

GENERAL CONDITIONS OF CONTRACT

Request for Tender (RFT)	PROVISION OF SECURITY SCREENING SERVICES AT GOVE AIRPORT
Closing Time:	3 PM (CST), 31ST MAY 2019
RFT Number:	19/04

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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 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;
- (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.

1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.

1.5 All information delivered as part of the Services supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.

1.6 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

2. DEFINITIONS

2.1 In the Contract, except where the context otherwise requires:

'Act' means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

'Authorised Officer' see Clause 29.1.

'Clause' means a clause of the Contract.

'Contract' means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

'Contract Commencement Date' means **seven (7) days after the date of the Letter of Acceptance.]**

'Contract Expiry Date' means **Twelve (12) months after the Contract Commencement Date.]**

'Contract Material' means New Contract Material and Existing Contract Material.

'Contract Price' means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract; and
- (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and
- (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

‘Contractor’ means the party whose Offer to supply the Services is accepted by the Principal (by Letter of Acceptance).

‘Defective Services’ see Clause 9.1.

‘Dispute Notice’ see Clause 19.2.

‘Existing Contract Material’ means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

‘Extension Period’ means [four (4) twelve month periods from the Contract Expiry Date to the date 48 months after the Contract Expiry Date.]

‘Force Majeure’ means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

‘General Conditions of Contract’ means these General 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* and includes other GST related legislation.

‘Intellectual Property Rights’ means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

‘Letter of Acceptance’ means a letter from the Principal to the Contractor advising the Contractor of the Principal’s acceptance of the Offer.

‘Local Government’ means a local government for a local government area described by regulation under the *Local Government Act 2009*.

‘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*, and rights of a similar nature anywhere in the world whether existing before commencement of the Term or which may come into existence on or after the date of the Contract.

‘New Contract Material’ means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

‘Offer’ means the written offer (in the form of the Tender Response) submitted to the Principal by the Contractor to provide the Services and, if applicable, as amended in writing by any post offer negotiations.

‘Order’ means an order for Services placed by the Principal with the Contractor under the terms of the Contract and **‘Ordered’** has a corresponding meaning.

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

‘Principal’ means **Nhulunbuy Corporation Limited**

‘Request for Tender’ means the Request for Tender given to prospective tenderers inviting offers to tender for the supply of the Services of which these General Conditions of Contract form part.

‘RTI Act’ means the *Right to Information Act 2009*.

‘Services’ means the services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification including all variations to the services, tasks, work and requisites provided for by the Contract or such of them as shall be described in an Order.

‘Special Conditions of Contract’ means the Special Conditions of Contract included in the Request for Tender.

‘Specification’ includes any specification included in the Request for Tender.

‘Term’ means the period for which the Contract will be in effect as specified in Clause 3, including any period of extension under Clause 3.

3. TERM

- 3.1 (The Term of the Contract shall begin on the Contract Commencement Date and expire on the Contract Expiry Date unless:
- (a) terminated earlier in accordance with the terms and conditions of the Contract; or
 - (b) extended by the Principal for the Extension Period.
- 3.2 The Principal may, in its sole discretion, by written notice (an "Extension Notice") to the Contractor given not less than 1 month prior to the Contract Expiry Date extend the Term by the Extension Period.

4. EVIDENCE OF CONTRACT

- 4.1 The Contract between the Principal and the Contractor is constituted by the following documents:
- (a) Order;
 - (b) Letter of Acceptance;
 - (c) Specification;
 - (d) Special Conditions of Contract;
 - (e) General Conditions of Contract;
 - (f) Offer; and
 - (g) correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Tender.
- 4.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (g) in Clause 4.1.
- 4.3 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within 14 days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor.

