Queensland Health
Basic Purchasing Conditions

1. The Contract

1.1 Formation

A Contract will be formed between the Customer and the Supplier:

(a) when the authorised representatives of both parties have signed the appropriate section of the Details to indicate their acceptance and communicated that acceptance to the other party (if applicable);

(b) when the Supplier accepts a Basic Order; or

(c) following receipt of a Basic Order, when the Supplier provides the Goods or Services set out in the Basic Order.

1.2 Documents making up the Contract and hierarchy

A Contract will be made up of the following documents, in order of precedence (highest to lowest) if there is any inconsistency between the documents:

(a) the contract departures section of the Details (if applicable);

(b) the Details (if applicable);

(c) the Basic Order;

(d) the Basic Purchasing Conditions; and

(e) any document which either the Details or Basic Order state will form part of the Contract (if applicable).

1.3 Counterparts

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

(b) Where a Contract is formed pursuant to clause 1.3(a):

(i) the parties consent to the use of electronic communications as a method for the signing of the Contract; and

(ii) the parties may communicate their signature by providing a copy of the signed document by electronic means.

1.4 Expiry

The Contract continues until:

(a) the Deliverables are delivered without error or defect; or

(b) the expiry date specified in the Details or Basic Order (if specified),

unless terminated earlier in accordance with the Contract.

2. Supplier obligations

2.1 Supplier to provide Deliverables

The Customer appoints the Supplier to deliver the Deliverables and the Supplier accepts the appointment.

2.2 Requirements

(a) The Supplier must meet, and ensure that the Deliverables meet, the Requirements, and meet or exceed the performance measures specified in the Details (if any).

(b) The Supplier must ensure that the Goods satisfy the description in the Contract, are of a high quality, and fit for their usual purpose and any other purpose disclosed by the Customer before the Contract is formed.

(c) The Supplier must ensure the work performed for the Services is of a high quality, and provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.

2.3 Delay

The Supplier will promptly notify the Customer if it believes it will not be able to meet any delivery date or other timeframes specified in the Basic Order. If the Supplier cannot meet the timeframes specified in the Basic Order, then the Customer may terminate the Contract at no cost to the Customer.

2.4 Policies

(a) The Supplier must comply with all policies (including the Queensland Procurement Policy and workplace health and safety policies), codes of conduct (including the Queensland Government Supplier Code of Conduct), rules, standards and procedures ('policies') which apply to the Deliverables and/or the Supplier's obligations under this Contract.

(b) If any new policies are introduced, or amendments made to any existing policies, which apply to the Deliverables and/or the Supplier's obligations under this Contract, the Supplier must comply with the new or amended policies. Access to the relevant policies will be provided on request.

2.5 Directions

The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.

2.6 Laws

The Supplier must comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), *Modern Slavery Act 2018* (Cth), the *Human Rights Act 2019* (Qld), and the *Child Safe Organisations Act 2024* (Qld) (where applicable to the Supplier).

2.7 Access and inspection

The Supplier must, on reasonable prior written notice from the Customer, give the Customer or its nominated third party reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Customer or a third party nominated by the Customer to verify:

(a) the completeness and accuracy of information provided by the Supplier in connection with the Contract or the associated Invitation Process; and

(b) the Supplier's compliance with its obligations under the Contract (including but not limited to the Queensland Procurement Policy and Queensland Government Supplier Code of Conduct),

and must, without limiting the Customer's other rights, promptly address any non-compliances notified by the Customer to the Supplier to rectify.

2.8 Cyber Incident

The Supplier will, without limiting any other obligation under this Contract, notify the Customer as soon as reasonably practicable (and no later than two (2) Business Days) after discovery of a Cyber Incident that has had, is having, or is likely to have, a relevant impact on the performance of the Supplier's obligations.

3. Terms and conditions specific to Goods and Deliverables

3.1 Manufacturer warranties

The Supplier assigns, at no additional cost to the Customer, any manufacturer's warranty to the Customer, where possible to do so, and must inform the Customer where it is not possible to do so.

