Term (unless otherwise accepted by Local Buy) the Contractor may provide Local Buy with an updated Register of Subcontractors which will if approved by Local Buy then be fixed for the following three (3) months of the Term.
- 25.8 Any application by the Contractor for a change in registered sub-contractors under the Contract must be submitted to and approved by Local Buy a minimum of thirty (30) days

General Conditions of Contract

prior to each quarterly anniversary date of the Contract Commencement Date. The Contractor is to provide such notification to Local Buy via a letter addressed to the Category Manager including a written statement with supporting evidence of the proposed registration.

26. NEGATION OF EMPLOYMENT AGENCY

- 26.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of Local Buy or any Purchaser.
- 26.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of Local Buy or any Purchaser.
- 26.3 Nothing in the Contract or any Purchaser Agreement is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

27. NOTICES

- 27.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, email, by hand or by facsimile transmission. Notices are deemed given five (5) days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:
 - (a) for Local Buy (PO Box 2230, Fortitude Valley BC QLD 4006)
 - (b) for the Contractor – the address for service and facsimile number (if any) of the Contractor specified in the Offer or its registered office address.
- 27.2 A party may change its address for service of notices by giving written notice to the other party to the Contract.
- 27.3 Where email is used, the notice may validly be delivered to the email address provided by the party for:
 - (a) Local Buy – the Category Manager;
 - (b) the Contractor – the Contractor's Representative.
- 27.4 Any email notice sent pursuant to Clause 27.3 is deemed to be received on the following Business Day. Where an "out of office" or undeliverable message is received in response to an email notice, the notice will be deemed not to have been delivered unless a reply to the contrary is received from the receiving party.

28. FORCE MAJEURE

- 28.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default is caused by a Force Majeure Event.
- 28.2 Without limitation, where a Force Majeure Event continues for a period of more than fourteen (14) days, Local Buy may Suspend the Contractor or immediately terminate the Contract by giving written notice to the Contractor.

29. CONTRACTORS REPRESENTATIVE

- 29.1 Not later than fourteen (14) days after the Contract Commencement Date the Contractor must appoint a duly authorised representative (the "Contractor's Representative") who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to Local Buy. The Contractor may change the identity of the Contractor's Representative from time to time. The Contractor must give written notice to Local Buy of any change in the identity of the Contractor's Representative within forty eight (48) hours of the change occurring.
- 29.2 The Contractor's Representative must have a detailed knowledge of all activities associated with the supply and performance of the Deliverables and be authorised by the

- Contractor to make decisions and act on behalf of the Contractor.
- 29.3 The Contractor's Representative must:
 - (a) liaise with and report to Local Buy's Category Manager; and
 - (b) be available for discussions with, and attend briefings when reasonably requested by, Local Buy's Category Manager; and
 - (c) reply promptly to any correspondence from Local Buy's Category Manager dealing with the Contract; and
 - (d) if required, provide written reports to Local Buy's Category Manager in a form, to a standard, and containing such information as may be required by, Local Buy's Category Manager.

30. SECURITY AND ACCESS

- 30.1 The Contractor must, when using any premises or facilities of Local Buy or any Purchaser, comply with all reasonable directions and procedures as notified by Local Buy or the relevant Purchaser, including those relating to security and workplace health and safety which are in effect at the premises or facility.

31. INDUSTRIAL DISPUTES

- 31.1 The Contractor must not involve Local Buy or any Purchaser in any industrial dispute arising between the Contractor and any employee, sub-contractor and/or agent of the Contractor or any entity in the Contractor's supply chain.

32. REPORTING – REQUESTED BY PURCHASER

- 32.1 Contractors are required to provide reasonable Contract Usage Reports (CUR) detailing purchases and quotations upon request and in a timely manner. These reports shall be made available in electronic copy upon the Contractor's receipt of written request from a Purchaser or Local Buy acting on behalf of a Purchaser. Such reports shall be provided free of any cost.