5. SUPPLY OF SERVICES BY ORDER

- 5.1 Where an Order is placed with the Contractor, the Contractor must supply Services:
- (a) in accordance with the terms and conditions of the Order; and
 - (b) that comply with the Specification.
- 5.2 The Contractor must supply all Orders for Services placed by the Principal during the Term.
- 5.3 The Principal may Order:
- (a) any 1 type or item of the Services; and
 - (b) Services in 1 lot or instalments or in such quantities as may be required from time to time.
- 5.4 Where the Contractor receives an Order from a person other than the Authorised Officer the Contractor must:
- (a) not supply the Services identified in the Order; and
 - (b) refer the Order to the Authorised Officer.
- 5.5 The Contract does not confer on the Contractor an exclusive right to supply the Services to the Principal.
- 5.6 The Principal may obtain the Services or any part of the Services from an alternate supplier at any time during the Term.

6. QUALITY OF SERVICES

- 6.1 Unless the Specification states otherwise, all Services supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.
- 6.2 If no sample or standard is stated in the Specification, the Services must be of the highest standard and carried out promptly with all due skill, care and diligence.

- 6.3 The Contractor must:
- (a) engage and retain personnel who are able to competently provide the Services; and
 - (b) ensure that all personnel engaged in the supply of the Services have all skills and qualifications necessary to perform the Services; and
 - (c) consult regularly during the Term with the Principal (through the Authorised Officer and the Contractor's representative).
- 6.4 The Contractor must document its compliance with its obligations under the Contract and use a Quality Assured System to assist in this compliance where relevant. The Contractor is not released or discharged from its obligations under the Contract from use of a Quality Assured System.
- 6.5 If relevant, the Contractor shall allow access to the Contractor's Quality Assured System by the Principal to enable effective monitoring of the Contractor's compliance in the supply of the Services under the Contract.

7. SUPPLY OF SERVICES

- 7.1 The Contractor must supply the Services punctually. However, if a time for supply of the Services is stated in an Order or the Contract, the Services must be supplied within the time stated in the Order or the Contract, as the case may be.
- 7.2 Time shall be of the essence in all cases.
- 7.3 Upon it becoming evident to the Contractor that supply of the Services is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the Services by the due date or from any other obligation under the Contract, unless the Principal agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 7.4 The Contractor shall not be entitled to any extension of time for supply of the Services except with the prior written consent of the Principal. The Principal may in its sole discretion:
- (a) grant its consent; or
 - (b) refuse its consent.

8. INSURANCE

Public Liability (Required) – All companies are required to have this insurance to protect them against claims arising from personal injury or property damage caused by the actions and operations of the insured.

Workers Compensation or Personal Accident Insurance Cover (Required) – All employees in Australia must be insured by their employer for workers' compensation. The corporation or person awarded the Contract will be required to take out and maintain the appropriate insurance.

Professional Indemnity (Optional) – This insurance is particularly relevant for professional people in the business of giving advice and acting on behalf of others to cover legal liability resulting from their negligence or a breach of their duty of care. Examples of professions where this would be required include consultants, lawyers, doctors, accountants and insurance brokers.

Product Liability (Optional) – The purpose of a product liability policy is to provide the insured with protection against losses arising out of the defective nature of the products of the insured. The protection provided by this policy usually extends to losses or damage sustained by third parties as a result of use of the products of the insured.

- 8.1 The Contractor must have and maintain:
- (a) insurance under the *Workers' Compensation and Rehabilitation Act 2003* to cover workers, eligible persons, self employed contractors, directors, trustees and partners; and
 - (b) public liability insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - (c) product liability insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - (d) professional indemnity insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims.

- 8.2 The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 8 have been effected and maintained.
- 8.3 Each public liability insurance policy must either insure the Principal and the Contractor severally, for their respective entitlements and interests under the Contract, and for this purpose accept that the insured comprises at least the Principal and the Contractor as if a separate insurance policy were issued to each of them (but not so as thereby to increase the sum insured) or be endorsed to note the interest of the Principal under the Contract.
- 8.4 Each public liability insurance policy must contain a cross liability provision waiving the insurer's right of subrogation at least against the Principal save in relation to damage intentionally caused by the Principal.
- 8.5 Each insurance policy must:
- (a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
 - (b) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
 - (c) contain no exclusions, endorsements or alterations not approved in writing by the Principal (that approval not to be unreasonably withheld); and
 - (d) contain an undertaking by the insurer to notify the Principal in writing not later than 30 days before it terminates or materially alters the policy; and
 - (e) otherwise contain provisions acceptable to, or required by the Principal (but the Principal may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
 - (f) remain current at all times during the Term.
- 8.6 If the Contractor is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Contractor and its servants and agents for liability under the Contract for the amount specified in Clause 8.1. The Contractor must maintain the professional indemnity insurance on terms and conditions no less favourable to the Principal than those approved under this Clause 8, for the Term and, after expiry or termination of the Contract upon request in writing.
- 8.7 If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.
- 8.8 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 8.
- 8.9 The Contractor must give the Principal upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this Clause 8.
- 8.10 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 8 within 7 days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 8.11 This Clause 8 shall survive termination or expiration of the Contract.