3.2 Delivery

(a) The Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with the Customer's instructions, including within the timeframes specified in the Basic Order or as otherwise agreed. If the Supplier asks, the Customer will confirm in writing that the Deliverables have been received.

(b) If the Supplier enters the Site to deliver the Deliverables, the Supplier must, while on Site, comply with:

(i) the reasonable directions of the Customer; and

(ii) the Customer's policies, codes of conduct, rules, standards and procedures, and workplace health and safety policies relevant to the Site.

3.3 Packaging

The Supplier must adequately pack and protect Goods to withstand transit and storage.

3.4 Risk and title

(a) Risk will transfer to the Customer when the Goods are delivered to the delivery address specified in writing by the Customer, in accordance with the delivery instructions.

(b) Title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price.

3.5 No encumbrance

The Supplier warrants that the Goods are not (and when title passes, will not be) subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract.

4. Personnel and subcontracting

4.1 Responsibility

The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements.

4.2 Not Customer employees

The Supplier is not, and Supplier Personnel are not, employees of the Customer.

4.3 Vaccine preventable diseases

(a) The Supplier warrants that its Personnel meet the vaccine preventable disease screening requirements set out in the Vaccine Policy, where applicable.

(b) If the Vaccine Policy is not applicable at the start date of the Contract, the Customer may require compliance by the Supplier with the Vaccine Policy at any time during the Contract Term, and the Supplier will promptly comply with the request.

(c) The Customer may, at any time during the Contract Term, require the Supplier to produce documentary evidence of vaccination or proof of non-susceptibility to specified vaccine preventable diseases in relation to any of its Personnel performing the Services and the Supplier will promptly comply with the request.

(d) Where the Vaccine Policy applies in relation to the Contract and any individual performing the Services for the Supplier changes, the Supplier must produce documentary evidence of vaccination or proof of non-susceptibility to specified vaccine preventable diseases in relation to that individual prior to any Services being performed by that individual.

(e) The Supplier must use its best endeavours to ensure that any subcontractors appointed under the Contract hold and maintain insurance coverage that is appropriate to the nature of the Goods, Services, and other Deliverables they are to perform.

4.4 Subcontracting

(a) The Supplier may only subcontract any part of its obligation under this Contract to subcontractors with the Customer's prior written consent. The Customer will not unreasonably withhold consent but may give consent subject to reasonable conditions.

(b) The Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier from its liabilities and obligations under the Contract.

(c) If the Customer agrees that the Supplier may subcontract its obligations under the Contract, the Supplier must take reasonable steps to ensure that its subcontractor complies with the Queensland Procurement Policy and Queensland Government Supplier Code of Conduct.

4.5 Industrial relations

(a) The Supplier must comply with all Laws, applicable awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions.

(b) Subject to the terms of the Contracting Out Policy, the Supplier must pay wage rates which are no less favourable in aggregate than the following rates of pay for comparable employees:

(i) where the type of labour relates to clause 6.4.4 of EB12 – the rates of pay specified in that clause; or

(ii) where the type of labour relates to clause 7.8.5 of BEMS8 – the rates of pay specified in that clause.

(c) Where the Services include the type of labour in clause 6.4.6 of EB12, the Supplier must, if requested by the Customer, provide information to the Customer about the skills and knowledge used in providing the Services, as required by clause 6.4.6 of EB12.

5. Invoicing, Price and payment

5.1 Price

The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

5.2 Price for Regulated Goods

If the Goods are Regulated Goods:

(a) the Price must not exceed the Regulated Price applicable at the time; and

(b) if at any time the Price paid by the Customer exceeds the Regulated Price:

(i) the difference between the Price and the Regulated Price (the '**Price Difference**') is immediately payable by the Supplier to the Customer as a debt due and owing; and

(ii) the Customer may set off the Price Difference against any amounts payable to the Supplier by the Customer.

5.3 Invoicing

(a) The Supplier may invoice the Customer after delivery of Deliverables that comply with the Requirements.

(b) The Supplier must include adequate information for the Customer to verify that the invoice is accurate and must provide supporting documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause 5.3.

