

CONTRACT AUDITING SUPPLY CONDITIONS

July 2018 Version

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the contrary intention appears:

“Act” means the *Auditor-General Act 2009*;

“Actual Expenses” means the amount actually incurred by the Audit Service Provider for disbursements and travel expenses in connection with the performance of the Auditing Services;

“Audit Methodology” means a structured framework within which audits are planned, performed and reported upon, which complies with the Standards;

“Audit Service Provider” means the provider of the Auditing Services named in the Contract for Auditing Services;

“Auditing Services” means the performance of:

- (a) financial and assurance audits mentioned in section 40 of the Act; or
- (b) another type of audit, as specified in Item 2 of the Schedule;

in respect of an Entity in accordance with the Specifications and the Offer;

“Auditor-General” means the person for the time being holding or performing the duties of the Auditor-General or any other officer specified by the Auditor-General from time to time;

“Conditions” means these Contract Auditing Supply Conditions;

“Conflict of Interest” means a situation where the private or business interests of the Audit Service Provider, Contract Auditor or a Key Person are likely to or could be perceived to interfere with the proper performance of the Auditing Services;

“Contract” means the contract formed between the Auditor-General and the Audit Service Provider for the performance of Auditing Services, comprising the Contract for Auditing Services, the Special Conditions, the Supply Conditions, the Specifications and the Offer;

“Contract Auditor” means the person named in Item 3 of the Schedule, being an individual appointed as a contract auditor under section 43 of the Act;

“Contract for Auditing Services” means the document signed by the Auditor-General and the Audit Service Provider entitled Contract for Auditing Services and its Schedule;

“Entity” means the public sector entity or entities named in Item 4 of the Schedule or as specified in the Contract for Auditing Services, in respect of which the Audit Service Provider is to perform the Auditing Services;

“Estimated Expenses” means the total amount estimated to be incurred by the Audit Service Provider for disbursements and travel expenses in connection with the performance of the Auditing Services, as specified in Item 14 of the Schedule;

“Fees” means the fees payable for the Auditing Services, as specified in Item 5 of the Schedule;

“Force Majeure Event” means an event beyond the reasonable control of the Audit Service Provider, including:

- (a) an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, or adverse weather conditions;
- (b) a strike, lockout or other labour difficulty, other than those involving only the employees of the Audit Service Provider;

- (c) an act of public enemy, war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, or epidemic; or
- (d) the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority;

“GST” means any tax imposed by or through the GST Legislation;

“GST Amount” means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time (10% as at the commencement of this Contract);

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

“Indemnified Persons” has the meaning given in clause 13.2 of these Conditions;

“Instalment” means an instalment of the Fees, as specified in the table under the heading ‘Milestones and Fee Instalments’ in the Specifications;

“Key Person” and **“Key Personnel”** means the representatives of the Audit Service Provider specified in Item 6 of the Schedule or as specified in the Contract for Auditing Services, who are to perform the Auditing Services on the Audit Service Provider’s behalf, under the supervision of the Contract Auditor;

“Milestone” means a milestone specified in the table under the heading ‘Milestones ‘ Milestones and Fee Instalments’ in the Specifications;

“Offer” means those parts of the Audit Service Provider’s offer to provide the Auditing Services that are attached to the Contract for Auditing Services;

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

“Project Officer” means an officer of the Queensland Audit Office nominated to oversee and manage the Contract on the Auditor-General’s behalf;

“Protected Information” has the same meaning as in section 53 of the Act;

“QAO” means the Queensland Audit Office established under the Act;

“Records” information assets, in any format, that document business activities and transactions, including all financial statements, information, evidence, working papers, correspondence, emails, files and reports created or received in relation to any part of the Auditing Services;

“Schedule” means the Schedule to the Contract for Auditing Services;

“Specifications” means the specifications for the Auditing Services that are attached to the Contract for Auditing Services; and

“Special Conditions” means the special conditions, if any, specified in Item 15 of the Schedule or as specified in the Contract for Auditing Services;



“Standards” includes:

- (a) the Auditor-General of Queensland Auditing Standards issued by the Auditor-General;
- (b) the Australian Auditing Standards;
- (c) APES 110 Code of Ethics for Professional Accountants;
- (d) APES 320 Quality Control for Firms; and
- (e) ASQC1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements.