9. DEFECTIVE SERVICES

- 9.1 Where, at any time during the supply of the Services or any part of the Services pursuant to an Order, or after the supply of the Services pursuant to an Order, an Authorised Officer determines, acting reasonably, that the Services or a part of the Services do not comply with the Specification, the Order or the Contract ("Defective Services"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly perform or perform again the Services or such part of the Services as do not comply.
- 9.2 The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective performance, defer payment of that part of an invoice as relates to the Defective Services until the Authorised Officer has certified that the re-performed Services comply with the Specification, the Order or the Contract, as the case may be.
- 9.3 If the Contractor fails to comply with a requirement of a notice given under Clause 9.1, the Principal reserves the right to arrange for the supply of the Services from another supplier.

9.4 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 9.3 in excess of the Contract Price, shall be a debt due and payable by the Contractor to the Principal.

10. OBLIGATIONS OF CONTRACTOR

10.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Services.

10.2 The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the Services.

10.3 If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.

10.4 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.

10.5 The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.

10.6 For the purposes of this Clause 10, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

11. VARIATION OF SERVICES

11.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Services in nature, scope or timing.

11.2 Without limiting the generality of Clause 11.1, the Principal may direct the Contractor to:

- (a) increase, decrease or omit any part of the Services; or
- (b) change the character or content of any part of the Services; or
- (c) change the direction or dimensions of any part of the Services; or
- (d) perform additional work.

11.3 Where the Principal requires a variation to the Services, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Services and failing agreement, either party may invoke the dispute resolution procedure in Clause 19.

11.4 The Contractor must not commence work on the variation to the Services unless and until the variation is agreed in writing by the Principal and the Contractor.

12. INVOICING

12.1 The Contractor must submit invoices to the Authorised Officer on a monthly basis, unless otherwise specified in the Special Conditions of Contract. The Principal will not have any obligation to pay the Contractor for Services until the Authorised Officer has been given a correctly rendered invoice.

12.2 A correctly rendered invoice must:

- (a) identify the Services the subject of the invoice; and
- (b) specify the title of the Contract; and
- (c) specify the Contract number allocated to the Contract by the Principal (or any other number as the Principal may specify in writing to the Contractor for the purposes of the Contract)(if any); and
- (d) where Services are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Authorised Officer; and
- (e) specify details of the Order; and
- (f) specify details of the Contract Price requested by the Principal; and
- (g) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Order or the Specification; and
- (h) specify the Australian Business Number of the Contractor; and

- (i) specify the address for payment of the Contractor; and
- (j) specify the date of supply of the Services identified in the invoice; and
- (k) specify the Contractor's invoice number and invoice date; and
- (l) specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
- (m) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.

12.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

13. PAYMENT

13.1 Subject to the Authorised Officer's certification that:

- (a) the Services supplied by the Contractor comply with the relevant Order, the Specification and the Contract; and
- (b) the Services supplied by the Contractor are complete; and
- (c) the Contractor's invoice is in accordance with the Contract,

the Principal must pay the amount due to the Contractor within 30 days of receipt of an invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, within 30 days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.

13.2 If the Principal pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Principal may deduct any overpaid amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Contract, recover the amount from the Contractor as a debt due and payable to the Principal.

13.3 Payment of money to the Contractor does not constitute an admission by the Principal that Services have been supplied in accordance with the Contract.