33. REPORTING – REQUESTED BY LOCAL BUY - QUARTERLY SALES RETURNS (QSR)

- 33.1 The Contractor is required to provide Quarterly Sales Returns ("QSR") detailing the accumulative total of all tax invoices (exclusive of GST) raised by the Contractor, the Contractor's sub-contractors and agents made to Purchasers under the Contract and any Purchaser Agreement ("Sales"). For the avoidance of doubt, invoices are to be included in the Contractor's QSR when raised and not when paid or when the relevant Purchaser Agreement comes to an end.
- 33.2 QSRs using Local Buy's online reporting system are to be provided to Local Buy by no later than the 21st day of January, April, July and October of each year of the Term.
- 33.3 In the case of no Orders commissioned during any given quarter, a 'nil' QSR must be provided through Local Buy's online reporting system.
- 33.4 If the Contractor submits three (3) consecutive 'nil' QSRs Local Buy may request a meeting to be held at Local Buy's office or if required a telephone appointment between the Contractor and Local Buy's Category Manager to discuss the 'nil' QSR. Where so required by Local Buy, the Contractor shall provide a detailed marketing and sales engagement strategy for the next calendar quarter.
- 33.5 If the Contractor:
 - (a) does not attend the meeting (or where applicable, participate in a teleconference) as per Clause 33.4; or
 - (b) submits 'nil' QSRs in any four (4) quarters during the Term; or
 - (c) fails to submit a QSR;

the Contractor shall be deemed to be in breach of the Contract and Local Buy may at its sole discretion Suspend