“State Government” means the Government of the State of Queensland.

“Transfer” the act of changing custody, ownership or responsibility of records between parties.

1.2 In these Conditions:

- (a) a reference to an individual or person includes a corporation or other legal entity or, where a position is nominated, the individual occupying that position;
- (b) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (c) headings have been inserted for ease of reference only and are not intended to affect the meaning of the Contract;
- (d) where there is any inconsistency between a Schedule to the Contract and a clause contained in the Contract, the clause will prevail to the extent of the inconsistency;
- (e) a reference to the Act or any other legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it; and
- (f) defined terms include other parts of speech and grammatical forms of the defined term.

1.3 Where the day on or by which any act or thing to be done under the Contract is a Saturday, Sunday or public holiday in Brisbane, the act or thing must be done on or by the immediately preceding business day.

1.4 If an Entity ceases to exist or is reconstituted, renamed or replaced or its powers and functions are transferred to another Entity or State Government department or agency, the Auditor-General may, in its absolute discretion, terminate this Contract by notice to the Audit Service Provider.

1.5 Where the Audit Service Provider comprises two or more persons, the Contract binds them jointly and each of them severally.

1.6 If there is any inconsistency between a provision of these Conditions, the Special Conditions; the Contract for Auditing Services, the Specifications and the Offer, the documents will apply in the following order of precedence to the extent of the inconsistency:

- (a) the Contract for Auditing Services;
- (b) the Special Conditions;
- (c) these Conditions;
- (d) the Specifications; and
- (e) the Offer.



2. PERFORMANCE OF AUDITING SERVICES

- 2.1 The Audit Service Provider agrees to perform the Auditing Services, through the Key Personnel under the supervision of the Contract Auditor, for the term of the Contract.
- 2.2 The Audit Service Provider warrants that it has the necessary skills to perform the Auditing Services.
- 2.3 The Audit Service Provider **warrants** that it currently complies with APES 110 Code of Ethics for Professional Accountants, APES 320 Quality Control of Firms and ASQC1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements, and will continue to so comply during the term of the Contract.
- 2.4 In performing the Auditing Services, the Audit Service Provider must:
- (a) exercise due skill, care and diligence;
 - (b) act professionally at all times and comply with the professional and ethical requirements contained in the Standards;
 - (c) comply with any reasonable directions issued by or on behalf of the Auditor-General from time to time;
 - (d) fulfil any representations made by the Audit Service Provider in its proposal;
 - (e) have and maintain appropriate quality review systems, including supervision processes, in accordance with professional auditing standards;
 - (f) as required from time to time, consult and cooperate with the officer nominated by the Auditor-General to undertake quality control reviews;
 - (g) promptly notify the Auditor-General of any matters of significance, including fraud and malpractice, of which the Audit Service Provider becomes aware in the course of performing the Auditing Services;
 - (h) promptly notify the Auditor-General of any matter likely to affect the scope, timing or completion of any part of the Auditing Services;
 - (i) promptly notify the Auditor-General of any matter likely to affect the findings, recommendations or audit opinion to be expressed in respect of an Entity;
 - (j) ensure that all Milestones are achieved;
 - (k) ensure that all correspondence to the Entity is submitted on QAO letterhead;
 - (l) ensure that financial statements are presented on an appropriate basis for the type of Entity being audited; and
 - (m) keep the Auditor-General informed of the progress of the Auditing Services, by providing status or billing reports as requested by Auditor-General from time to time.
- 2.5 The Audit Service Provider must provide the following deliverables, signed by the Contract Auditor personally, to the Auditor-General:
- (a) a report to the Auditor-General on each audit of an Entity, setting out the findings, recommendations and audit opinion arising from the audit;
 - (b) a report to the persons charged with the governance of each Entity, setting out the findings, recommendations and audit opinion arising from the audit;
 - (c) audited financial statements for each Entity; and
 - (d) any ancillary or follow-up information or reports requested from time to time by the

Auditor-General.