5.4 Payment

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

(b) The Customer may:

(i) withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable; and

(ii) suspend payments under the Contract during any period that the Supplier is in breach of the Contract.

6. GST

6.1 Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.

6.2 If GST is payable on a supply under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment.

6.3 Terms in this clause 6 have the same meanings as in the GST Law.

7. Insurance

7.1 The Supplier warrants that it holds, or is covered as an insured under, relevant and adequate insurance policies (including any policies required by Law) that:

(a) are held with a Reputable Insurer;

(b) covers the Supplier and its employees' insurable legal liability for third-party personal injury and property damage arising from the Supplier's business activities performed in connection with this Contract;

(c) covers the Supplier's insurable legal liability for third party personal injury and property damage caused by or arising from the Goods supplied by the Supplier in connection with this Contract, if applicable; and

(d) that covers the Supplier and its employees' insurable civil liability arising from the performance of the Services in connection with this Contract, if applicable.

7.2 If the Customer reasonably considers that the Goods and/or Services present higher risk than anticipated:

(a) the Customer may require the Supplier to maintain additional insurance types or minimum coverage limits appropriate to that risk, as notified in writing by the Customer; and

(b) the Supplier must comply with any such requirement within the timeframe specified in the notice.

7.3 For each insurance policy required under this clause 7:

(a) if 'occurrence-based', the Supplier must maintain an annual insurance policy for the entire Contract Term; or

(b) if 'claims-made', the Supplier must maintain an annual insurance policy or run-off cover such that insurance policy coverage is maintained for a minimum period of 6 years after expiry of the Contract .

7.4 The Supplier warrants that any retained exposure arising from deductibles, or from limitations or exclusions introduced by endorsements to the required insurance policies, will not impair its ability to meet any claim or otherwise prejudice the Customer's rights under the Contract.

7.5 Upon receipt of a written request from the Customer, the Supplier must provide Evidence of Insurance to confirm compliance with its obligations under this clause 7, to the satisfaction and approval of the Customer within the timeframe specified in the notice.

7.6 The Supplier must promptly notify the Customer if any insurance required under the Contract is cancelled or there is any significant change in any of those insurances which may impact the Supplier's ability to meet its obligations under the Contract.

7.7 Compliance with this clause 7 does not limit the Supplier's liabilities or obligations under this Contract.

8. Liability

8.1 Contribution

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

8.2 Consequential Loss

Subject to clause 8.4, to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Contract.

8.3 Caps on liability

Subject to clause 8.4, the maximum liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is an amount equal to the total of all Prices (including additional expenses and charges) payable under the Contract, multiplied by 1.5.

8.4 No limitation

The exclusion of liability for Consequential Loss in clause 8.2 and the cap on liability in clause 8.3 does not apply to liability in relation to:

(a) fraud or Wilful Misconduct;

(b) personal injury, including sickness, injury or death;

(c) loss of, or damage to, tangible property;

(d) Intellectual Property Rights or Moral Rights infringement;

(e) a breach by the Supplier or its Personnel of any obligation under clause 12 (Confidentiality) or clause 13 (Privacy); or

(f) an indemnity,

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

8.5 Mitigation

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

8.6 Binding scheme

Despite any other condition of the Contract, the Supplier's liability under the Contract is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the *Professional Standards Act 2004* (Qld) as specified in the Details.

9. Indemnity

The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any Claim that may be brought against or made upon or incurred by any of them whether in contract, tort (including negligence) or otherwise, in connection with any:

(a) failure to comply with applicable Law by the Supplier or its Personnel;

(b) Wilful Default or Wilful Misconduct by the Supplier or its Personnel;

(c) Claim of Intellectual Property Rights or Moral Rights infringement relating to this Contract or the Deliverables;

(d) breach by the Supplier or its Personnel of any obligation under clause 12 (Confidentiality) or clause 13 (Privacy);

(e) breach of any warranty given in this Contract; or

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

except to the extent that the Customer or its Personnel caused or contributed to the Claim.

10. Intellectual Property Rights

10.1 The Supplier grants (and must ensure that relevant third parties grant) the Customer an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferable and sub-licensable licence to exercise all Intellectual Property Rights in the Deliverables, for any purpose of the Customer, the State of Queensland or other Queensland Government Body.