General Conditions of Contract

- the Contract pursuant to Clause 16 or immediately terminate the Contract.
- 33.6 Local Buy may at any time during the Term of the Contract and thereafter, during any ongoing Purchaser Agreement, query suspected unreported Sales with the Contractor. The Contractor shall within seven (7) days of such query provide Local Buy with detailed information in respect of such suspected unreported Sales and, if not made under the Local Buy Contract, details of the valid legally compliant procurement process followed by the Purchaser to engage the Contractor.
- 33.7 Local Buy reserves the right to transition to a monthly online reporting regime during the Term. Where Local Buy gives notice to the Contractor that such a transition has occurred, all references to 'quarterly' reporting and fee payments in the Contract shall be deemed to refer to 'monthly' reporting from the date nominated in Local Buy's notice. The Contractor shall from the nominated date comply with the monthly reporting and fee payment regime.
- 33.8 Unless otherwise directed in writing by Local Buy, the Contractor shall report all Sales (including for the avoidance of doubt those to Northern Territory based Purchasers) and pay the related Contract Management Fee to Local Buy.
- 34. REPORTING – REQUESTED BY LOCAL BUY – MONTHLY STATISTICAL REPORT (MSR)**
- 34.1 Where so reasonably requested by the Category Manager, Contractors shall provide Local Buy with a Monthly Statistical Report ("MSR"), showing details of quotations issued and sales that are completed or outstanding, the total value of Deliverables commissioned by each Purchaser either directly, or through any sub-contractors, re-sellers or agents under this Contract for each calendar month.
- 34.2 The MSR referred to in Clause 34.1 is to be provided to Local Buy via electronic mail to an address provided to the Contractor for such purpose and free of any cost.
- 34.3 The MSR for the preceding month is to be provided to Local Buy by no later than the 7th day of the following month.
- 34.4 In the case of no quotations being issued or Orders commissioned during any given month, a 'nil' MSR must be provided to Local Buy.
- 35. LOCAL BUY CONTRACT MANAGEMENT FEE**
- 35.1 The Contractor will pay to Local Buy each quarter of the Contract Term a value of money referred to as the Contract Management Fee.
- 35.2 The value of the Contract Management Fee shall be calculated as the accumulative total of the prices of all Deliverables supplied to each Purchaser under the Contract and each Purchaser Agreement as evidenced by the tax invoices (exclusive of GST) raised by the Contractor, the Contractor's sub-contractors and agents for each quarter multiplied by the Contract Management Rebate [refer **Item 6 Schedule A**].
- 35.3 For the avoidance of doubt, any reductions in the price of the Deliverables due to set-offs, or any other like items shall be excluded from the Contract Management Fee calculation.
- 35.4 The amount of the Contract Management Fee will not under any circumstances be included as a separate line item in any quote or invoice to a Purchaser.
- 35.5 The Contractor agrees that Local Buy may treat all purchases of Deliverables by Purchasers as Orders under the Contract, irrespective of a Local Buy Contract Number being quoted, unless the Contractor can provide evidence satisfactory to Local Buy that the purchase was made under some other valid, legally procured agreement between the Purchaser and the Contractor. Confirmation in writing from a Purchaser that a purchase was made pursuant to the LGA Arrangement shall be deemed conclusive subject to receipt of material evidence to the contrary.
- 35.6 Notwithstanding Clause 35.5, where a Purchaser publishes (whether pursuant to their obligations under section 237 of the Local Government Regulation 2012 (Qld), the State Procurement Policy or otherwise) that a purchase has been made under this LGA Arrangement, such publication (in the absence of evidence to the contrary) shall be deemed conclusive and the Contractor shall be liable for the Contract Management Fee associated with such purchase subject to receipt of evidence to the contrary.
- 35.7 The Contractor agrees that the Contract Management Fee payable has been allowed for in the Contract Rates specified in the Pricing Schedule together with all costs associated with the calculation and proving payment of the Contract Management Fee.
- 35.8 The Contractor may elect to include payment simultaneously to the submission of its QSR.
- 35.9 Where the Contractor does not include payment as set out in Clause 35.8 and/or where the Contractor has outstanding Contract Management Fees under another contract with Local Buy, Local Buy shall invoice the Contractor for the sum owing.
- 35.10 The Contractor shall pay such invoice raised pursuant to Clause 35.9 within thirty (30) days of the invoice date.
- 35.11 Local Buy may at its sole discretion immediately Suspend or terminate the Contract where the Contractor fails to comply with Clause 35.10.
- 35.12 Notwithstanding Clause 35.11, any unpaid invoices or the Contract Management Fee component of any unreported Sales will incur interest at 4% above the Commonwealth Bank base rate until such time as they are paid. Any unpaid amounts shall be deemed a debt due and owing to Local Buy.
- 35.13 If requested in writing by Local Buy, the Contractor must within thirty (30) days after the end of the Contractor's financial year, provide to Local Buy a certificate prepared by an auditor confirming the accuracy of all sales information provided by the Contractor as to Deliverables sold or provided and the Contract Management Fee paid or payable.
- 35.14 Local Buy may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the amount of the Contract Management Fee due to Local Buy by the Contractor.
- 35.15 If the measures taken in Clauses 35.13 and 35.14 verify that the Contractor has not paid the Contract Management Fee that is actually due to Local Buy, the Contractor must:
- (a) remit the difference between the Contract Management Fee paid to Local Buy and the Contract Management Fee actually due to Local Buy within thirty (30) days of a direction from Local Buy;
 - (b) pay interest on the difference between the Contract Management Fee actually due to Local Buy and the amount paid at 4% above the Commonwealth Bank base rate; and
 - (c) at the discretion of Local Buy, reimburse Local Buy's costs and expenses of the measures taken (including any auditor's fees) under Clause 35.14.
- 35.16 The Contractor shall during the Term and for a thirty-six (36) month period after the Contract Expiry Date, keep secure all relevant documents and information for the purposes of this Clause 35 and give any auditor appointed by Local Buy access to those documents and information at all reasonable times.
- 35.17 Termination or expiry of the Contract shall not affect the Contract Management Fee due to Local Buy in respect of any ongoing Purchaser Agreement which shall continue to be due and payable to Local Buy in full.
- 35.18 The Contract Management Rebate is not peculiar to the Contractor, and is payable by all suppliers that do business

General Conditions of Contract

with Local Buy. Nothing in these General Conditions of Contract prevents the Contractor from disclosing that a Contract Management Fee is payable to Local Buy and disclosing the rebate rate to any Purchaser or prospective Purchaser. However, for the avoidance of doubt, the Contract Management Rebate/ Fee must not be included as a separate line item in any quote or invoice issued by the Contractor.

- 35.19 Each party has satisfied itself that the Contract Management Fee paid by the Contractor and the receipt of such payment by Local Buy does not breach any Australian laws, is not a secret commission and is not provided to Local Buy to secure the business of the Contractor.
- 35.20 Unless otherwise advised by Local Buy in writing, all reporting of sales and payment of Contractor Management Fees (including those to Purchasers in other States) is to be made to Local Buy.