- 2.6 The Audit Service Provider must provide the deliverables each financial year, upon completion of the Auditing Services for each Entity, in the form required by the Auditor-General.
- 2.7 Prior to finalising a report mentioned in clause 2.5(a) or (b) in respect of an Entity, the Audit Service Provider must present the draft findings, recommendations and audit opinion to the persons charged with governance of the Entity and must include their response in the final report.
- 2.8 Other than in relation to matters required to be raised internally with the persons charged with governance of an Entity, the Audit Service Provider must not report to any person on any matter arising from the undertaking of any engagement to provide Auditing Services except with the prior written consent of the Auditor-General.
- 2.9 The Audit Service Provider must at all times during the term of the Contract, comply with APES 110 Code of Ethics for Professional Accountants, APES 320 Quality Control of Firms and ASQC1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements.
- 2.10 The Contract Auditor must not enter into any agreements binding on the Auditor-General without prior approval from the Auditor-General.

3. CONTRACT AUDITOR & KEY PERSONNEL

- 3.1 The Auditing Services must be performed by the Key Personnel under the supervision of the Contract Auditor, unless the Audit Service Provider has obtained the Auditor-General's consent otherwise. A person replacing one of the Key Personnel with the Auditor-General's consent will be considered to be one of the Key Personnel during the person's engagement on the Auditing Services.
- 3.2 The Audit Service Provider must ensure that Key Personnel are competent and have the necessary skills to perform the Auditing Services on which they will be engaged.
- 3.3 The Audit Service Provider must not without the Auditor-General's consent:
 - (a) allow Key Personnel to delegate any part of the Auditing Services to a person who is not one of the Key Personnel;
 - (b) reassign any part of the Auditing Services from one Key Person to another; or
 - (c) allows tasks that are not connected with the Auditing Services to interfere with or take priority over the Key Personnel's ability to perform and complete the Auditing Services within agreed timeframes.
- 3.4 If the Contract Auditor is not available to perform any of the Services at any time during the term of the Contract, the Audit Service Provider must immediately notify the Auditor-General of the circumstances.
- 3.5 If any of the Key Personnel are not available to perform any of the Services allocated to them, the Audit Service Provider must immediately:
 - (a) notify the Auditor-General of the circumstances; and
 - (b) if so requested by the Auditor-General, arrange for replacement of that person with a person satisfactory to the Auditor-General at no cost to the Auditor-General.
- 3.6 The Auditor-General may, on reasonable grounds, give notice requiring the Audit Service Provider to remove a Key Person from working on the Auditing Services. Upon receipt of a notice under this clause, the Audit Service Provider must, at no cost to the Auditor-General, promptly remove and replace the Key Person mentioned in the notice with a person satisfactory to the Auditor-



General.

3.7 Without limiting the generality of clause 3.6, the parties agree that:

- (a) any conduct by a Key Person that, if done by an employee of the Auditor-General, would constitute a breach of the QAO code of conduct; or
- (b) a Conflict of Interest affecting or involving a Key Person;

is a reasonable ground on which the Auditor-General may request the removal of the Key Person.

4. CONFLICT OF INTEREST

4.1 The Audit Service Provider warrants that, to the best of its knowledge, information and belief, no Conflict of Interest exists or is likely to arise in the performance of the Auditing Services.

4.2 If any actual, perceived or potential Conflict of Interest arises with respect to the performance of Auditing Services, the Audit Service Provider must give notice of the Conflict of Interest, or risk of it, to the Auditor-General immediately upon becoming aware of it.

4.3 The Audit Service Provider undertakes not to use any information acquired in the course of performing the Auditing Services for personal gain.

4.4 The Audit Service Provider must:

- (a) take all reasonable measures to ensure that the Key Personnel and the Audit Service Provider's employees, agents and sub-contractors do not engage in any activity or obtain any interest which is in conflict with the performance of the Auditing Services; and
- (b) immediately give notice of any such activity or interest to the Auditor-General.

4.5 If the Auditor-General receives notice of any Conflict of Interest under clause 4.2 or 4.4, or if the Auditor-General otherwise becomes aware of a matter referred to in clause 4.2 or 4.4, the Auditor-General may terminate the Contract by notice to the Audit Service Provider.