13.4 Failure by the Principal to pay the amount payable by the due time will not be grounds to invalidate or avoid the Contract.

13.5 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

13.6 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any security held by the Principal under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

14. TEMPORARY SUSPENSION OF SERVICES

14.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Services for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Services.

14.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Services suspended by written notice given under Clause 14.1.

14.3 Where the Contractor is required to suspend the supply of the Services pursuant to Clause 14.1:

- (a) the Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and
- (b) any previously agreed date for completion of the supply of the Services will be postponed by a period equal to the duration of the suspension.

14.4 The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the Services. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 19.

15. VARIATION OF PRICE

15.1 On each anniversary of the Contract Commencement Date during the Term the Contract Price shall be adjusted by applying the formula:

$$\text{Contract Price} \times \frac{\text{Index 2}}{\text{Index 1}}$$

For the purposes of this Clause 15:

- (a) “**Index 1**” means the CPI published with respect to the quarter year last expiring before the Contract Commencement Date;
- (b) “**Index 2**” means the CPI published with respect to the quarter year last expiring before the relevant Adjustment Date;
- (c) “**Adjustment Date**” means each anniversary of the Contract Commencement Date during the Term;
- (d) “**CPI**” means the Consumer Price Index (All Groups) Brisbane figure published from time to time by the Australian Bureau of Statistics or, if no Consumer Price Index (All Groups) Brisbane figure is published at the relevant time by the Australian Bureau of Statistics, an index that the Australian Statistician nominates as appropriate (whether by public notice or by specific advice to the Principal or the Contractor).

16. DUTY

16.1 The Contractor must pay all duty imposed under the *Duties Act 2001* on the Contract.

17. GOODS AND SERVICES TAX

17.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

17.2 The Contract Price includes the Principal’s liability for GST on the supply of the Services. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Services.

17.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this Clause 17.3 does not apply if the supply of the Services is not a taxable supply.

18. TERMINATION

18.1 If the Contractor:

- (a) breaches any Clause of the Contract; or
- (b) suspends payment of its debts or is unable to pay its debts; or
- (c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
- (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
- (e) has a receiver appointed for all or any part of the assets of the Contractor; or
- (f) has an application made or order filed for the Contractor’s administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
- (g) ceases to carry on business,

the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.

18.2 If within 14 days of receiving a notice under Clause 18.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.

18.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 18.2, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with Clause 18.2:

- (a) let such contracts as the Principal 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
- (b) suspend or cease all payments otherwise due to the Contractor.

18.4 This Clause 18 shall survive termination or expiration of the Contract.

18.5 Upon termination of the Contract pursuant to Clause 18.2, all money which has been paid and all money to be paid for Services supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

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 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.

19.4 Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.

19.5 If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be referred to arbitration.

19.6 Arbitration shall be effected by an arbitrator who shall be nominated by the Authorised Officer. The arbitration must be conducted in accordance with the provisions of the *Commercial Arbitration Act 1990*.

19.7 Nothing in this Clause 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.

20. CLAUSES TO SURVIVE EXPIRATION OR TERMINATION

20.1 The following Clauses survive the expiration or termination of the Contract:

- (a) Clause 21 – Intellectual Property Rights; and
- (b) Clause 22 – Release and Indemnity; and
- (c) Clause 24 – Confidentiality; and
- (d) Clause 32 – Right to Information and Disclosure; and
- (e) Clause 33 – Information Privacy.

21. INTELLECTUAL PROPERTY RIGHTS

21.1 The Contractor warrants that the supply of the Services by the Contractor to the Principal and the use of the Contract Material by the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.

21.2 The Contractor must indemnify the Principal against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Services by the Contractor to the Principal under the Contract.

21.3 In respect of the supply of the Services by the Contractor under the Contract, the Contractor must at all times indemnify and keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against the Principal where the loss or liability arose out of, or in connection with, or in respect of, the supply of the Services by the Contractor under the Contract.