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

11. Customer Data

11.1 The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, will vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause.

11.2 The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel or to others as specified in the Contract on a need to know basis to perform the Contract.

11.3 The Supplier must comply with clauses 12 (Confidentiality) and 13 (Privacy) and all applicable Laws in relation to Customer Data which is Personal Information or Confidential Information, and must provide reasonable assistance to the Customer on request to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data including (without limitation) identifying, labelling, searching, reporting, copying, retrieving and modifying Customer Data in relation to Personal Information, Confidential Information, public records, right to information and information standards.

12. Confidentiality

12.1 Each party must not use or disclose or otherwise make available any Confidential Information of the other party to any person except:

(a) to its Personnel on a need to know basis to perform the Contract;

(b) with consent of the other party;

(c) to its professional advisors; or

(d) to the extent required by Law.

12.2 The Customer may disclose information about the Contract and the Supplier:

(a) on the Queensland Government Arrangements Directory, where required or recommended by government policy;

(b) to the Minister, their advisors, or Parliament on request;

(c) to its Personnel for Queensland Government reporting purposes; or

(d) as required under the Right to Information Act and/or the Information Privacy Act.

13. Privacy

The Supplier must, in relation to any Personal Information in connection with the Contract:

(a) comply with Parts 1 and 2 of Chapter 2 and section 41 of the Information Privacy Act as if the Supplier were the Customer; and

(b) immediately notify the Customer on becoming aware of a breach of this clause or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information.

14. Warranties

14.1 Medical devices

Where the Goods are medical devices as defined in section 41BD of the TGA, the Supplier warrants that the Goods:

(a) have been tested, and certified as having been tested, in accordance with acceptance testing required for new medical devices before they are released for clinical use according to AS 3551 or equivalent;

(b) meet, and will continue to meet, all regulatory requirements for medical devices, including the requirements under the TGA; and

(c) may be used in accordance with the documentation relevant to the Goods without risk to health or safety of persons.

14.2 Conflict of interest

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

(b) If a Conflict of Interest or risk of it arises during the Contract Term, the Supplier must notify the Customer immediately. Upon receipt of such a notice, or upon the Customer otherwise identifying a Conflict of Interest or a risk of it, the Customer may, without limiting its rights under clause 18, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

14.3 Anti-competitive conduct

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

14.4 Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

14.5 Supplier information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Contract or the associated Invitation Process are complete, accurate, up to date and not misleading in any way.

14.6 Modern Slavery

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

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

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

14.7 **Warranties are ongoing**

(a) The warranties in this clause 14 are provided as at the date of the Contract and on an ongoing basis.

(b) The Supplier will immediately notify the Customer if it becomes aware that any warranty made in this clause 14 was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way.

15. Therapeutic Goods Act - recalls, product alerts and product corrections

15.1 This clause applies in each event of a TGA Notice being issued in relation to the Goods.

15.2 On and from the date a TGA Notice is issued and for the remainder of the term of the SOA, the functional and technical specifications necessary to Remedy the Issue in relation to the Affected Goods are deemed included in the Requirements.

15.3 The Supplier must, at its sole cost and within 30 calendar days of the TGA Notice being issued (or as otherwise agreed by the parties), deliver to the Customer either Alternative Goods or Remedied Goods, whichever is the appropriate Remedy in the circumstances, in a quantity equivalent to the Affected Goods. The following conditions apply:

(a) the Supplier's obligations under this clause are not contingent on any action by the Customer, including the return of Affected Goods for substitution;

(b) provisions of the Contract relating to the acceptance of Goods apply equally to acceptance of Alternative Goods or Remedied Goods; and

(c) remedies and consequences available to the Customer for non-acceptance of Goods under the Contract also apply to the non-acceptance of Alternative Goods or Remedied Goods.