4.6 The Audit Service Provider must not, and must ensure that the Contract Auditor, Key Personnel or other employees do not, during the Contract provide any services that may give rise to any Conflict of Interest or any concerns as to independence as outlined in the Standards. The Audit Service Provider must not perform any such other services without the prior consent of the Auditor-General.

5. AUDIT RECORDS

5.1 All records and deliverables relating to the Auditing Services provided by the Audit Service Provider will be and remain the property of the Auditor-General on behalf of the State of Queensland.

5.2 Any audit tools used by the Audit Service Provider will be and remain the property of the Audit Service Provider.

5.3 The Audit Service Provider must ensure that:

- (a) all Records relating to the Auditing Services are neatly and legibly compiled and maintained in good order;
- (b) sufficient information and evidence are recorded in the Records to demonstrate the nature and extent of the processes employed in the Auditing Services and to support the recommendations, findings, and opinions of the Auditing Services;
- (c) Records that are stored electronically are properly recorded, easily retrievable and that each file is readily identifiable to facilitate storage and retrieval
- (d) appropriate references are made in the relevant sections of the current file to indicate the existence, nature and location of relevant audit information during the course of the

performance of any part of the Auditing Services; and

- (e) all Records are handled and stored in a manner that ensures their confidentiality, integrity and availability.

5.4 The Queensland Audit Office (QAO) retains the right to access any Records relating to the delivery of the Auditing Services, for the purpose of monitoring compliance with these conditions. The Audit Service Provider must make the Records available to the Auditor-General promptly upon request and must allow QAO to:

- (a) have reasonable access to any premises used or occupied by the Audit Service Provider in connection with the provision of the Auditing Services;
- (b) have reasonable access to Records that are in the custody or control of the Audit Service Provider; and
- (c) examine, audit, copy and use any Records that are in the custody or control of the Audit Service Provider.

5.5 The Audit Service Provider must:

- (a) retain all Records for the term of the Contract and promptly return all Records to the Auditor-General within three months of the Contract end date;
- (b) provide electronic Records in a format approved by the Auditor-General;
- (c) regularly back-up electronic Records, and store back-up copies offsite for business continuity and disaster recovery purposes;
- (d) not destroy, or transfer Custody of any Records without the prior written approval of the Auditor-General;
- (e) return Records to the Auditor-General promptly upon receipt of a request to do so by the Auditor-General, except that the Audit Service Provider may retain one (1) copy of its working papers for quality assurance and risk management purposes;
- (f) not copy the Records except for the purposes of establishing and maintaining the Audit Service Provider's own records; and
- (g) immediately notify the Auditor-General in writing if any Records are lost or destroyed.

5.6 The Fees payable under the Contract include the costs of handover of Records by the Audit Service Provider to a subsequent auditor or the Auditor-General at the end of the term of the Contract.

6. QUALITY

6.1 The Audit Service Provider must maintain an Audit Methodology and provide a copy of it to the Auditor-General promptly upon request.

6.2 The Audit Service Provider's performance each year may be subjected to the quality review procedures adopted by QAO, in addition to the Audit Service Provider's own quality review procedures.

6.3 The Auditor-General may at any time review and evaluate the Audit Service Provider's professional development and quality review systems, and the Audit Service Provider's compliance with clause 2.9 and for that purpose the Audit Service Provider must provide access to information and documentation reasonably requested by the Auditor-General.

6.4 If requested, the Audit Service Provider must provide evidence of reviews undertaken of the Audit Service Provider's quality assurance practices and procedures by relevant professional and regulatory bodies, except where the provision of such information to a third party is prohibited by



the conditions of the review.

- 6.5 If the Audit Service Provider is unable to demonstrate a continuing satisfactory level of quality assurance measures, the Auditor-General may terminate the Contract by notice to the Audit Service Provider.