36. ANNUAL ADMINISTRATION FEE

- 36.1 The Contractor shall pay the Annual Administration Fee within fourteen (14) days of the Contract Commencement Date.
- 36.2 On the first anniversary of the Contract Commencement Date, and each subsequent anniversary thereafter during the Term, the Annual Administration Fee becomes owing and payable within fourteen (14) days for each such twelve (12) month period (or part thereof).
- 36.3 Where the Contractor has outstanding Annual Administration Fees (including under another contract with Local Buy), Local Buy may invoice the Contractor for the sum owing.
- 36.4 The Contractor shall pay an invoice issued under Clause 36.3 within fourteen (14) days of the invoice date.
- 36.5 Local Buy shall at its sole discretion be entitled to immediately Suspend or terminate this Contract where the Contractor fails to comply with Clause 36.4.
- 36.6 Notwithstanding Clause 36.5, any invoices that remain unpaid after forty-five (45) days from the date of issue shall incur interest at 4% above the Commonwealth Bank base rate until such time as they are paid. Any unpaid amounts shall be deemed a debt due and owing to Local Buy.
- 36.7 The Annual Administration Fee is not peculiar to the Contractor, and is payable by all suppliers that do business with Local Buy. Nothing in these General Conditions of Contract prevents the Contractor from disclosing that an Annual Administration Fee is payable to Local Buy and disclosing the value of that fee to any Purchaser or prospective Purchaser. However, for the avoidance of doubt, the Annual Administration Fee must not be included as a separate line item in any quote or invoice issued by the Contractor.
- 36.8 Each party has satisfied itself that the Annual Administration Fee paid by the Contractor and the receipt of such payment by Local Buy does not breach any Australian laws, is not a secret commission and is not provided to Local Buy to secure the business of the Contractor.

37. MARKETING AND PROMOTION

- 37.1 No information relating to the acceptance of any Offer or the provision of any Deliverables under the Contract may be published in any advertising medium without the prior written approval of Local Buy. Local Buy's written approval will clearly indicate the precise material on which the information can be used.
- 37.2 The Contractor may only use the Local Buy logo in the Contractor's marketing strategy upon receipt of Local Buy's written confirmation to do so. Such use of the relevant logo shall be solely limited to the marketing of the Contractor's Deliverables as they apply to the Deliverables of the Contract, and only for the Term.
- 37.3 The Contractor shall actively promote the LGA Arrangement for its Term, and liaise with Local Buy to establish a

Contract marketing plan that ensures that the Contractor's marketing strategy is effective and consistent with Local Buy's marketing strategies.

- 37.4 The Contractor shall ensure that the information contained on the Local Buy directory and/or on Vendor Panel about the company, its sub-contractors and agents, and the Deliverables is accurate and kept up-to-date at all times.
- 37.5 The Contractor shall make immediately available to a Purchaser or prospective Purchaser, detailed and suitable information, brochures and manuals regarding the Deliverables under the Contract.
- 37.6 At the end of the Term, the Contractor shall remove all references to the LGA Arrangement and Local Buy from its marketing materials (including its website).

38. FEEDBACK

- 38.1 When a Purchaser conveys a complaint or conveys comments to Local Buy which could be reasonably taken to indicate that the Contractor is not compliant with the terms and conditions of the Contract or any Purchaser Agreement, Local Buy shall seek feedback by making enquiries of any persons for the purpose of becoming more and suitably informed of the nature of such feedback.
- 38.2 At any instance where Local Buy issues written advice to a Contractor where the word "Feedback" appears in the subject heading of the written correspondence, within twenty four (24) business hours of the issue date of the said correspondence, the contractor shall acknowledge receipt and within seventy two (72) business hours (or such other longer timeframe specified by Local Buy) shall:
 - (a) provide a reasonable and suitably detailed response to the written advice to Local Buy, and
 - (b) take all reasonable steps to resolve the matter in absolute compliance with the Contract.
- 38.3 The Contractor must maintain a current register of complaints received from the Purchaser and record actions taken to resolve the complaint. This register must be made available to Local Buy upon request.
- 38.4 Where in Local Buy's reasonable opinion the response or the steps taken to resolve a matter referred to in Clauses 38.1 and 38.2 by the Contractor are insufficient or not undertaken at all Local Buy may at its discretion Suspend the Contractor pursuant to Clause 16 until such time as the matter has been resolved to Local Buy's satisfaction or immediately terminate the Contract.