15.4 If the Supplier fails to meet its obligations under clause 15.3, the Customer may, in its absolute discretion, within 10 Business Days of the Supplier's failure, issue written notice rejecting the Affected Goods. Upon receipt of that notice, the Supplier must, at its sole cost and within 10 Business Days, supply replacement Alternative Goods in a quantity equivalent to the Affected Goods. The Supplier's obligations under this clause, and the Customer's rights and remedies in relation to the supply and acceptance of the replacement Alternative Goods, are subject to the conditions in clause 15.3, which apply as if the replacement Alternative Goods were Alternative Goods supplied under that clause.

15.5 If the Supplier fails to meet its obligations under clause 15.4, the Customer may, in its absolute discretion, within 10 Business Days of the Supplier's failure, issue written notice rejecting the replacement Alternative Goods (if supplied) and/or demanding a refund under this clause 15.5. Upon such notice:

(a) the Supplier must promptly fully refund to the Customer the Price paid for the Affected Goods; and

(b) the Customer may have the Goods supplied by others, and the Supplier must pay to the Customer on demand:

(i) the difference between the cost of the replacement Goods and the Price paid to the Supplier for the Affected Goods; and

(ii) any other costs incurred by the Customer in procuring the replacement Goods.

15.6 The Customer may exercise its rights under clause 15.4 and 15.5 only if it has returned or made available for collection by the Supplier (at the Customer's absolute discretion), any Remedied Goods or Alternative Goods that:

(a) fail acceptance under the Contract;

(b) are subsequently found to be non-compliant with the TGA; or

(c) do not meet the Requirements.

15.7 The Supplier must indemnify the Customer for all reasonable costs incurred in discharging its obligations under this clause.

16. Where Requirements are not met

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

(a) refund the Customer any monies paid for the Deliverables; or

(b) resupply the relevant Goods or re-perform the relevant Services so that the Deliverables comply with the Requirements,

and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.

16.2 If the Supplier fails to comply with its obligations under clause 16.1, the Customer may have the Deliverables re-supplied or re-performed by others, and the Supplier must pay the Customer on demand any costs incurred by the Customer in doing so.

16.3 Acceptance of the Deliverables by the Customer does not relieve the Supplier of any of its obligations under the Contract.

16.4 If the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 calendar days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost.

17. Disputes

The parties agree that they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation.

18. Termination

18.1 For cause

(a) The Customer may terminate the Contract immediately on written notice if:

(i) the Customer is satisfied that the Supplier has breached any warranty in this Contract;

(ii) a Conflict of Interest exists or arises and has not been, or in the Customer's view cannot be, appropriately resolved to the Customer's satisfaction;

(iii) the Supplier ceases business or indicates that it is unwilling or unable to complete the Contract;

(iv) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Customer; or

(v) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies.

(b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 18.1, the Supplier must pay or reimburse the Customer's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

18.2 **For convenience**

(a) The Customer may terminate this Contract at any time in its absolute discretion without giving reasons by written notice to the Supplier.

(b) The Customer will pay the Supplier for work performed and Deliverables supplied but not yet invoiced on a pro rata basis and the Supplier's reasonable and documented expenses directly relating to the termination. The Customer will have no other liability to the Supplier relating to the termination under this clause.

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

(d) The Supplier must comply with any directions given by the Customer in the notice in connection with the termination and take all reasonable steps to minimise its expenses relating to the termination.

19. Notices

19.1 The parties will send all notices relating to the Contract to the other party at the address listed in the Details or Basic Order (as applicable), with a copy to the nominated contact person in the Details or Basic Order (or as updated by the parties).

19.2 A notice will be deemed to be given:

(a) if posted within Australia to an Australian postal address – 5 Business Days after the date of posting;

(b) if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia – ten (10) Business Days after the date of posting;

(c) if delivered by hand during a Business Day – on the date of delivery; or

(d) if emailed – on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

20. General

The parties agree that:

(a) (**Updates to Basic Purchasing Conditions**) Queensland Health may amend these Basic Purchasing Conditions from time to time by posting a new version of the Basic Purchasing Conditions on [**www.health.qld.gov.au/healthsupport/businesses/strategic-procurement-and-supply/doing-business-with-sps**]. Any Contracts in place prior to the amendments being made will continue to be governed by the version of the Basic