7. FEES & EXPENSES

- 7.1 In consideration of the Audit Service Provider performing the Auditing Services in accordance with the Contract and these Conditions, the Auditor-General will pay the Fees to the Audit Service Provider in the manner described in clause 7.1A.
- 7.1 A The Fees will be payable in Instalments upon satisfaction of the Milestones for each such Instalment.
- 7.2 In addition to the Fees, the Auditor-General will pay the Actual Expenses incurred by the Audit Service Provider in the performance of the Auditing Services, up to but not exceeding the amount of Estimated Expenses.
- 7.3 The Fees represent fixed prices and the Audit Service Provider will not be entitled to any variations to the Fees, or any amount in excess of the Estimated Expenses, other than in accordance with clause 12 of these Conditions or clause 6 of the Contract for Auditing Services.
- 7.4 The Audit Service Provider will not be entitled to be paid for any part of the Auditing Services which the Project Officer has determined has not been performed in accordance with this Contract.
- 7.5 The Audit Service Provider must promptly perform or perform again any part of the Auditing Services that has been determined not to have been performed in accordance with this Contract and the Auditor-General may, without limiting any other right it may have, defer payment for that part of the Auditing Services until the Project Officer is satisfied that the Auditing Services have been performed or performed again in accordance with this Contract.

8. INVOICING AND PAYMENT

- 8.1 The Auditor-General will not have any obligation to pay the Audit Service Provider for any part of the Auditing Services until the Auditor-General has received a correctly rendered invoice.
- 8.2 Invoices submitted by the Audit Service Provider must be of sufficient detail to allow the Project Officer to assess whether the scope of the work undertaken for which payment is claimed meets the agreed Milestone in the Specification.
- 8.3 The Auditor-General through the Project Officer may require the Audit Service Provider to provide additional information to determine whether or not an amount is payable.
- 8.4 The Auditor-General will make payment of a correctly rendered invoice within 30 days after receipt of the invoice or, if additional information is required pursuant to clause 8.3, 30 days after receipt of the additional information.
- 8.5 For the purposes of this Contract, a “correctly rendered invoice” is an invoice:
- (a) in which the amount claimed is properly due for payment pursuant to this Contract;
 - (b) in which the amount claimed is correctly calculated in accordance with this Contract;
 - (c) which fully and correctly identifies the Auditing Services performed; and
 - (d) which complies with clause 8.2.
- 8.6 The Auditor-General will notify the Audit Service Provider as soon as reasonably possible after discovering that an invoice has not been correctly rendered.
- 8.7 If an invoice is found, after the Auditor-General has paid the invoice amount to the Audit Service

Provider, not to have been correctly rendered, the Auditor-General will, as the case requires:

- (a) pay any amount owed to the Audit Service Provider within 30 days of receipt of a correctly rendered invoice or, if additional information is required pursuant to clause 8.3, within 30 days after receipt of the additional information; or
- (b) deduct any amount owed to the Auditor-General from the next payment due to the Audit Service Provider or, if no other payment is due to the Audit Service Provider pursuant to this Contract, recover the amount from the Audit Service Provider as a debt due to the Auditor-General.

8.8 Payment of any amount to the Audit Service Provider will not constitute an admission by the Auditor-General that the Auditing Services have been properly performed in accordance with this Contract.

9. GST

9.1 The Auditor-General is not required to pay the Audit Service Provider for any supply under the Contract until the Audit Service Provider has given the Auditor-General a valid tax invoice in respect of the supply.

9.2 The Auditor-General will pay the GST Amount to the Audit Service Provider in addition to the Fees and the Audit Service Provider must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.

9.3 If for any reason including, without limitation:

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

the amount of GST paid by the Auditor-General under the Contract differs from the amount of GST paid or payable by the Audit Service Provider to the Commissioner of Taxation, then the Audit Service Provider must issue an appropriate GST adjustment note and the difference must be paid by or to the Auditor-General as the case may be.

9.4 The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this clause.

10. PRIVACY

10.1 Where the Audit Service Provider collects, accesses, uses or stores Personal Information in order to perform Auditing Services, the Audit Service Provider must comply with the Information Privacy Principles contained in the *Information Privacy Act 2009* and without limiting the generality of that must:

- (a) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure and other misuse;
- (b) ensure that its employees and agents are aware of the Audit Service Provider's obligations under this clause;
- (c) immediately notify the Auditor-General if Personal Information is compromised as a result of a data breach;
- (d) only use Personal Information for the purpose for which it was obtained, unless use is required, authorised under law or necessary for law enforcement purposes



- (e) not disclose Personal Information without written consent from the Auditor-General or an authorised delegate of the Auditor-General, unless disclosure is required or authorised under law or necessary for law enforcement purposes;
- (f) ensure that only authorised persons have access to Personal Information;
- (g) immediately notify the Auditor-General if the Audit Service Provider becomes aware that a disclosure of Personal Information is required, authorised under law or necessary for law enforcement purposes;
- (h) not transfer Personal Information outside Australia without the Auditor-General's written consent; and
- (i) comply with such other privacy and security measures as the Auditor-General reasonably advises the Audit Service Provider in writing from time to time.