39. SUPPLIER TRANSITION

- 39.1 In the event that a Purchaser changes its supplier of Deliverables and this change of suppliers involves the transfer of infrastructure or information to occur between the previous supplier and the new supplier, the Contractor shall do all things reasonably within its power to ensure the transition is efficient, orderly, prompt and timely. This applies whether the transition occurs from another supplier to the Contractor, or from the Contractor to another supplier under Local Buy's LGA Arrangement.

40. FINANCIAL VIABILITY

- 40.1 The Contractor shall advise Local Buy immediately if the Contractor's (or any of the Contractor's suppliers, sub-contractors or agents) financial viability is compromised to the extent that the compromise could reasonably be considered to be a risk to the provision of Deliverables in accordance with the terms and conditions of the Contract or any Purchaser Agreement.
- 40.2 The Contractor shall provide Local Buy with audited financial statements and/or a current original signed letter from a qualified accountant to Local Buy which details and explains the current and prospective financial viability of the Contractor (or any of the Contractor's sub-contractors or agents), within fourteen (14) Business Days of the date of issue of any letter from Local Buy to the Contractor

General Conditions of Contract

requesting same. This requirement shall not apply to publicly listed companies.

40.3 Where Local Buy reasonably believes that the Contractor's (or any of the Contractor's suppliers, sub-contractors or agents) financial viability is in question, Local Buy shall be entitled to Suspend the Contractor (or the relevant sub-contractor or agent) pursuant to Clause 16 until such time as the Contractor has demonstrated to Local Buy's satisfaction that it is financially sound

41. BEST TERMS TO BE PROVIDED

41.1 The Contractor shall offer the Purchaser the best price, rate, fee, term and/or condition for the Deliverables as detailed in the Pricing Schedule. For the avoidance of doubt, the rates set out in the Pricing Schedule are the highest rates that the Contractor may charge under this LGA Arrangement. The Purchaser may at any time offer a lower rate.

41.2 Where a Contractor offers a Purchaser a more favourable price, rate, fee, margin, term, condition or discount than those specified in the Contract, it will make the more favourable price, rate, fee, margin, term, condition or discount available to all Purchasers entitled to the benefit of the LGA Arrangement (subject to the Purchaser orders being reasonably comparable).

41.3 Where a Contractor offers a temporary or periodic price, rate, fee, margin, term, condition or discount or special that is lower than a Price or margin, or greater than a discount respectively, specified or periodical price, margin or discount special in the Pricing Schedule it will make available that lower price or margin, or greater discount to all Purchasers and will promptly notify Local Buy of such temporary or periodical price, margin or discount special (subject to the Purchaser orders being reasonably comparable).

41.4 The Contractor shall not suggest to any Purchaser that they may benefit from purchasing outside of the terms and conditions of the Local Buy Contract to avoid the Contractor's obligation of paying the Contract Management Fee. For the avoidance of doubt, this Clause 41.4 does not restrict a Contractor from offering a more favourable price, fee, margin, term, condition or discount outside of this LGA Arrangement where the Purchaser has complied with its legally mandated procurement process obligations.

41.5 Failure by the Contractor to comply with any obligation set out in this Clause 41 shall entitle Local Buy at its sole discretion to either Suspend the Contractor pursuant to Clause 16 or immediately terminate the Contract.

41.6 Where Local Buy is made aware of any pricing offered by the Contractor which is better than the pricing offered under this LGA Arrangement for reasonably similar deliverables, Local Buy may require the Contractor to justify the price difference. Where such a request is received by the Contractor, the Contractor shall provide justification promptly or reduce its prices to match, or beat, the better pricing.

42. CONTRACT WARRANTIES – TENDER & QUOTATIONS

42.1 The Contractor warrants that its tender Offer has, and any Quote provided to a Purchaser under this Contract will, not been prepared with any consultation, communication, contact, arrangement or understanding with any competitor, other than:

- (a) where certain joint venture arrangements exist between the Contractor and a competitor,
- (b) where the Contractor and a competitor have an agreement that has been authorised by the Australian Competition and Consumer Commission (ACCC), or
- (c) where the Contractor has communicated with a competitor for the purpose of subcontracting a portion of the Deliverables, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract.