Purchasing Conditions in place at the time the Contract was formed. The amended Basic Purchasing Conditions will apply to new Contracts formed after the amendments were made. The Supplier agrees that it is the Supplier's responsibility to review and understand the applicable Basic Purchasing Conditions relevant to each Contract it enters into;

(b) (**communication**) they will direct all enquiries relating to the Contract to the other party's nominated contact person, or to another person if the other party directs;

(c) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;

(d) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;

(e) (**relationship**) their relationship is of Customer and Supplier. The Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, agent, joint venturer, officer or employee of the Customer;

(f) (**severability**) if any part of a Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected;

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

(h) (**survival**) the following clauses will survive termination or expiry of the Contract for any reason:

(i) clause 1.2 (Documents making up the Contract and hierarchy);

(ii) clause 5 (Invoicing, Price and payment);

(iii) clause 6 (GST);

(iv) clause 7 (Insurance);

(v) clause 8 (Liability);

(vi) clause 10 (Intellectual Property Rights);

(vii) clause 11 (Customer Data);

(viii) clause 12 (Confidentiality);

(ix) clause 13 (Privacy);

(x) clause 21 (Definitions and interpretation); and

(xi) any other clause which is expressed to survive or by its nature survives.

21. Definitions and interpretation

21.1 Definitions

The following definitions apply to this Contract:

Affected Goods means Goods that were supplied to a Customer under this Contract that are subject to a TGA Notice.

Alternative Goods means Goods that are compliant with the requirements of the TGA and TGA Notice and meet or exceed the Requirements.

Associated Health Agency means Queensland Health, a Hospital and Health Service or any other Queensland Government Body involved in the provision of health services in Queensland.

Authority means an Australian, State or local government authority.

Basic Order means any form of order from the Customer for the provision of Deliverables which incorporates or refers to the Basic Purchasing Conditions.

Basic Purchasing Conditions means this document.

BEMS8 means the Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 8) 2022 (BEMS8) (CB/2023/54).

Business Day means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Customer's address.

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those from third parties, those arising out of the terms of any settlement, and any kind of investigation and includes the allegation of a claim.

Confidential Information means all information disclosed by or on behalf of one party ("Discloser") to the other party ("Recipient") in connection with an Invitation to Offer, Request for Quote or a Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Customer) all Customer Data.

Confidential Information does not include any information which:

(a) is or becomes public, except through breach of a confidentiality obligation;

(b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or

(c) the Recipient receives from another person on a non-confidential basis.

Conflict of Interest means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflicts, may reasonably have the potential to conflict, or may reasonably be perceived as conflicting, with the ability of the Supplier or its Personnel to perform its obligations under the Contract fairly and objectively.

Consequential Loss means:

(a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party;

(b) any loss of profits, loss of revenue, loss of any contract value, loss of goodwill, damage to reputation, loss of anticipated profit or damages for lost opportunity; or

(c) loss of data, other than loss of data arising out of any obligation of the Supplier under a Contract with respect to the hosting, storage, migration, conversion, cleansing or backup of data for the Customer in providing the Goods or Services.

Consumer means an individual or entity in Queensland that is the end user, final consumer or final beneficiary of Regulated Goods.

Contract means an agreement between the Customer and the Supplier, made up of the documents specified in clause 1.

Contract Details means a document titled 'Contract Details' that contains information about a specific contract between the Customer and Supplier.

Contract Term means the period of the Contract as determined in accordance with clause 1.

Contracting Out Policy means the Queensland Government Policy on the Contracting-out of Services issued by the Department of Premier and Cabinet.

Correctly Rendered Tax Invoice means a tax invoice as intended by the GST Law:

(a) in which the amount claimed is due for payment and correctly calculated either in Australian dollars or in the currency specified in the Details;

(b) which is set out as an itemised account, identifying the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;

(c) which includes an ABN or ACN number; and

(d) which includes adequate information for the Customer to verify that the invoice is accurate, and which is accompanied by supporting documentation reasonably requested by the Customer.