21.4 The indemnities in Clause 21.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.

- 21.5 Unless otherwise specified in the Contract, title to and Intellectual Property Rights in all New Contract Material provided to the Principal, including each and every stage of design and production of it, will upon its creation vest in the Principal.
- 21.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:
- (a) to use, reproduce, communicate to the public and adapt for its own use; and
 - (b) to perform any other act with respect to copyright; and
 - (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
- the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 21.7 Where specified in the Special Conditions of Contract, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Contractor and the Contractor grants to the Principal, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Special Conditions of Contract.
- 21.8 Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Contractor.
- 21.9 Without limiting Clause 21.8, the Contractor consents, in relation to the Contract Material:
- (a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
 - (b) to the specific acts or omissions set out in the Contract.
- 21.10 Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:
- (a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 21; and
 - (b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

22. RELEASE AND INDEMNITY

- 22.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Services under the Contract.
- 22.2 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from:
- (a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
 - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
 - (c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.
- 22.3 In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of Services supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.

23. CONFLICT OF INTEREST

- 23.1 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 because of work undertaken for any person other than Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 23.2 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 Services to the Principal. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 23.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 18.1.

24. CONFIDENTIALITY

- 24.1 The Contractor must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.
- 24.2 If required by the Special Conditions of Contract, the Contractor's employees, agents and approved subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 24.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 24.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 24.4 However, the Contractor may disclose any information:
- (a) which it is legally required or entitled to disclose; or
 - (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

25. ASSIGNMENT

- 25.1 The Contractor must not assign or subcontract any of the rights or obligations of the Contractor under the Contract (either for the supply of the Services or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:
- (a) may be conditional; and
 - (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 25.2 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.

26. NEGATION OF EMPLOYMENT AGENCY ETC

- 26.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 26.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 26.3 Nothing in the Contract 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, by hand or by facsimile transmission. Notices are deemed given 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 the Principal; **ceo@ncl.net.au**
 - (b) for the Contractor – the address for service and facsimile number (if any) of the Contractor specified in the Offer.

27.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

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:

- (a) is caused by Force Majeure; or
- (b) continues for less than 3 days.

28.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 days, the Principal may terminate the Contract by giving written notice to the Contractor.

29. AUTHORISED OFFICER

29.1 The Principal must, by giving written notice to the Contractor, appoint a representative (the "Authorised Officer") who shall be responsible for administering the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.

29.2 For the avoidance of doubt, the Principal may appoint more than 1 Authorised Officer. If the Principal appoints more than 1 Authorised Officer:

- (a) each Authorised Officer must be responsible for administering a specified part of the Contract on behalf of the Principal; and
- (b) the Principal may not appoint more than 1 Authorised Officer to administer a specified part of the Contract; and
- (c) the Principal must give written notice to the Contractor detailing which part of the Contract is to be administered by each Authorised Officer.

29.3 Not later than 14 days after the Contract Commencement Date the Contractor must appoint a representative who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor's representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor's representative from time to time.

29.4 The Contractor's representative must have a detailed knowledge of all activities associated with the supply and performance of the Services and be authorised by the Contractor to make decisions and act on behalf of the Contractor.

29.5 The Contractor's representative must:

- (a) liaise with and report to the Authorised Officer; and
- (b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
- (c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract; and
- (d) if required, provide written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.

30. SECURITY AND ACCESS

30.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or an Authorised Officer, including those relating to security and occupational health and safety which are in effect at the premises or facility.

31. INDUSTRIAL DISPUTES

31.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

32. RIGHT TO INFORMATION AND DISCLOSURE

32.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).

- 32.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 32.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 32.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information, this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

33. INFORMATION PRIVACY

- 33.1 Where the Contractor or its subcontractors have access to or are responsible for holding Personal Information, the Contractor must:
- (a) comply with parts 1 and 3 of chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
 - (b) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
 - (c) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
 - (d) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
 - (e) not transfer the Personal Information outside Australia without the consent of the Principal; and
 - (f) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
 - (g) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
 - (h) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
 - (i) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.
- 33.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 33 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

34. MISCELLANEOUS

- 34.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Services.
- 34.2 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 therefrom.
- 34.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.
- 34.4 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.
- 34.5 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.
- 34.6 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.

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