42.2 If one of the exceptions under Clause 42.1 applies, the Contractor agrees to fully disclose the full nature and extent

of any agreements with competitors to Local Buy and the relevant Purchaser.

42.3 In the event that no such disclosure pursuant to Clause 42.2 is made, the Contractor warrants that their tender Offer has and any quotation provided to a Purchaser under this Contract will not been prepared with any consultation, communication, contact, arrangement or understanding with any competitor regarding:

- (a) rates;
- (b) methods, factors or formulas used to calculate prices;
- (c) the intention or decision to submit, or not submit, a bid;
- (d) the submission of a bid that is non-conforming;
- (e) the quality, quantity, specifications and/or delivery particulars of the Deliverables to which the call for bids relates; or
- (f) the terms of the bid.

42.4 The Contractor acknowledges and accepts that Local Buy has accepted the Contractor's Offer and Purchasers accept the Contractor's quotations in reliance on this warranty.

43. DISCLOSURE OF PRIOR ANTI-COMPETITIVE CONDUCT

43.1 Contractors must indicate to Local Buy if they, or any corporation or person associated with the Contract, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct in Australia or overseas. The information must include:

- (a) the names of the parties to the proceedings;
- (b) the case number;
- (c) the general nature of the proceedings; and
- (d) the outcome or current status of the proceedings

43.2 Local Buy reserves the right, at its discretion, to Suspend a Contractor from the LGA Arrangement if the Contractor, or any corporation or person, including directors or senior managers associated with the Contractor's tender Offer, have ever contravened the anti-competitive provisions of the *Competition and Consumer Act 2010* or equivalent laws in Australia or overseas.

43.3 Local Buy reserves the right, at its discretion, to immediately terminate the Contract if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* or equivalent laws in Australia or overseas has not been made by the Contractor.

44. COMPLIANCE WITH ANTI-CORRUPTION LAWS

44.1 The Contractor represents and warrants that:

- (a) it will comply with all Anti-Corruption Laws;
- (b) that neither the Contractor nor any of its Affiliated Persons has, in connection with transactions under this LGA Arrangement, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any government official, employee or representative of a business for the purpose of corruptly:
 - i. influencing any act or decision of such person in exercising its function
 - ii. inducing such person to do or omit to do any act in violation of the government official's lawful duty
 - iii. securing any improper advantage; or
 - iv. inducing such person to use its influence with a government entity, employee or representative of a business engagement to affect or influence any act or decision of that government entity or business,

General Conditions of Contract

in each instance to direct business to the Contractor, the Contractor's authorised resellers, the Contractor's dealers or any Contractor's Group Company; and

- (a) to inform Local Buy without undue delay of any conflict of interest that arises, and the measures taken if such a conflict arises.
- (b) to the full extent permitted by law, the Contractor will indemnify and hold Local Buy harmless in relation to any and all claims arising out of or in connection with a claim or breach of any legislation that this Clause 44 contemplates.

44.2 The following definitions apply to this Clause 44:

"Anti-Corruption Laws" means all Australian anti-corruption legislation.

"Affiliated Persons" means a party's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests.

"Contractor's Group Company" means any entity ultimately owned or held by the Contractor or in which the Contractor has a controlling interest.