11. CONFIDENTIALITY

- 11.1 The Audit Service Provider must not disclose Protected Information to any person except in the circumstances set out in section 53 of the Act.
- 11.2 The Audit Service Provider must ensure that Protected Information or other confidential information is not used in any manner which is calculated to cause injury or loss to an Entity, the Auditor-General or the State Government and must use reasonable precautions to prevent the disclosure of any such information by any Key Personnel or other employees of the Audit Service Provider.
- 11.3 The Audit Service Provider expressly consents to the Auditor-General publishing information about this Contract in the QAO Annual Report and on State Government websites (including, without limitation, the QAO website and the Queensland Government Chief Procurement Office website), which may include:
- (a) the Audit Service Provider's name and address;
 - (b) the names of the Contract Auditor and Key Personnel who performed the Auditing Services on the Audit Service Provider's behalf;
 - (c) the audits carried out by the Audit Service Provider on behalf of the Auditor-General;
 - (d) the amount of Fees paid in relation to the Auditing Services; and
 - (e) the date on which this Contract commenced.

12. CHANGE OF SCOPE

- 12.1 If there is a substantial and unforeseen change in the scope of the Auditing Services, then the Auditor-General may by notice require the Audit Service Provider to vary the nature, scope or timing of Auditing Services under a Contract for Auditing Services.
- 12.2 Without limiting the generality of clause 12.1, the Auditor-General may direct the Audit Service Provider to:
- (a) increase, decrease or omit any part of the Auditing Services;
 - (b) change the character or content of any part of the Auditing Services;
 - (c) change the direction or dimensions of any part of the Auditing Services; or
 - (d) perform additional work.
- 12.3 Where the Auditor-General requires a variation to the Auditing Services, the Fees will be increased or decreased by an amount that the parties agree accurately reflects the change in scope of the Auditing Services. The parties will negotiate in good faith about the variation of the Fees and the time for completion of the varied Auditing Services.

- 12.4 The Audit Service Provider must not commence work on the variation to the Auditing Services without the Auditor-General's consent and the written agreement of both parties to the varied Fees and time for completion.

13. INDEMNITIES

- 13.1 In this clause 13, 'claim' means any claim, action, proceeding, demand, liability, obligation, costs including legal costs on a full indemnity basis, losses, damages, and expenses, including those arising out of the terms of any settlement.
- 13.2 Subject to the limitation of liability in clause 13.3, the Audit Service Provider indemnifies the Auditor-General, QAO and each of its officers and employees ('the Indemnified Persons') against any and all claims which may be brought against, made upon or incurred by any of the Indemnified Persons in connection with:
- (a) a breach of this Contract by the Audit Service Provider;
 - (b) negligent performance of the Auditing Services; or
 - (c) an unlawful or negligent act or omission of the Audit Service Provider or any of its officers, agents, employees or contractors;

except to the extent that a claim arises from or is caused by a negligent act or omission of any of the Indemnified Persons.

- 13.3 The Audit Service Provider's liability is limited to the extent necessary to comply with a scheme that is in force and applies to the Audit Service Provider under the *Professional Standards Act 2004*.

14. INSURANCE

- 14.1 The Audit Service Provider must have, and maintain for the term of the Contract, public liability insurance and professional indemnity insurance in relation to the Auditing Services.
- 14.2 The Audit Service Provider must take out and maintain for the duration of the Contract:
- (a) workers' compensation insurance for the Audit Service Provider's employees, in accordance with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) public liability insurance if specified in the Contract for Auditing Services, for the amount specified;
 - (c) professional indemnity insurance if specified in the Contract for Auditing Services, for the amount specified; and
- any other insurances specified in the Contract for Auditing Services.
- 14.3 The insurances must be satisfactory to the Auditor-General in all respects and effected with an insurer that is authorised and licensed to operate in Australia.
- 14.4 The Audit Service Provider must maintain the professional indemnity insurance for a period of 6 years following the completion or termination of the Contract.
- 14.5 The Audit Service Provider must promptly upon request produce evidence to the Auditor-General of the existence and currency of any of the insurances required by this clause 14.
- 14.6 The Audit Service Provider must notify the Auditor-General if an insurance policy is cancelled, lapses or is materially modified.