Customer means the State of Queensland (acting through Queensland Health) or the entity listed in the Details or Basic Order (as applicable), and in the definitions of 'Customer Data' and 'Confidential Information' includes all Associated Health Agencies.

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

(a) provided by or on behalf of the Principal or Customer to the Supplier for use, processing, storing or hosting by the Supplier in performing the Contract; and

(b) created, processed, produced or derived from using, processing, storing or hosting that information, material, data, dataset or database in the Supplier's performance of the Contract or the use by the Customer of the Goods or Services or Deliverables the subject of the Contract,

and includes Metadata.

Cyber Incident means any actual or reasonably suspected circumstances involving unauthorised: access; modification; connectivity impairment to or from; or impairment of the availability, reliability, security or operation of a computer (including computer system or network), computer data (including data storage device holding data for use in a computer), or computer program.

Deliverables means the Goods, Services and documentation to be provided to the Customer including as described in the Requirements, and all incidental and ancillary goods, services and documentation.

Details means:

(a) the Contract Details; or

(b) where a Basic Order is issued following an RFQ (which does not reference Contract Details), the details in the RFQ, including the specifications and the Supplier's offer, as varied or clarified in writing in the Basic Order.

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

EB12 means the Queensland Public Health Sector Certified Agreement (No.12) 2025 (EB12) (CB/2025/157).

Evidence of Insurance means:

(a) a certificate of currency, certificate of insurance, policy schedule, or other document issued by:

  (i) the Supplier's insurer;

  (ii) an authorised representative of the Supplier's insurer;

  (iii) an insurance broker with binding authority from the Supplier's insurer; or

(iv) an insurance broker without binding authority from the Supplier's insurer, provided the document is certified by the Supplier's insurer; and

(b) the certificate of currency, certificate of insurance, policy schedule, or other document must specify, to the extent permitted without breaching the terms and conditions of the Supplier's insurance policies, the following minimum details:

(i) insurer name;

(ii) policy holder/insured name;

(iii) policy number;

(iv) type of insurance policy;

(v) period of insurance;

(vi) declared business description/activities (or professional services description); and

(vii) limits of indemnity/liability (listed separately for each class of insurance covered),

or where the Supplier cannot provide evidence meeting paragraphs (a) and (b), any other documentation, to the reasonable satisfaction the Customer, that demonstrates that the Supplier holds the required insurances in accordance with its obligations under clause 7.

Goods means the goods the Supplier will provide, described in the Details or the Basic Order (as applicable).

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

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

Hospital and Health Service means a Hospital and Health Service established under section 17 of the *Hospital and Health Boards Act 2011* (Qld).

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

(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth));

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;

(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);

(d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

(e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;

(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);

(g) it is otherwise unable to pay its debts when they fall due; or

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

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

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders' rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Request for Quote or Contract (as applicable), but excludes Moral Rights.

Invitation Process means the process commenced by the issuing of a request for quote or any other process by which the Customer seeks an offer for the supply of goods and/or services and concluding upon formal announcement by the Customer of the selection of a preferred supplier or upon the termination of the process.

Invitation to Offer or **ITO** means an Invitation to Offer issued by a Customer seeking offers for the provision of goods, services and/or deliverables.

Issue means the defect, fault or issue raised in the TGA Notice.

Laws means all:

(a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;

(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;

(c) the requirements of any Authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and

(d) fees and charges payable in connection with the foregoing.

Metadata means any system-generated data that is created or generated in connection with the Customer's use of the Goods or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Goods or Services and includes any descriptive, structural and administrative metadata.

Modern Slavery is as defined under the *Modern Slavery Act 2018* (Cth).

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

Personal Information has the meaning given in the Information Privacy Act.

Personnel means:

(a) officers, directors, employees, agents, temporary contractors; and

(b) in the case of the Supplier includes:

  (i) any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors; and

  (ii) any other person employed or engaged in the performance of the Contract.

In the definition of Confidential Information, the Customer's Personnel includes Associated Health Agency Personnel.

Price means the price or prices described in the Contract or calculated using a calculation method in the Details.