45. RIGHT TO INFORMATION, PRIVACY, DISCLOSURE & PUBLICATION

- 45.1 The Contractor accepts and acknowledges that Local Buy and/or any Purchaser may be subject to the provisions of the RTI Act and that information relating to this Contract, Purchaser Agreement and/or any Order placed under it may be subject to disclosure to third parties.
- 45.2 The Contractor shall clearly label any information which it believes may cause it harm if disclosed (for instance; trade secrets, confidential information, information with a commercial value) and provide the reasoning supporting its position prior to disclosing such information to Local Buy and/or any Purchaser.
- 45.3 Notwithstanding Clause 45.2 above, the Contractor accepts and acknowledges that Local Buy and/or any Purchaser is unable to guarantee that any information provided by the Contractor will not have to be disclosed under the provisions of the RTI Act.
- 45.4 The Contractor acknowledges and accepts that there is no obligation whatsoever on Local Buy to advise the Contractor of the receipt of an RTI Act request for information, the decision made (or reasoning behind any such decision) or the details surrounding the release of any documents.
- 45.5 The Contractor acknowledges and accepts that Local Buy or a Purchaser may be required to publish certain information about the Contract or a relevant Purchaser Agreement in its public office or on a website (including for the avoidance of doubt the value of any purchases made).
- 45.6 The Contractor acknowledges and accepts that Local Buy discloses information relating to the Contractor (including for the avoidance of doubt, the Pricing Schedule) to Purchasers and prospective Purchasers.
- 45.7 While every care is taken to retain the integrity of the disclosure process, Local Buy accepts no liability whatsoever where any information or documentation supplied by the Contractor is disclosed in error or for the use made of the information or documentation by any Purchaser or prospective Purchaser.
- 45.8 The Contractor accepts and acknowledges that Local Buy and certain Purchasers may be subject to the provisions of the Privacy Act.
- 45.9 The Contractor shall comply with the requirements of the Default Purchaser Conditions and all applicable State and Commonwealth legislation with respect to its handling of personal information.
- 45.10 For the purposes of the Contract, "personal information" has the same meaning as given to it by section 12 of the Privacy

Act and "IPP" refers to the Information Privacy Principles set out in Schedule 3 of that Act.

- 45.11 Where in the course of providing the Deliverables under this Contract or any Purchaser Agreement the Contractor deals with personal information, the Contractor:
 - (a) accepts and acknowledges that it is a "contracted service provider" for the purposes of Part 4 of the IPA;
 - (b) agrees to carry out and discharge the obligations set out in Parts 1 to 3 (inclusive) of the IPA and the IPP as if it were any agency under that Act;
 - (c) agrees to only use or disclose personal information obtained in providing the Deliverables under this Contract, for the purposes of complying with its obligations under this Contract;
 - (d) agrees to ensure that any of its employees, agents or subcontractors who deal with personal information are aware of and comply with the Contractor's obligations under this clause and the IPA;
 - (e) agrees to promptly comply with any directions given or decisions made by the Office of the Information Commissioner (Qld); and
 - (f) agrees to ensure that any authorised subcontractors are bound by and comply with the same terms relating to information privacy as are set out in this Clause 45.
- 45.12 The Contractor shall immediately notify Local Buy if it becomes aware of any breach (or possible breach) of its obligations (including a breach by its agents or subcontractors) under this Clause 45.

46. WORKPLACE HEALTH AND SAFETY

- 46.1 The Contractor shall comply with Condition 31 of the Default Purchaser Conditions with respect to workplace health and safety.
- 46.2 Without limiting in any way the generality of the foregoing, the Contractor agrees to comply with the provisions of State and Commonwealth workplace health, safety and welfare legislation and all associated regulations (as amended from time to time) and will ensure that its own agents, sub-contractors and employees will comply with the relevant legislation and all regulations, improvement notices, prohibition notices and codes of practice issued there under and having application to the Contract.
- 46.3 The Contractor agrees to provide evidence to Local Buy of its compliance with Clause 46.2 on request (including for the avoidance of doubt, evidence of any policies, plans, procedures, handbooks, training materials, licences, logbooks, qualifications, relating to workplace health and safety that Local Buy may from time to time request).

47. ENTIRE PROJECT ENGAGEMENTS

- 47.1 Where a Contractor is engaged to deliver an entire project for a Purchaser and such engagement requires the Contractor to engage sub-contractors to complete the works, the Contractor must ensure that they comply with the relevant Purchaser's procurement obligations in sourcing those sub-contractors.
- 47.2 Where a Contractor wishes to make use of a Local Buy panel to source the relevant sub-contractors, the Contractor must in the first instance contact Local Buy's Category Manager, and if so required, execute such confidentiality agreements as Local Buy may require.

48. MISCELLANEOUS

- 48.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Deliverables.
- 48.2 No agreement or understanding that varies or amends the Contract will bind either party unless and until agreed to in writing by Local Buy and the Contractor.