15. SUSPENSION OF SERVICES

- 15.1 If the Auditor-General wishes to suspend Auditing Services under a Contract for Auditing Services because of any change in the nature, scope, or timing of the Auditing Services to be provided, the Auditor-General may by notice require the Audit Service Provider to suspend the



progress of the whole or any part of the Auditing Services for a specified period within a reasonable time after receipt of the notice.

- 15.2 The Auditor-General may by notice require the Audit Service Provider to recommence work on all or any part of the suspended Auditing Services.
- 15.3 Where the Audit Service Provider is required to suspend Auditing Services pursuant to clause 15.1:
- (a) the Audit Service Provider and the Auditor-General will negotiate in good faith as to reasonable compensation payable to the Audit Service Provider; and
 - (b) any previously agreed completion dates for the Auditing Services may be postponed by a period equivalent to the duration of the suspension following written agreement between the parties.
- 15.4 The Auditor-General will reimburse the Audit Service Provider for additional costs reasonably and properly incurred by the Audit Service Provider as a result of the suspension of the Auditing Services pursuant to clause 15.1.

15A. FORCE MAJEURE

- 15A.1 If the Audit Service Provider is prevented, in whole or in part, from providing the Auditing Services as a result of a Force Majeure Event, the Audit Service Provider must promptly notify the Auditor-General in writing, specifying:
- (a) the Force Majeure Event and the reasons why, and extent to which, it will prevent the Audit Service Provider from providing the Auditing Services; and
 - (b) the estimated length of time for which the Force Majeure Event is expected to continue.
- 15A.2 Once a notice is given under clause 15A.1:
- (a) the obligations of the Audit Service Provider which cannot be performed because of the Force Majeure Event will be suspended for the duration of the Force Majeure Event;
 - (b) the Audit Service Provider must do everything reasonable to remedy the Force Majeure Event and resume providing the Auditing Services as soon as possible; and
 - (c) the Auditor-General will not be required to pay any part of the Fees to the Audit Service Provider during, or in relation to, the period for which the Force Majeure Event continues.
- 15A.3 If the Force Majeure Event notified under clause 15A.1 continues for a period of more than 21 days, then, notwithstanding anything elsewhere in the Contract, the Auditor-General may terminate the Contract by 7 days' written notice to the Audit Service Provider.
- 15A.4 The term of the Contract will not be extended by the period for which the Force Majeure Event notified under clause 15A.1 continues.

16. DISPUTE RESOLUTION

- 16.1 If a dispute arises in relation to the Contract, the dispute will be the subject of mediation for a period of up to 14 days (or such longer period as the parties may agree) by a mediator appointed by agreement between the parties.
- 16.2 If the parties fail to agree as to the appointment of a mediator within 7 days after a dispute arises, the mediator will be appointed by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators.
- 16.3 A dispute will have arisen between the parties when one party gives notice to that effect to the other party.
- 16.4 Each party may designate a person to act as its representative in mediation relating to the



dispute, being a person with sufficient authority to settle the dispute.

- 16.5 If any information or documents are exchanged or any offer of settlement is made during the course of a mediation, a party may not use any such information or documents or offer of settlement for any purpose other than to settle the dispute.
- 16.6 In the event that the dispute is not resolved by agreement within 28 days after the dispute arose, either party may commence legal proceedings.
- 16.7 Each party shall continue to perform its obligations under the Contract notwithstanding the existence of a dispute or any proceedings under this clause.
- 16.8 Nothing in this clause 16 prevents a party from exercising its rights to terminate under clause 17.