Queensland Government Body means any of:

(a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local Authority);

(b) a body established by the State of Queensland through the Governor or a Minister; or

(c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Queensland Procurement Policy (QPP) means the Queensland Procurement Policy as published from time to time.

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

Regulated Goods means Goods in respect of which the price is regulated, subsidised or subject to rebates of any kind anywhere in the supply chain by any Authority.

Regulated Price means the lowest price at which Regulated Goods can be lawfully acquired by a Consumer, from time to time, taking into account:

(a) the price (or maximum price) set by an Authority; and/or

(b) any subsidy paid or payable by an Authority; and/or

(c) any rebate paid or payable by an Authority.

Remedied Goods means Affected Goods that have been Remedied so that they are TGA compliant and meet or exceed the Requirements.

Remedy means to repair or correct the defect, fault or Issue raised in the TGA Notice.

Reputable Insurer means one or more of the following:

(a) an insurer authorised and licensed to operate in Australia;

(b) an Australian Financial Services licensee authorised to issue miscellaneous mutual risk products;

(c) a treasury managed fund;

(d) an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation);

(e) a government or statutory agency responsible for overseeing and regulating a State's workers' compensation and injury management scheme; or

(f) an insurer as otherwise agreed by the Customer in writing.

Request for Quote or **RFQ** means a document issued by a Customer seeking quotes or offers for the supply of Deliverables.

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract, which are set out in the Contract, the Invitation to Offer, or Request for Quote (if any), or otherwise agreed by the parties in writing.

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

Services means the services the Supplier will perform under the Contract, described in the Details or Basic Order (as applicable).

Site means the site or premises at which the Deliverables are to be provided as specified by the Customer in the Details or Basic Order (as applicable).

Supplier:

(a) for a Contract – is described in the Basic Order or Details (as applicable); and

(b) for an Invitation Process – is a potential supplier invited to participate in the Invitation Process.

Supplier Code of Conduct means the supplier code of conduct available at **https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/supplier-code-conduct** and as updated and amended from time to time.

TGA means the *Therapeutic Goods Act 1989* (Cth), its regulations or orders.

TGA Notice means a notice or letter issued under the TGA or the *Procedure for recalls, product alerts and product corrections (PRAC)* for any of the following reasons:

(a) recall to remove the product from the market;

(b) product correction to, for example, address specific or potential deficiencies;

(c) product alert to, for example, raise awareness about deficiencies, potential deficiencies, or other concerns with the use of the product;

(d) quarantine to temporarily suspend use and/or distribution of products already in the market, pending further investigation of a problem;

(e) a suspension or cancellation of the registration or listing of the Goods on the Australian Register of Therapeutic Goods; or

any other safety alert indicating that the Goods do not meet the Requirements.**Vaccine Policy** means Human Resources Policy B1: Recruitment and Selection or Health Service Directive # QH-HSD-047:2016 and Protocol # QH-HSD-047-1:2016 Vaccine Preventable Disease Screening for Contractors, Students and Volunteers.

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract by a party or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract or of a Law in respect of the Supplier's obligations under the Contract, committed with reckless disregard for the consequences and in circumstances where the Supplier knows or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

21.2 Interpretation

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

(a) (**agreement**) a reference to an agreement, including to the Contract, includes any variation or replacement of the agreement;

(b) (**Business Day**) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;

(c) (**consistency**) where the Contract is made up of more than one document, the Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;

(d) (**plural**) words in the singular include the plural and vice versa;

(e) (**grammatical forms**) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;

(f) (**currency**) all currency amounts are in Australian dollars unless otherwise expressly stated;

(g) (**headings**) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;

(h) (**includes**) "include", "includes" and "including" must be read as if followed by the words "without limitation";

(i) (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;

(j) (**governing law**) the laws of Queensland apply to the Contract. Each party submits to the jurisdiction of the courts of Queensland;

(k) (**Law**) a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a Law;

(l) (**party**) a reference to 'party' means the Customer and/or the Supplier;

(m) (**person**) a person includes the person's executors, administrators, novatees and assignees;

(n) (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and

(o) (**consent**) any reference to the Customer's consent is a reference to the prior written consent of the Customer.