General Conditions of Contract

- | | | | |
|------|---|------|---|
| 48.3 | None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right. | 48.5 | The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of Local Buy or any Purchaser. |
| 48.4 | The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract. | 48.6 | The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals there from. |

SCHEDULE A – CONTRACT DETAILS

<p>Item 1</p>	<p>Contract Number: BUS 267</p>
<p>Item 2</p>	<p>Contract Commencement Date: 1st November 2018 unless otherwise set out in the Letter of Acceptance.</p>
<p>Item 3</p>	<p>Contract Expiry Date: Three (3) years from the Commencement Date.</p>
<p>Item 4</p>	<p>Contract Extension Period: Two (2) periods of up to twelve (12) months each.</p>
<p>Item 5</p>	<p>Minimum Insurance Levels:</p> <ul style="list-style-type: none"> (a) Public Liability Insurance: \$20M aggregate, \$10m per occurrence (b) Professional Indemnity Insurance: \$2 Million per occurrence (where supplying professional services) (c) Product Liability Insurance: \$20M aggregate, \$10m per occurrence (only when supplying Goods) (d) Statutory Workcover Insurance
<p>Item 6</p>	<p>Contract Management Rebate: 2%</p> <p>Example Calculation of the Contract Management Fee:</p> <ul style="list-style-type: none"> ▪ In the first quarter the Contractor raises a total of six (6) tax invoices and the Contractor’s sub-contractor raises a total of two (2) tax invoices each with a total value of five thousand dollars (\$5,000.00) exclusive of GST. ▪ $8 \times \\$5,000.00 = \\$40,000.00 \times 2.0\% = \\800 in Contract Management Fees owed by the Contractor to Local Buy for the first quarter.
<p>Item 7</p>	<p>Annual Administration Fee: \$660 (incl GST)</p>
<p>Item 8</p>	<p>Consultancy Pricing Schedule Fixed Period: Twelve (12) months</p>
<p>Item 9</p>	<p>Category Manager: Pat McCormack, Category Manager – Works</p>
<p>Item 10</p>	<p>Purchaser Conditions: “Purchaser Conditions” means:</p> <ul style="list-style-type: none"> (a) where the Deliverables consist of Goods and/or Services: <ul style="list-style-type: none"> i. Default Purchaser Conditions (Goods and Services) set out in Part 5A of the Request for Tender documents; or (b) where the Deliverables are of a Consultancy nature: <ul style="list-style-type: none"> i. Default Purchaser Conditions (Goods and Services) set out in Part 5A of the Request for Tender Documents; or ii. Australian Standard Contract AS4122-2010 General Conditions of Contract for Engagement of Consultants; or

	<p>(c) where the Deliverables include ancillary works:</p> <ul style="list-style-type: none"> i. Default Purchaser Conditions (Works) set out in Part 5B of the Request for Tender Documents; or ii. a relevant Australian Standard Contract executed by the Purchaser and Contractor such as: <ul style="list-style-type: none"> • AS4300-1995/Amdt 1 – 2000 GCC for Design and Construct • AS4905/Amdt 1-2005 Minor Works Contract Conditions (Superintendent Administered) • AS4906/Amdt 1-2005 Minor Works Contract Conditions (Principal Administered) <p>(d) Such other alternative purchaser conditions of contract approved by Local Buy’s Category Manager from time to time in writing (but only where both the Purchaser and Contractor consent to the use of such other Local Buy approved conditions).</p>
<p>Item 11</p>	<p>Purchasers:</p> <p>Queensland</p> <ul style="list-style-type: none"> • Local Buy acting in its own capacity. • LGAQ (and any related company). • Queensland local governments (including Brisbane City Council). • Queensland community councils. • Queensland Regional Organisation of Councils (ROCS). • Queensland statutory authorities and bodies. • Queensland universities. • Queensland water authorities. • Queensland ports. • Queensland schools. • Queensland state government departments and agencies. • Queensland government owned corporations. • Queensland based charity and not-for-profit organisations. <p>And any other organisation that may reasonably be considered as a Queensland public sector, statutory, government or government-related body or which otherwise has a public function.</p> <p>South Australia</p> <ul style="list-style-type: none"> • The Local Government Association of South Australia acting in its own capacity. • Any South Australian local governments and their subsidiaries. <p>Other State Local Governments</p> <ul style="list-style-type: none"> • Other State local governments where compliance with their procurement obligations has been met and subject to agreement by the Contractor. <p>Miscellaneous</p> <ul style="list-style-type: none"> • Any other organisation with a public function or which is not-for-profit subject to compliance with its procurement obligations. • Any other organisation without a public function subject to agreement by Local Buy and the Contractor.