17. TERMINATION

- 17.1 Either party may terminate the Contract by giving 21 days' notice of termination to the other party.
- 17.2 The Auditor-General may immediately terminate the Contract by notice to the Audit Service Provider if:
 - (a) a matter mentioned in clause 1.4, 4.5 or 6.5 occurs;
 - (b) the Audit Service Provider is in breach of clause 2.9;
 - (c) the Audit Service Provider has failed to remedy any other breach of the Contract within 14 days after a notice to remedy has been given by the Auditor-General specifying the breach;
 - (d) the Contract Auditor is suspended from or ceases membership of the Institute of Chartered Accountants in Australia, CPA Australia or NIA, or fails to hold any practicing certificate required by these bodies;
 - (e) the Contract Auditor or a Key Person is incapacitated through accident or ill-health and in the opinion of the Auditor-General is unable to properly provide the Auditing Services within the required timeframe;
 - (f) the Contract Auditor or a Key Person is convicted of any criminal offence which in the opinion of the Auditor-General materially affects the performance of the Auditing Services; or
 - (g) the Audit Service Provider
 - (i) becomes insolvent;
 - (ii) becomes subject to any form of external administration;
 - (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (iv) is wound up, voluntarily or involuntarily.
- 17.3 The Audit Service Provider may terminate the Contract immediately by notice if the Auditor-General has failed to remedy a breach of the Contract within 14 days after a notice to remedy has been given by the Audit Service Provider specifying the breach.
- 17.4 Termination of the Contract will not affect any claim or action either party may have against the other by reason of any prior breach of the Contract and will not relieve either party of any obligation under the Contract which is expressed to continue after termination.
- 17.5 Upon termination of the Contract, all money which has been paid and all money to be paid for work done prior to the date of termination will be in full and final satisfaction of claims by the Audit Service Provider under the Contract.



18. CLAUSES TO SURVIVE TERMINATION

18.1 The following clauses will survive termination or expiration of these Conditions or any Contract for Auditing Services:

- (a) clause 5 (Audit Records);
- (b) clause 8.7 (refund or recover of incorrect payments);
- (c) clause 9 (GST);
- (d) clause 10 (Privacy);
- (e) clause 11 (Confidentiality);
- (f) clause 13 (Indemnities); and
- (g) clause 14 (Insurance).

19. NOTICES

19.1 Any notice, request, notification, consent or approval (a “notice”) under the Contract must be in writing and may be sent by prepaid postage, fax, email or delivered by hand to the respective addresses set out in the Contract for Auditing Services or such other address as a party may subsequently notify to the other.

19.2 A notice will be deemed to be given:

- (a) if posted – five days after the date of posting;
- (b) if delivered – on the date of delivery; or
- (c) if faxed – on the date the sender’s facsimile machine notes a complete and successful transmission;
- (d) if emailed – on the date of the email;

except that a fax or email sent after 5:00pm will be deemed to be given on the next business day.

20. GENERAL PROVISIONS

20.1 No employment, partnership or joint venture – The relationship of the parties under the Contract is one of principal and contractor. The Audit Service Provider is not by virtue of the Contract in partnership or joint venture with, the Auditor-General and must not represent itself or allow itself to be represented as a partner or joint venturer. The Contract Auditor and Key Personnel are not by virtue of the Contract employees of the Auditor-General.

20.2 Delay not to constitute waiver – Any failure by a party at any time to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party’s rights.

20.3 Waiver to be in writing – No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

20.4 Waiver limited to specific occasion – A waiver by a party of a breach of any provision of the Contract will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

20.5 Governing law – The Contract is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

20.6 Compliance with all laws – The Audit Service Provider must comply with all relevant laws in the performance of the Services.



- 20.7 Severability – If any part of the Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 20.8 Further assistance – The Audit Service Provider must do all things reasonably required by the Auditor-General to give effect to the Contract.
- 20.9 No subcontract or assignment – The Audit Service Provider may not assign its interest in the Contract or subcontract any part of the Auditing Services, except with the prior written consent of the Auditor-General.
- 20.10 Any consent given by the Auditor-General under clause 20.9:
- (a) will not operate as an authority to transfer responsibility to the assignee or subcontractor; and
 - (b) will not relieve the Audit Service Provider from any of its liabilities or obligations under the Contract.

